

CHAPTER 94: INCOME TAX

EDITOR'S NOTE: See Chapter 94.5 for income tax effective January 1, 2016.

Section

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EDITOR'S NOTE: The City of West Carrollton hereby declares its intent and resolve to enact uniform provisions in its tax ordinances in accordance with the proposals stated in Exhibit A attached to Resolution 24-2012 upon revision of Chapter 718 of the Ohio Revised Code as recommended in Exhibit A.

The City encourages the Ohio General Assembly to be expeditious in revising Chapter 718 of the Ohio Revised Code in accordance with the proposals stated in Exhibit A and maintaining revenue neutrality.

The City further encourages other municipalities in southwestern Ohio to declare their intent and resolve to enact the uniform tax provisions proposed in Exhibit A upon revision of Chapter 718 of the Ohio Revised Code.

§ 94.01 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:

ASSOCIATION. A Partnership, limited partnership, limited liability partnership/company, or any other form of unincorporated enterprise or business entity, owned by two or more persons.

BOARD OF APPEAL. A board consisting of three appointed West Carrollton citizens in charge of reviewing penalty and/or interest abatement appeals and then rendering an impartial decision.

BOARD OF REVIEW. A board consisting of the City Manager, the Finance Director, or their respective designees, and a third individual appointed by the membership in charge of reviewing and making minor revisions to, additions to, interpretations of, and/or clarifications of the income tax chapter.

BUSINESS/BUSINESS ENTITY. An enterprise, venture, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit; including but not limited to the renting or leasing of property, real, personal or mixed; whether by an individual, partnership, fiduciary, trust, association, corporation, or any other entity.

CORPORATION. A corporation, Subchapter S corporation, or joint stock association organized under the laws of the United States, State of Ohio, or any other state, territory or foreign country or dependency.

EMPLOYEE. One who works for wages, salary, commission, or other type of compensation in the service of an employer.

EMPLOYER. An individual, partnership, association, corporation, governmental body, unit, or agency, whether or not organized for profit, or any other entity that employs one or more persons on a salary, wage, commission or other compensation basis.

FINANCE DIRECTOR. The individual responsible for managing the fiscal affairs of the City of West Carrollton, including collection of all tax imposed by this chapter.

FISCAL YEAR. An accounting period of twelve months (12) or less ending on any other day than December 31.

FORM 2106. The Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

GENERIC FORM. An electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income.

GROSS RECEIPTS. The total income for any source before any deductions, exceptions or credits are claimed which are required to be included in the tax return.

INTANGIBLE INCOME. Income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code.

INTERNAL REVENUE CODE. The Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

INTERNET. The international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical sub-network known as the world wide web.

JOINT ECONOMIC DEVELOPMENT DISTRICT (JEDD). Districts created under Ohio Revised Code sections 715.70 through 715.83, as amended.

NET PROFITS. The net gain from the operation of a business, profession, enterprise, or other activity, after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes without deduction of taxes imposed by this chapter, Federal, State, or other taxes based on income; and in the case of an association, without deduction of wages paid to partners, and other owners; and otherwise adjusted to the requirements of this chapter.

NON-RESIDENT. An individual domiciled outside the City of West Carrollton.

OTHER PAYER. Any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent.

PERSON. A human being, partnership, fiduciary, association, or corporation. Whenever used in any clause prescribing and imposing a penalty, "person" as applied to any unincorporated entity means the parties or members thereof, and as applied to corporations, the office thereof; and any employee having control, supervision, or responsibility of tax law compliance on behalf of a human being, partnership, fiduciary, association, or corporation.

RESIDENT. An individual domiciled in the City of West Carrollton.

RETURN PREPARER. Any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.

SCHEDULE C. The Internal Revenue Service Schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

SECTION 1231 PROPERTY. Business real estate/land or any depreciable business property excluded from the definition of "capital assets" as defined by the Internal Revenue Code.

SECTION 1245 PROPERTY. Property that is or has been depreciable such as personal property or other tangible property (i.e. fixed assets/property, plant, and equipment) used as an integral part of the business operations as defined by the Internal Revenue Code.

SECTION 1250 PROPERTY. Any real property that is or has been depreciable but not subject to recapture under Section 1245 as defined by the Internal Revenue Code. Examples include buildings and their structural components and tangible real property.

TAXABLE YEAR. Calendar year or the fiscal year on the basis of which the net profits are to be computed under this chapter and in the case a return for a fractional part of a year, the period for which such return is required to be made. Assume calendar year for all individuals.

TAXPAYER. Any person, as defined, required filing a return or paying tax pursuant to this chapter. The singular shall include the plural and the masculine shall include the feminine and the neuter.

(Ord. 3251. Passed 11-11-03.)

§ 94.02 INCOME TAX LEVY.

To provide funds for the purpose of general municipal operations, there is levied a tax at the rate of two and one-fourth percent (2.25%), except for those under the minimum age, upon the following:

(Ord. 3523. Passed 1-22-13.)

(A) All qualified wages, sick and vacation pay, commissions, and other compensation earned, received, accrued, rental income, or in any other taxable income set apart unto residents of the City of West Carrollton.

(Ord. 3275. Approved by the voters 11-2-04.)

(1) On all income derived anywhere by residents or derived in West Carrollton by non-residents from prizes, awards, gaming, wagering, lotteries, or games of chance as permitted by Ohio law including, but not limited to, reporting on IRS form W-2G, form 5754 and/or other form required by the IRS for reporting such income.

(Ord. 3466. Passed 12-14-10.)

(B) All qualified wages, sick and vacation pay, commissions, rental income and other compensation earned, received, accrued, or in any other way set apart unto non-residents for work done or services rendered in the City of West Carrollton.

(C) (1) On all of the taxable net profits of resident associations, unincorporated businesses, professions, or other entities, derived from sales made, work done, services performed/rendered, business conducted, or other activities performed. The tax levied on these associations or other business entities are primarily liable for the tax with the owners/officers being secondarily liable. Credit will be given for appropriate municipal income tax paid to other cities allowable by this chapter for work performed outside the City of West Carrollton limits.

(2) On a resident partner/owner's share of the taxable net profits earned from a business entity or association. Credit will be given for allowable municipal income tax paid to other cities for work performed outside the City of West Carrollton limits.

(D) (1) On the portion attributable to the City of West Carrollton of the net profits of all non-resident associations, unincorporated businesses, professions, or other entities, derived from sales made, work done, services performed/rendered, business conducted, or other activities performed in West Carrollton whether or not such an association or other business entity has an office or place of business in the City of West Carrollton. The tax levied on these associations or other business entities are primarily liable for the tax with the owners/officers being secondarily liable.

(2) On a non-resident partner/owner's share of the net profits earned in the City of West Carrollton from a business entity or association.

(E) On the payments made to current and former employees by an employer as accrued benefits and/or vacation wages for services performed in West Carrollton; on the payments made to current or former employees by an employer under a wage continuation plan during periods of disability or sickness earned for service performed in West Carrollton.

(F) 12-Day Occasional Entry Rule: the City of West Carrollton shall not tax the compensation of an individual if all of the following apply:

(1) The individual does not reside in the City of West Carrollton;

(2) The compensation is paid for personal services performed by the individual in the City of West Carrollton on twelve (12) or fewer days during the calendar year;

(3) In the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the City of West Carrollton and the individual pays tax on compensation described in this chapter to the taxing entity the employer's principal place of business is located in, and no portion of the tax is refunded to the individual.

(4) The individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment/entertainer or sports event, or an employee of such a promoter, all as may be reasonably defined by the City of West Carrollton.

(Ord. 3275. Approved by the voters 11-2-04.)

§ 94.03 INCOME TAX RETURN AND PAYMENT OF TAX.

(A) Each person engaged in business or whose qualified wages, commissions, and/or other compensation are subject to the income tax imposed by this chapter, shall make and file, on or before April 15th of the following year in each year they are subject to City income tax, a return with the City of West Carrollton Income Tax Department, whether or not tax is due. A

taxpayer on a fiscal year accounting basis for Federal income tax purposes shall, beginning with the first fiscal year in which any part of such year falls within the effective period of this chapter, file a return on or before the fifteenth day of the fourth (4) month after the close of fiscal year-end or period.

(B) All City of West Carrollton residents at the minimum age or older, are required to file a City of West Carrollton income tax return. This mandatory filing requirement is in effect whether or not income tax is due. The Tax Administrator may enforce a minimum age filing requirement.

(C) A husband and wife, in any taxable year, may elect to file separate or joint returns.

(D) The taxpayer making a return shall, at the time of filing thereof, pay to the City of West Carrollton Income Tax Department, the amount of taxes due thereon, provided, however, that where any portion of the tax due shall have been deducted at the source pursuant to the provisions of this chapter, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of this chapter, or where an income tax has been properly paid to another municipality, credit for the amount so paid in accordance with this chapter hereof, 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 said return. The Tax Administrator may determine a reasonable minimum balance due limit. If the balance due is at or below this limit, payment may not be required.

(E) The Finance Director or his delegate may provide by regulation to accept that the return of an employer(s) showing the correct tax deducted by said employer(s) from qualified wages, commissions, or other compensation of and paid by the employer(s) to the City of West Carrollton Income Tax Department shall be accepted as the return required of any employee whose sole income, subject to the tax under this chapter, is such qualified wages, commissions, or other compensation.

(F) A taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of this chapter may have the overpayment applied against any subsequent liability hereunder, or at his election indicated on the return, such overpayment or part hereof, shall be refunded provided that no additional unpaid liability exists, and that such refund is in compliance with this chapter, and is within three years after tax for that year was initially due. The Tax Administrator may determine a reasonable minimum refund due limit. If the balance due is at or below this limit, the refund will not be required.

(G) The net loss from an unincorporated business activity (example: Federal schedule C) may not be used to offset qualified wages, commissions, or other compensation. However, if a taxpayer is engaged in two or more taxable business activities to be included in the same return, the net loss of one unincorporated business activity (except any portion of a loss that is separately reportable for municipal tax purposes to another similar municipal taxing entity) may be used to offset the profits of another for purposes of arriving at overall net profits. A profit or loss from any entity required by this chapter to file as a separate entity cannot be offset in any manner. A net operating loss sustained in any taxable year may not be carried backward to any other taxable year but may be carried forward for three (3) years.

(H) The City of West Carrollton shall accept a generic form of any return, report, or document required to be filed if the generic form once completed and filed, contains all of the information required to be submitted with the City of West Carrollton's prescribed returns, reports or documents, and, if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the City of West Carrollton governing the filing of returns, reports or documents.

(Ord. 3251. Passed 11-11-03.)

§ 94.04 COLLECTION OF TAX AT THE SOURCE.

(A) Each resident employer and/or employers doing business within the City who employs one or more persons on a qualified wage, commission, or other compensation basis, shall deduct at the time of payment of such qualified wage, commission, or other compensation, the income tax at the rate of two and one-fourth percent (2.25%) on the gross qualified wages, commissions, or other compensation due by the employer to such employee and shall, following the schedules as specified in this section, make a return showing the amount of taxes so deducted and a record of payments showing that all taxes deducted during the periods required have been paid to the City in accordance with the payment schedule prescribed by this chapter. (Ord. 3523. Passed 1-22-13.)

(B) 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. Every employer or officer(s) of a business entity is deemed to be a trustee for this Municipality in collecting and holding the tax required under this chapter to be withheld. The funds so collected by such withholding are deemed to be trust funds. The officer(s) and/or employee(s) having control, supervision, and/or charged with the responsibility of filing the return and making payment is personally liable for failure to file the return or pay the tax due as required by this chapter. The officer(s) or employee(s) shall be personally liable for the tax he failed to return or pay as well as any related interest and penalties. The dissolution of a business entity does not discharge an officer's or employee's liability for failure of the business entity to pay the tax due.

(C) Employers shall pay to the City all income tax withheld or required to be deducted and withheld on a quarterly or monthly basis. If the employers City of West Carrollton withholding tax due is consistently averaging \$500 or more per month or over \$6,000 for the year, they must file on a monthly basis. The monthly withholding return (W-1) is due on or before the fifteenth day of each following month. All other employers may elect to file quarterly. The quarterly withholding tax due must be paid on or before the end of the month following the reporting period (i.e. due dates of April 30, July 31, October 31, and January 31) with the proper withholding tax return (W-1).

(D) Each employer, on or before the corresponding IRS due date, shall file with the Income Tax Department of the City of West Carrollton an information return, City of West Carrollton Reconciliation of Tax Withheld (W-3), for each employee from whom income tax has been or should have been withheld showing the name, address and social security number of the

employee, the total amount of qualified wages, commissions, tips and other compensation paid the employee during the year, and the amount of municipal income tax withheld from each employee (Form W-2). In lieu of submitting form W-2's, an alternative method of reporting must be approved by the Finance Director or his delegate. The Finance Director or his delegate may, by regulation, provide for the use of electronic media by employers for reporting of annual wage and tax data.

(E) In addition to the above wage reporting requirements, any person who compensates an individual, contractor or subcontractor shall report such payment. The information required includes the name, address and social security number (or federal identification number for business entities), and amount of compensation. Federal form 1099 may be submitted in lieu of such listing. The information must be filed annually with the Income Tax Department of the City of West Carrollton on or before the corresponding IRS due date for form 1099.

(F) Failure to file any required documentation in a timely manner as prescribed by this section will be subject to late filing penalty assessment as prescribed in this chapter.

(Ord. 3275. Approved by the voters 11-2-04.)

§ 94.05 EXEMPTIONS/DEDUCTIONS.

Exemptions.

(A) Military pay or allowance of active members of the Armed Forces of the United States.

(B) The income of religious, fraternal, charitable, scientific, literary, non- profit, educational institutions, and/or other organization specified in the Ohio Revised Code, Section 718.01, to the extent that such income is derived from tax exempt real estate, tax-exempt tangible or intangible property or tax exempt activities.

(C) Personal earnings of any natural person under the minimum age filing requirement (Section 94.03(B)), if applicable. The entire year of taxable income becomes taxable if the person exceeds that minimum age by the end of the year (no proration).

(D) Any natural person 65 or older by the end of the taxable year is entitled to an exemption to be determined by the Tax Administrator.

(E) Social Security benefits, unemployment insurance benefits, welfare benefits, and qualified pensions paid as a result of retirements.

(F) Most interest, dividends, and royalties. (Ord. 3251. Passed 11-11-03.)

(G) Poor relief, food stamps, unemployment compensation, aid to dependent children, child support, alimony, capital gains and losses from investment activity (Federal schedule D), gains or losses from Section 1231 property not defined as a capital asset, Worker's Compensation, third-party sick and disability pay, jury duty if turned over to employer, housing allowances for clergy to the extent that the allowance is used to rent or provide a home.

(Ord. 3466. Passed 12-14-10.)

(H) Qualified wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution, the Constitution of the State of Ohio, any act of Congress, or any act of the Ohio General Assembly limiting the City of West Carrollton to impose income taxes on income.

(I) Compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.

Deductions

(J) Form 2106 Employee Business Expense: A person who receives qualified wages or compensation and who pays business expenses without reimbursement from his employer or association, shall be entitled to a deduction to the same extent that such expenses are allowable under The Federal Income Tax Code without any adjusted gross income limitations. However the deduction will only be permitted to the extent the Finance Director deems it ordinary, necessary, and it was incurred while earning the income and directly related to earning the income subject to the tax levied by this chapter.

(K) Losses incurred from business activities such as self-employment (Federal schedule C), rental (schedule E), and partnership interests (schedule E) losses may be carried forward for three (3) years to offset similar business activity income. Such losses may not be used to offset employee compensation such as qualified wages. If part or all of the business loss was generated outside the City of West Carrollton limits, that portion of the loss must be allocated to other taxing districts appropriately.

(L) Part-year residents can deduct the portion of their income earned while they did not live in the City of West Carrollton. Other deductions must be allocated on the same basis. A person will be considered a resident if they live in West Carrollton a total of 30 days or more.

(Ord. 3251. Passed 11-11-03.)

§ 94.06 CONSOLIDATED RETURNS.

(A) Filing of consolidated returns may be permitted, required or denied in accordance with the rules and regulations prescribed by the Finance Director or his delegate. The returns must be a fair representation of business activity in the City.

A method of reporting should not be chosen with the intent to minimize or decrease the entity's tax liability. If the Tax Administrator determines this intent, the consolidated return may be denied.

(B) 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 other activity within the City constituting a portion only of its total business, the Finance Director or his delegate may require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City. If the Finance Director or his delegate finds taxable income not being properly allocated to the City by reasons such as transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the City.

(Ord. 3251. Passed 11-11-03.)

§ 94.07 DECLARATIONS.

(A) Every person who anticipates any taxable income which is not subject to this chapter or who engages in any business, profession, enterprise, or other activity subject to the tax imposed by this chapter hereof, shall file a declaration setting forth such business activity together with the estimated tax due thereon.

(B) Such declaration shall be filed on or before April 15th of each year, or within the 15th day of the fourth (4th) month after the taxpayer first becomes subject to the tax.

Taxpayers who report on a fiscal year basis shall file a declaration within the 15th day of the fourth month after the beginning of each fiscal year or period.

(C) (1) Such declaration shall be filed on a form furnished or obtainable from the Income Tax Department. Credit shall be taken for West Carrollton City Tax withheld, if any, from any portion of such income. In addition, credit may be taken for tax paid or to be withheld and remitted to other taxing municipalities in accordance with this chapter.

(2) The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment date as provided herein. A declaration may be amended at any time, provided, however, that the unpaid balance due shall be paid in equal installments on or before the remaining payment dates.

(D) (1) Such declaration of estimated tax to be paid the City shall be accompanied by a payment of at least one-fourth of the estimated annual tax, and at least an equal amount to be paid on or before the 15th day of the fourth month and the last day of the 7th, 10th, and 13th months after the beginning of the year. For a calendar-year taxpayer, the due dates are as follows: April 15, July 31, October 31, and January 31 of the following year.

(2) On or before the 15th day of the fourth month of the calendar year or fiscal year following that for which such declaration or amended declaration should be filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with the provisions of this chapter.

(3) The final installment of estimated tax quarterly payments need not be made if the taxpayer files his final return and pays the balance of tax due thereon within forty-five (45) days of the end of his chapter-complying taxable year.

(E) A declaration of estimated tax shall not be considered filed in good faith if less than ninety percent (90%) of the total correct tax is not paid by the final quarter declaration due date. The remaining tax due the day after the final quarter due date is subject to a ten percent (10%) interest charge. An exception will be made if one hundred percent (100%) or more of the prior year tax liability, after tax withheld is deducted, has been paid in equal quarterly installments in the current year.

(F) Taxpayers that have a total correct tax due of less than two hundred dollars (\$200) before any estimated tax payments are made are not required to file a declaration because they are exempt from declaration interest. (Ord. 3251. Passed 11-11-03.)

§ 94.08 DUTY TO RETAIN RECORDS.

Every taxpayer shall retain all records necessary to compute tax liability for a period not less than five (5) years from the date the return is filed, or the taxes required to be withheld are paid.

(Ord. 3251. Passed 11-11-03.)

§ 94.09 CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES.

(A) Every individual taxpayer who resides in the City but who received net profits, qualified wages, commissions or other compensation for work done or services performed or rendered outside of the City, if he has paid a municipal income tax or Joint Economic Development District tax based on income, on such net profits, qualified wages, commissions or other compensation in another municipality, shall be allowed a credit for the amount so paid by him or in his behalf in such Municipality. The credit shall not exceed the tax assessed by this chapter on such income earned in such other municipality or municipalities where such tax is paid.

(B) Notwithstanding the provisions contained in this chapter, or any other provisions inconsistent herewith, a claim for refund or credit under this section shall be made in such manner as the Finance Director or his delegate may, by regulation, provide.

(Ord. 3251. Passed 11-11-03.)

§ 94.10 APPORTIONMENT OF TAXABLE INCOME.

If the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the City of West Carrollton shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the City of West Carrollton, then only such portion shall be considered as having a taxable situs in the City of West Carrollton for purposes of municipal income taxation. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of the City of West Carrollton shall be considered as having a taxable situs in the City of West Carrollton for purposes of municipal income taxation in the same proportion as the average ratio of:

(A) (1) The average original cost of the real and tangible personal property owned or used by the taxpayer in the taxable period to the average original cost 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.

(2) 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 therein by eight.

(B) (1) Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City of West Carrollton to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession wherever their services are performed.

(2) As used in the preceding paragraph, persons employed shall not be construed to mean any subcontractor or independent contractor.

(C) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City of West Carrollton to gross receipts of the business or profession during the same period from sales and services, wherever made or performed. In the event the foregoing allocation formula does not produce an equitable result, the Finance Director or his delegate may under uniform regulations, substitute another basis so as to produce such result. Changing to a basis to minimize or manipulate taxable income should not be a reason for making the change. Once a basis is chosen, this basis should be consistently used unless the Finance Director approves a change.

As used in this chapter, "sales made in the City," means:

(1) All sales of tangible personal property which is delivered within the City regardless of where title passes if shipped from a stock of goods within the City;

(2) All sales of tangible personal property which is delivered within the City regardless of where title passes even though transported from a point outside the City if the taxpayer is regularly engaged through his own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion;

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

(4) For West Carrollton resident business or business entities, if sales are made outside the City but no municipal income was paid to another municipality for that activity, then that corresponding taxable income becomes taxable to the City of West Carrollton.

(5) If the sales department is physically located in the City of West Carrollton limits, and substantially all the sales department's activity occurs in West Carrollton, those sales shall be considered in West Carrollton for allocation purposes regardless of where the purchaser is located or the product/service is eventually shipped/rendered.

(6) If one or more of the apportionment factors significantly distorts the percentage of taxable income allocated to West Carrollton, that factor(s) should be removed from the calculation. The remaining factors will then be divided by the number of factors used. Even one factor used is acceptable if the percentage fairly represents the business activity in West Carrollton.

(D) Non-resident individual taxpayers working in and out of the City of West Carrollton limits will calculate their tax liability based on the formula of the total number of days worked in the City divided by the total number of days worked for the year, excluding vacation, holiday, and sick days during the year. The resulting percentage applies to the total annual income from wages. Where no record can be substantiated for the total number of days worked, two hundred and sixty (260) days will be used. Employer verification/certification of basis for refunding the tax is required.

(Ord. 3251. Passed 11-11-03.)

§ 94.11 LOSS CARRY-FORWARD.

(A) The portion of net operating loss, based on income taxable under this chapter, sustained in any taxable year allocable to the City may be applied against the portion of the profit of succeeding years allocable to the City until fully utilized but, in no event, for more than three (3) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year. On an individual return, such losses may not be used to offset employee compensation such as qualified wages.

(B) In the event taxable income is properly allocated both within and outside the City, the portion of net operating loss

sustained shall be allocated to the City in the same manner as provided in this chapter for allocating net profits to the City as stated in this chapter. The portion of net operating loss to be carried forward shall be determined in the year the net operating loss is sustained, on the basis of the allocation factors applicable to that year. The same method of accounting and allocation must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained.

(C) The net operating loss of a business which loses its identity through a merger, consolidation, etc. shall not be allowed as a carry-forward loss deduction to the surviving business entity.

(Ord. 3251. Passed 11-11-03.)

§ 94.12 REFUNDS; OVERPAYMENTS.

(A) A taxpayer who has overpaid the amount of tax to which the City of West Carrollton is entitled under the provisions of this chapter may have the overpayment applied against any subsequent liability hereunder, or at the taxpayer's election indicated on the return, such overpayment, or part thereof, shall be refunded, if above the minimum refund due limit, provided that no additional unpaid liability exists, all proper supporting documentation was filed, and the refund is properly requested within three years after that year's tax return was initially due before extensions.

(B) The Tax Administrator may determine a reasonable minimum refund due limit. If the balance due is at or below this limit, the refund will not be required.

(C) Refunds may be held for or applied against prior year outstanding tax balances.

(D) All requests for refund of tax overpaid must be made in writing, unless otherwise accepted/approved by the Finance Director, by one of the following methods:

(1) Indicating a refund for tax overpaid on the space indicated on the West Carrollton income tax return with proper supporting documentation, or

(2) Written correspondence in the form of a refund request, with all supporting documentation and/or information attached.

(E) When a taxpayer's return indicates that a refund is due and a refund is not issued within a reasonable amount of time after the Income Tax Department has received proper verification and substantiation as to the validity of the refund claim, interest shall be paid at the rate determined by the Tax Administrator. A return, which indicates a claim for refund, is not deemed to be filed until the Income Tax Department receives all proper verification and substantiation validating the refund claim.

(Ord. 3251. Passed 11-11-03.)

§ 94.13 EXTENSIONS.

(A) The Finance Director or his delegate shall have the authority to extend the time for filing of the annual return of the taxpayer for a period not to exceed the last day of the month following the month of the Internal Revenue Service extension due date for a Federal Income Tax Return. Upon written request for extension and/or a copy of the Federal extension, such extension will be considered, providing that notification, documentation, and information are included, accompanied by a tentative return and payment of tax shown to be due therein 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. Any portion of tax unpaid after the original due date of the return, but paid within the period as extended, will be subject to interest charges as prescribed by this chapter. If an extension request is denied, the subsequent filing of the return and payment of tax due shall be subject to the applicable penalty and interest charges as prescribed by this chapter.

(B) The City of West Carrollton may deny a taxpayers request for extension if the taxpayer:

(1) Fails to timely file the request;

(2) Fails to file a copy of the federal extension request (if applicable);

(3) Owes the City of West Carrollton any delinquent income tax, penalty, interest, assessment or other charge for the late payment of nonpayment of income tax;

(4) Has failed to file any required income tax return, report, or other related document for a prior tax period.

(Ord. 3251. Passed 11-11-03.)

§ 94.14 AMENDING AN INCOME TAX RETURN.

(A) An amended return shall be filed in order to report additional income and pay any additional tax due, or claim a refund if overpaid, subject to requirements and/or limitations contained in this chapter. A taxpayer may not change the method of accounting or method of apportionment of taxable income after the due date for filing the original return if the original methods were consistent and correct.

(B) Within three (3) months from the final determination of any federal tax liability affecting a taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to City tax based upon such final determination of Federal tax liability, and pay any additional tax shown due therein, or make claim for refund of

overpayment, according to regulations and/or limitations as set forth in this chapter.

(Ord. 3251. Passed 11-11-03.)

§ 94.15 FAILURE TO FILE/ESTIMATING RETURNS.

If a taxpayer fails to properly file an income tax return, and the Finance Director has made a reasonable attempt to contact and inform the taxpayer of the failure to file, the Finance Director can estimate the income tax return based on prior year activity and/or other method the Finance Director deems reasonable. If the taxpayer then files a return with the actual data within a reasonable amount of time, the actual return would then take precedence. If the taxpayer does not respond by filing an actual return within a reasonable amount of time, the estimated figures will become binding. The City of West Carrollton can pursue taxpayers who have not properly filed their City income tax returns or properly provided sufficient documentation to the City of West Carrollton Tax Department why no return was required or six (6) years after the return was originally due.

(Ord. 3251. Passed 11-11-03.)

§ 94.16 COLLECTION OF UNPAID TAXES.

All taxes imposed by this chapter shall be collectible, together with any interest, fees, and penalties thereon, by suit, as other debts of like amounts are recoverable. All additional assessments shall be made and all criminal and civil actions to recover municipal income taxes, and the associated penalties, interest, and fees shall be brought within three years after the tax was due, the return was filed, the bankruptcy was discharged, or the City of West Carrollton payment agreement expected completion date, whichever is later.

(Ord. 3251. Passed 11-11-03.)

§ 94.17 PENALTIES, INTEREST, AND FEES.

(A) (1) All taxes imposed by this chapter and remaining unpaid after they become due shall bear interest, in addition to the unpaid tax, at the rate to be determined by the Tax Administrator.

(2) Declaration interest will be charged at a rate of ten percent (10%). A declaration of estimated tax shall not be considered filed in good faith if it is less than ninety percent (90%) of the total correct tax is not paid by the final quarter declaration due date. The remaining tax due the day after the final quarter due date is subject to a ten percent (10%) interest charge. An exception will be made if one hundred percent (100%) or more of the prior year liability has been paid in equal quarterly installments in the current year.

(B) In addition to the interest as provided in subsection (A)(1) hereof, penalties based on the unpaid tax are hereby imposed as follows:

(1) For failure to pay taxes due, other than taxes withheld, a penalty of one and one half percent (1.5%) per month or ten percent (10%) of the unpaid tax, whichever is greater, but not to exceed fifty percent (50%) of the initial tax due.

(2) For failure to remit proper taxes withheld from employees, the corresponding employer is subject to a penalty of three percent (3%) per month or ten percent (10%) of the unpaid tax, whichever is greater, but not to exceed fifty percent (50%) of the initial tax due.

(C) (1) For failure to file a tax return when due as required by this chapter, a reasonable penalty to be determined by the Tax Administrator shall be assessed per return.

(2) Filings are deemed to be made timely postmarked by the due date.

(D) Except in the case of fraud and excluding the late fee discussed in the above subsections (A)(2) and (C), the total penalty can't exceed fifty percent (50%) of the initial delinquent unpaid tax balance.

(E) A penalty shall not be charged on any additional City of West Carrollton income tax assessment made by the Income Tax Department, when a return has been filed in good faith and the tax paid thereon within the time prescribed by this chapter, 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 the final determination of the Federal Tax Liability.

(F) A fee deemed reasonable by the Finance Director will be charged for each check returned to the City of West Carrollton marked as non-sufficient funds or unpaid.

(Ord. 3251. Passed 11-11-03.)

§ 94.18 CRIMINAL PENALTIES.

(A) Any person who shall:

- (1) Fail, neglect, or refuse to make any return or declaration required by this chapter; or
- (2) Make any substantially incomplete, false, or fraudulent return; or
- (3) Fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this chapter; or

(4) Fail, neglect, or refuse to withhold the tax from his employees or remit such withholdings to the City of West Carrollton; or

(5) Refuse to permit the Finance Director or his delegate or any duly authorized agent or employee to examine his books, records, papers, State, and Federal income tax returns relating to the taxable income of a taxpayer; or

(6) Refuse to disclose to the Income Tax Department any information with respect to the taxable income of a taxpayer; or

(7) Fail to comply with the provisions of this chapter or subpoena of the Income Tax Department; or

(8) Fail, as an individual charged with the responsibility to withhold and remit from the wage of employees the City of West Carrollton income tax in accordance with the provisions of this chapter; or

(9) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties, interest, or fees imposed by this chapter.

(B) Whoever violates any provisions set forth above shall be guilty of a misdemeanor in the first degree and may be assessed such penalties, including fines and/or imprisonment as the same are set forth in the Ohio Revised Code.

(C) All prosecutions under this section shall be commenced within the time specified in Section 718.12 of the Ohio Revised Code.

(D) The failure of any employer, taxpayer, or person to have knowledge of this chapter or to receive or procure a return, declaration, or other required form shall not excuse such person from making any information return, return, or declaration, from filing such form, or from paying the tax.

(Ord. 3251. Passed 11-11-03.)

§ 94.19 ALLOCATION OF FUNDS.

(A) The funds collected under the provisions of this chapter shall be placed in a fund to be known as the Income Tax Receipts Fund and shall be allocated in such a manner as prescribed by the City Council.

(B) However, of the 2.25% City Income Tax, monies received from .50% City Income Tax is designated to the Capital Improvement Program Fund (CIP) and shall be further allocated to various other funds by the City Council through the annual appropriation ordinance for capital improvements, related debt service and economic development purposes and the remaining monies received from 1.75% City Income Tax are designated to the General Fund. (Ord. 3602. Passed 1-24-17.)

§ 94.20 BOARD OF APPEAL.

(A) A Board of Appeal, consisting of a Chairman and two other individuals, each to be selected by Council, is hereby created. A majority of members of the Board shall constitute a quorum. The Board of Appeal shall adopt its own procedural rules and shall keep a record of its transactions. Such records are not public records available for inspection under Section 149.43 of the Ohio Revised Code. Hearings requested by a taxpayer before a Board of Appeal created pursuant to this section are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code. Therefore any hearing by the Board of Appeal may be conducted privately with the tax confidentiality provisions of this chapter applying to such matters.

(B) Any person dissatisfied with any ruling or decision of the Finance Director, which is made under the authority conferred by this chapter, may appeal therefrom to the Board of Appeal within thirty (30) days from the announcement of the ruling or decision by the Finance Director, or the date the tax liability is paid in full, whichever is later, the Board of Appeal shall, on hearing, have, jurisdiction to affirm, reverse, or modify any such ruling or decision, or any part thereof pertaining to penalty and interest only. The Board shall schedule a hearing within forty-five (45) days after receiving the appeal, unless the taxpayer waives the hearing. The Board shall issue a decision on the appeal within Ninety (90) days after the Board's final hearing on the appeal, and send notice of its decision by ordinary mail to the petitioner within fifteen (15) days after issuing the decision.

(C) The imposition of penalty and interest as prescribed in the Codified Ordinances of the City of West Carrollton is not the sole basis for an appeal. Interpretations of the legality of any provision of this chapter by the City Law Director are not rulings or decisions of the Finance Director and are not subject to appeal to the Board of Review. Any such legal interpretations should be challenged through normal court proceedings.

(Ord. 3251. Passed 11-11-03.)

§ 94.21 BOARD OF REVIEW.

(A) A Board of Review consisting of the City Manager, the Finance Director, or their respective designees, and a third individual to be appointed by the membership, is hereby created. A majority of the members shall constitute a quorum. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board of Review may be conducted privately with the tax confidentiality provisions of this chapter applying to such matters.

(B) The Board of Review may adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration, operation, and enforcement of the provisions of this chapter. (Ord. 3251. Passed 11-11-03.)

§ 94.22 REPORTS BY LANDLORDS, CONDOMINIUM ASSOCIATES AND OTHER ORGANIZATIONS.

(A) Every owner of two (2) or more rental units and every owner or operator of a mobile home park is hereby directed and required to furnish to the Finance Director or his delegate a yearly roster of the names and addresses of persons residing in the rental units or mobile home park. The listing must include any changes during the year. The yearly roster shall be filed in the following year on or before January 31st. Larger entities may be required to file on a quarterly or semi-annually basis at the Finance Director's discretion.

(B) Every condominium association, owners' organizations of condominium units, or other owners'/residents' cooperative dwelling affiliations is hereby required to furnish a yearly roster of the names and addresses of their members that own, rent, or have an interest in properties located in the City of West Carrollton to the Finance Director or his delegate. This roster must include any changes during the year such as new owners or forwarding addresses. The yearly roster shall be filed in the following year on or before January 31st. Larger entities may be required to file on a quarterly or semi-annually basis at the Finance Director's discretion.

(Ord. 3251. Passed 11-11-03.)

§ 94.23 DUTIES OF THE FINANCE DIRECTOR.

(A) It shall be the duty of the Finance Director to collect and receive the tax levied by this chapter in the manner prescribed by this chapter, and it shall also be his duty to keep an accurate record showing the payment received by him from each taxpayer and the date of the payment.

(B) (1) The Finance Director or his delegate is hereby charged with the administration and enforcement of the provisions of this chapter and they are hereby authorized to enforce the rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns and payments.

(2) In any case where a taxpayer has failed, neglected or refused to file a return or has failed, neglected or refused to pay the tax due on a return or has filed a return which does not show the proper amount of tax due, the Finance Director or his delegate may determine the amount of tax appearing to be due the City from the taxpayer based on any information in his possession and shall send to such taxpayer a written statement showing the amount of tax so determined together with interest and penalties thereon, if any.

(C) The Finance Director or his delegate is authorized to arrange for the payment of unpaid taxes, fees, interest and penalties on a schedule of installment payments when the taxpayer has approved to the Finance Director or his delegate that, due to certain hardship conditions he is unable to pay the full amount of 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. However, all additional assessments shall be made and all criminal and civil actions to recover municipal income taxes, and the associated penalties, interest, and fees shall be brought within three years after the tax was due, the return was filed, the bankruptcy was discharged, or the City of West Carrollton payment agreement expected completion date, whichever is later.

(Ord. 3251. Passed 11-11-03.)

§ 94.24 INVESTIGATIVE POWERS OF THE FINANCE DIRECTOR.

(A) (1) The Finance Director or his delegate 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 who the Finance Director or his delegate believes is subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if any 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 Finance Director or his delegate, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(2) The Finance Director or his delegate 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 would have been returned for taxation or any transaction tending to effect 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.

(B) The Finance Director or his delegate or any authorized employee is hereby authorized to institute procedures to determine the associations, businesses, corporations, persons, employers, and employees subject to the provisions of this chapter, and in connection therewith, to require that all persons, as defined in this chapter shall provide in writing to the Finance Director or his delegate such information as deemed necessary to provide for the enforcement of this chapter. The refusal to provide information requested by the Finance Director shall be deemed a violation of this chapter, punishable as provided in this chapter.

(Ord. 3251. Passed 11-11-03.)

§ 94.25 CONFIDENTIALITY.

(A) Any information gained as result of any returns, investigations, hearings, or verifications required or authorized by this chapter shall be confidential. No disclosure thereof shall be made except to Municipal, County, State, or Federal taxing agencies, or, except for official purposes, or except in accordance with proper judicial order. No person shall otherwise

divulge such information.

(B) Each disclosure shall constitute a separate offense. In addition any City of West Carrollton employee who violates the provisions of this Section relative to disclosure of confidential information shall be guilty of an offense which may be punishable by immediate dismissal.

(Ord. 3251. Passed 11-11-03.)

§ 94.26 SAVING CLAUSE.

This chapter shall not apply to any person, firm, or corporation or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. Any sentence, clause, section, or part of this chapter, or any tax against or exception granted any individual or any of the several groups of persons, or forms of income specified herein is found to be unconstitutional or illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council of the City of West Carrollton that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, part thereof not been included therein.

(Ord. 3251. Passed 11-11-03.)

§ 94.27 EFFECTIVE PERIOD.

Any taxes levied by this chapter shall remain in full force and effect and apply in all terms and conditions for tax events prior to January 1, 2019. The tax provided for in this ordinance, (Ordinance 3602), shall be levied, collected and paid with respect to the qualified wages, commissions, and other compensation, and with respect to the net profits of businesses, professions, and other activities, earned from the effective date of this ordinance, January 1, 2019, and shall apply to all taxes, filings, and assessments effective and beginning with tax year 2019 for a continuing period of time.

(Ord. 3602. Passed 1-24-17.)

CHAPTER 94.5: INCOME TAX EFFECTIVE JANUARY 1, 2016

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§ 94.5.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.

§ 94.5.011 AUTHORITY TO LEVY TAX.

(A) The tax on income and the withholding tax established by this Chapter 94.5 are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax on income and the withholding tax established by this Chapter 94.5 are deemed to be levied in accordance with, and to be consistent with, the provisions and limitations of Ohio Revised Code 718 (ORC 718). This Chapter is deemed to incorporate the provisions of ORC 718.

(B) The tax is an annual tax levied on the income of every person residing in or earning or receiving income in the municipal corporation, and shall be measured by municipal taxable income. The Municipality shall tax income at a uniform rate. The tax is levied on Municipal Taxable Income, as defined herein. (Ord. 3572. Passed 11-24-15.)

§ 94.5.012 PURPOSES OF TAX; RATE.

(A) The purpose of this chapter is to provide funds for general municipal operations, maintenance of equipment, new equipment, extension, enlargement and improvements.

(B) The voter-approved income tax rate is 2.25%. (Ord. 3572. Passed 11-24-15.)

§ 94.5.13 ALLOCATION OF FUNDS.

(A) The funds collected under the provisions of this chapter shall be placed in a fund to be known as the Income Tax Receipts Fund and shall be allocated in such a manner as prescribed by ordinances adopted by the City Council.

(B) However, of the 2.25% or other total City Income Tax, monies received from the .50% City Income Tax are designated to the Capital Improvement Program Fund (CIP) and shall be further allocated to various other funds by the City Council through the annual appropriation ordinance for capital improvements, related debt service and economic development purposes and the 1.75% City Income Tax or remaining monies received are designated to the General Fund. (Ord. 3602. Passed 1-24-17.)

§ 94.5.014 STATEMENT OF PROCEDURAL HISTORY; STATE MANDATED CHANGES TO MUNICIPAL INCOME TAX.

(A) Significant and wide-ranging amendments to ORC 718 were enacted by Am Sub HB 5, passed by the 130th General Assembly, and signed by Governor Kasich on December 19, 2014, and H.B. 5 required municipal corporations to conform to and adopt the provisions of ORC 718 in order to have the authority to impose, enforce, administer and collect a municipal income tax.

(B) As mandated by H.B. 5, municipal income tax Ordinance 3572, effective January 1, 2016, comprehensively amends Chapter 94 in accordance with the provisions of ORC 718 to allow the Municipality to continue the income tax and withholding tax administration and collection efforts on behalf of the Municipality.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.02 EFFECTIVE DATE.

(A) Ordinance 3572, effective January 1, 2016, and corresponding changes to ORC 718, apply to municipal taxable years beginning on or after January 1, 2016. All provisions of this Chapter 94.5 apply to taxable years beginning 2016 and succeeding taxable years.

(B) Ordinance 3572 does not repeal the existing sections of Chapter 94 for any taxable year prior to 2016, but rather amends Chapter 94 effective January 1, 2016. For municipal taxable years beginning before January 1, 2016, the Municipality shall continue to administer, audit, and enforce the income tax of the Municipality under ORC 718 and ordinances and resolutions of the Municipality as that chapter and those ordinances and resolutions existed before January 1, 2016. (Ord. 3572. Passed 11-24-15.)

§ 94.5.03 DEFINITIONS.

Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Ohio Revised Code, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Ohio Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code.

For purposes of this Section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

As used in this chapter:

(1) **"ADJUSTED FEDERAL TAXABLE INCOME,"** for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division 23(D) of this section, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(A) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(B) Add an amount equal to five per cent of intangible income deducted under division (1)(A) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

(C) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(D) (i) Except as provided in division (1)(D)(ii) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(ii) Division (1)(D)(i) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(E) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(F) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

(G) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Ohio Revised Code;

(H) (i) Except as limited by divisions (1)(H)(ii), (iii) and (iv) of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.

The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

(ii) No person shall use the deduction allowed by division (1)(H) of this section to offset qualifying wages.

(iii) (a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty per cent of the amount of the deduction otherwise allowed by division (1)(H)(i) of this section.

(b) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (1)(H)(i) of this section.

(iv) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (1)(H) of this section.

(v) Nothing in division (1)(H)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (1)(H)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (1)(H)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (1)(H)(iii)(a) of this section shall apply to the amount carried forward.

(I) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (E)(3)(b) of Section 94.5.063 of this Chapter.

(J) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with division (E)(3)(b) of Section 94.5.063 of this Chapter.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (47)(B) of this section, is not a publicly traded partnership that has made the election described in division (23)(D) of this section,

and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(2) (A) **"ASSESSMENT"** means any of the following:

(i) A written finding by the Tax Administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation;

(ii) A full or partial denial of a refund request issued under Section 94.5.096 (B)(2) of this Chapter;

(iii) A Tax Administrator's denial of a taxpayer's request for use of an alternative apportionment method, issued under Section 94.5.062(B)(2) of this Chapter; or

(iv) A Tax Administrator's requirement for a taxpayer to use an alternative apportionment method, issued under Section 94.5.062(B)(3) of this Chapter.

(v) For purposes of division (2)(A)(i), (ii), (iii) and (iv) of this Section, an assessment shall commence the person's time limitation for making an appeal to the Local Board of Tax Review pursuant to Section 94.5.18 of this Chapter, and shall have "ASSESSMENT" written in all capital letters at the top of such finding.

(B) "ASSESSMENT" does not include notice(s) denying a request for refund issued under Section 94.5.096 (B)(3) of this Chapter, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (2)(A) of this section.

(3) **"AUDIT"** means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax

(4) **"BOARD OF REVIEW"** has same meaning as "Local Board of Tax Review".

(5) **"CALENDAR QUARTER"** means the three-month period ending on the last day of March, June, September, or December.

(6) **"CASINO OPERATOR"** and **"CASINO FACILITY"** have the same meanings as in section 3772.01 of the Ohio Revised Code.

(7) **"CERTIFIED MAIL," "EXPRESS MAIL," "UNITED STATES MAIL," "POSTAL SERVICE"** and similar terms include any delivery service authorized pursuant to section 5703.056 of the Ohio Revised Code.

(8) **"COMPENSATION"** means any form of remuneration paid to an employee for personal services.

(9) **"DISREGARDED ENTITY"** means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.

(10) **"DOMICILE"** means the true, fixed and permanent home of the taxpayer to which, whenever absent, the taxpayer intends to return.

(11) **"EXEMPT INCOME"** means all of the following:

(A) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state;

(B) (i) Except as provided in division (11)(B)(ii) of this section, intangible income;

(ii) A municipal corporation that taxed any type of intangible income on March 29, 1988, pursuant to Section 3 of S.B. 238 of the 116th general assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 voted in favor thereof at an election held on November 8, 1988.

(C) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (11)(C) of this section, "unemployment compensation" does not include supplemental unemployment

compensation described in section 3402(o)(2) of the Internal Revenue Code.

(D) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

(E) Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars for the taxable year. Such compensation in excess of one thousand dollars for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(F) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations;

(G) Alimony and child support received;

(H) Awards for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages;

(I) Income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code. Division (11)(I) of this section does not apply for purposes of Chapter 5745. of the Ohio Revised Code.

(J) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business;

(K) Compensation or allowances excluded from federal gross income under section 107 of the Internal Revenue Code;

(L) Employee compensation that is not qualifying wages as defined in division (34) of this section;

(M) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.

(N) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.

(O) All of the municipal taxable income earned by individuals under eighteen years of age.

(P) (i) Except as provided in divisions (11)(P)(ii), (iii), and (iv) of this section, qualifying wages described in division (B) (1) or (E) of Section 94.5.052 of this Chapter to the extent the qualifying wages are not subject to withholding for the Municipality under either of those divisions.

(ii) The exemption provided in division (11)(P)(i) of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

(iii) The exemption provided in division (11)(P)(i) of this section does not apply to qualifying wages that an employer elects to withhold under division (D)(2) of Section 94.5.052 of this Chapter

(iv) The exemption provided in division (11)(P)(i) of this section does not apply to qualifying wages if both of the following conditions apply:

(a) For qualifying wages described in division (B)(1) of Section 94.5.052 of this Chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in division (E) of Section 94.5.052 of this Chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;

(b) The employee receives a refund of the tax described in division (11)(P)(iv)(a) of this section on the basis of the employee not performing services in that municipal corporation.

(Q) (i) Except as provided in division (11)(Q)(ii) or (iii) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the Municipality on not more than twenty days in a taxable year.

(ii) The exemption provided in division (11)(Q)(i) of this section does not apply under either of the following circumstances:

(a) The individual's base of operation is located in the Municipality.

(b) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (11)(Q)(ii)(b) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 94.5.052 of this Chapter.

(iii) Compensation to which division (11)(Q) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.

(iv) For purposes of division (11)(Q) of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

(R) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to section 709.023 of the Ohio Revised Code on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.

(S) Income the taxation of which is prohibited by the constitution or laws of the United States.

Any item of income that is exempt income of a pass-through entity under division (11) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

(12) "**FORM 2106**" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(13) "**GENERIC FORM**" means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability, including a request for refund.

(14) "**INCOME**" means the following:

(A) (i) For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in division (23)(D) of this section.

(ii) For the purposes of division (14)(A)(i) of this section:

(a) Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (14)(A)(iv) of this section;

(b) The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.

(iii) Division (14)(A)(ii) of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division 11(N) or division 14(E) of this Section.

(iv) Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.

(B) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the Municipality, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(C) For taxpayers that are not individuals, net profit of the taxpayer;

(D) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings. Credit for tax withheld or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in Section 94.5.081 of this Chapter.

(15) "**INTANGIBLE INCOME**" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(16) **"INTERNAL REVENUE CODE"** means the "Internal Revenue Code of 1986," 100 Sta. 2085, 26 U.S.C.A. 1, as amended.

(17) **"LIMITED LIABILITY COMPANY"** means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

(18) **"LOCAL BOARD OF TAX REVIEW" and "BOARD OF TAX REVIEW"** means the entity created under Section 94.5.18 of this Chapter..

(19) **"MUNICIPAL CORPORATION"** means, in general terms, a status conferred upon a local government unit, by state law giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic development district or joint economic development zone that levies an income tax under section 715.691, 715.70, 715.71, or 715.74 of the Ohio Revised Code.

(20) (A) **"MUNICIPAL TAXABLE INCOME"** means the following:

(i) For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the Municipality under Section 94.5.062 of this Chapter, and further reduced by any pre-2017 net operating loss carryforward available to the person for the Municipality.

(ii) (a) For an individual who is a resident of a Municipality other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (20)(B) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality.

(b) For an individual who is a resident of a qualified municipal corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the qualified municipal corporation from the qualified municipal corporation's tax on or before December 31, 2013. If a qualified municipal corporation, on or before December 31, 2013, exempts income earned by individuals who are not residents of the qualified municipal corporation and net profit of persons that are not wholly located within the qualified municipal corporation, such individual or person shall have no municipal taxable income for the purposes of the tax levied by the qualified municipal corporation and may be exempted by the qualified municipal corporation from the requirements of section 718.03 of the Ohio Revised Code.

(iii) For an individual who is a nonresident of the Municipality, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the Municipality under Section 94.5.062 of this Chapter, then reduced as provided in division (20)(B) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality.

(B) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (20)(A)(ii)(a) or (iii) of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation.

(21) **"MUNICIPALITY"** means the City of West Carrollton.

(22) **"NET OPERATING LOSS"** means a loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.

(23) (A) **"NET PROFIT"** for a person other than an individual means adjusted federal taxable income.

(B) **"NET PROFIT"** for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (1)(H) of this section.

(C) For the purposes of this chapter, and notwithstanding division (23)(A) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

(D) (i) For purposes of this chapter, "publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.

(ii) For the purposes of this chapter, and notwithstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described in division (23)(D) of this section shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.

(iii) A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is subject to tax on its net profits in one or more municipal corporations in this state may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election in every municipal corporation in which the partnership is subject to taxation on its net profits. The election shall be made on the annual tax return filed in each such municipal corporation. Once the election is made, the election is binding for a five-year period beginning with the first taxable year of the initial election. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a C corporation for municipal purposes under division

(D)(iv) of this section.

(iv) An election to discontinue filing as a C corporation must be made in the first year following the last year of a five-year election period in effect under division (D)(iii) of this section. The election to discontinue filing as a C corporation is binding for a five-year period beginning with the first taxable year of the election and continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a partnership for municipal purposes. An election to discontinue filing as a partnership must be made in the first year following the last year of a five-year election period.

(v) The publicly traded partnership shall not be required to file the election with any municipal corporation in which the partnership is not subject to taxation on its net profits, but division (D) of this section applies to all municipal corporations in which an individual owner of the partnership resides.

(vi) The individual owners of the partnership not filing as a C Corporation shall be required to file with their municipal corporation of residence, and report partnership distribution of net profit.

(24) **"NONRESIDENT"** means an individual that is not a resident of the Municipality.

(25) **"OHIO BUSINESS GATEWAY"** means the online computer network system, created under section 125.30 of the Ohio Revised Code, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.

(26) **"OTHER PAYER"** means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual. "Other payer" includes casino operators and video lottery terminal sales agents.

(27) **"PASS-THROUGH ENTITY"** means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. "Pass-through entity" does not include a trust, estate, grantor of a grantor trust, or disregarded entity.

(28) **"PENSION"** means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.

(29) **"PERSON"** includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.

(30) **"POSTAL SERVICE"** means the United States postal service, or private delivery service delivering documents and packages within an agreed upon delivery schedule, or any other carrier service delivering the item.

(31) **"POSTMARK DATE," "DATE OF POSTMARK,"** and similar terms include the date recorded and marked by a delivery service and recorded electronically to a database kept in the regular course of its business and marked on the cover in which the payment or document is enclosed, the date on which the payment or document was given to the delivery service for delivery.

(32) (A) **"PRE-2017 NET OPERATING LOSS CARRYFORWARD"** means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the Municipality that was adopted by the Municipality before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such Municipality in future taxable years.

(B) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.

(33) **"QUALIFIED MUNICIPAL CORPORATION"** means a municipal corporation that, by resolution or ordinance adopted on or before December 31, 2011, adopted Ohio adjusted gross income, as defined by section 5747.01 of the Ohio Revised Code, as the income subject to tax for the purposes of imposing a municipal income tax.

(34) **"QUALIFYING WAGES"** means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

(A) Deduct the following amounts:

(i) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.

(ii) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.

(iii) Intentionally left blank.

(iv) Intentionally left blank.

(v) Any amount included in wages that is exempt income.

(B) Add the following amounts:

(i) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.

(ii) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. Division (34)(B)(ii) of this section applies only to those amounts constituting ordinary income.

(iii) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (34)(B)(iii) of this section applies only to employee contributions and employee deferrals.

(iv) Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.

(v) Any amount received that is treated as self-employment income for federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code.

(vi) Any amount not included in wages if all of the following apply:

(a) For the taxable year the amount is employee compensation that is earned outside of the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code;

(b) For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;

(c) For no succeeding taxable year will the amount constitute wages; and

(d) For any taxable year the amount has not otherwise been added to wages pursuant to either division (34)(B) of this section or section 718.03 of the Ohio Revised Code, as that section existed before the effective date of H.B. 5 of the 130th general assembly, March 23, 2015.

(35) **"RELATED ENTITY"** means any of the following:

(A) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(B) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(C) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (35)(D) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock;

(D) The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (35)(A) to (C) of this section have been met.

(36) **"RELATED MEMBER"** means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "twenty per cent" shall be substituted for "5 percent" wherever "5 percent" appears in section 1563(e) of the Internal Revenue Code.

(37) **"RESIDENT"** means an individual who is domiciled in the Municipality as determined under Section 94.5.042 of this Chapter.

(38) **"S CORPORATION"** means a person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

(39) **"SCHEDULE C"** means internal revenue service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(40) **"SCHEDULE E"** means internal revenue service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(41) **"SCHEDULE F"** means internal revenue service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(42) **"SINGLE MEMBER LIMITED LIABILITY COMPANY"** means a limited liability company that has one direct member.

(43) **"SMALL EMPLOYER"** means any employer that had total revenue of less than five hundred thousand dollars during the preceding taxable year. For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. "Small employer" does not include the federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.

(44) **"TAX ADMINISTRATOR"** means the individual charged with direct responsibility for administration of an income tax levied by a municipal corporation in accordance with this chapter, and also includes the following:

(A) A municipal corporation acting as the agent of another municipal corporation;

(B) A person retained by a municipal corporation to administer a tax levied by the municipal corporation, but only if the municipal corporation does not compensate the person in whole or in part on a contingency basis;

(C) The Central Collection Agency (CCA) or the Regional Income Tax Agency (RITA) or their successors in interest, or another entity organized to perform functions similar to those performed by the Central Collection Agency and the Regional Income Tax Agency.

(45) **"TAX RETURN PREPARER"** means any individual described in section 7701(a)(36) of the Internal Revenue CODE AND 26 C.F.R. 301.7701-15 .

(46) **"TAXABLE YEAR"** means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(47) (A) **"TAXPAYER"** means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (47)(B)(i) of this section, a disregarded entity.

(B) (i) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:

(a) The limited liability company's single member is also a limited liability company.

(b) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.

(c) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of section 718.01 of the Ohio Revised Code as this section existed on December 31, 2004.

(d) The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.

(e) The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.

(ii) For purposes of division (47)(B)(i)(e) of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least four hundred thousand dollars.

(48) **"TAXPAYERS' RIGHTS AND RESPONSIBILITIES"** means the rights provided to taxpayers in sections 718.11 , 718.12 , 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011 , and 5717.03 of the Ohio Revised Code and any corresponding ordinances of the Municipality, and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with Chapter 718. of the Ohio Revised Code and resolutions, ordinances, and rules adopted by a municipal corporation for the imposition and administration of a municipal income tax.

(49) **"VIDEO LOTTERY TERMINAL"** has the same meaning as in section 3770.21 of the Ohio Revised Code.

(50) **"VIDEO LOTTERY TERMINAL SALES AGENT"** means a lottery sales agent licensed under Chapter 3770. of the Ohio Revised Code to conduct video lottery terminals on behalf of the state pursuant to section 3770.21 of the Ohio Revised Code.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.04 INCOME SUBJECT TO TAX FOR INDIVIDUALS.

§ 94.5.041 DETERMINING MUNICIPAL TAXABLE INCOME FOR INDIVIDUALS.

(A) "Municipal Taxable Income" for a resident of the Municipality is calculated as follows:

(1) "Income" reduced by "Exempt Income" to the extent such exempt income is otherwise included in income, reduced by allowable employee business expense deduction as found in division (20)(B) of Section 94.5.03 of this Chapter, further reduced by any "Pre-2017 Net Operating Loss Carryforward" equals "Municipal Taxable Income".

(a) "Income" is defined in Section 94.5.03 (14) of this Chapter.

(i) "Qualifying Wages" is defined in Section 94.5.03(34).

(ii) "Net profit" is included in "income", and is defined in Section 94.5.03 (23) of this Chapter. This section also provides that the net operating loss carryforward shall be calculated and deducted in the same manner as provided in division (1)(H) of Section 94.5.03. Treatment of net profits received by an individual taxpayer from rental real estate is provided in Section 94.5.062(E).

(iii) Section 94.5.03(14) provides the following: offsetting and net operating loss carryforward treatment in (14)(A)(ii)(a); resident's distributive share of net profit from pass

through entity treatment in (14)(A)(ii)(b); treatment of S Corporation distributive share of net profit in the hands of the shareholder in (14)(A)(iii); restriction of amount of loss permitted to be carried forward for use by taxpayer in a subsequent taxable year in (14)(A)(iv).

(iv) "Pass Through Entity" is defined in Section 94.5.03(27).

(b) "Exempt Income" is defined in Section 94.5.03 (11) of this Chapter.

(c) Allowable employee business expense deduction is described in (20)(B) of Section 94.5.03 of this Chapter, and is subject to the limitations provided in that section.

(d) "Pre-2017 Net Operating Loss Carryforward" is defined in Section 94.5.03 (32) of this Chapter

(B) "Municipal Taxable Income" for a nonresident of the Municipality is calculated as follows:

(1) "Income" reduced by "Exempt Income" to the extent such exempt income is otherwise included in income, as applicable, apportioned or situated to the Municipality as provided in Section 94.5.062 of this Chapter, reduced by allowable employee business expense deduction as found in (20)(B) of Section 94.5.03 of this Chapter, further reduced by any "Pre-2017 Net Operating Loss Carryforward" equals "Municipal Taxable Income".

(a) "Income" is defined in Section 94.5.03(14) of this Chapter.

(i) "Qualifying Wages" is defined in Section 94.5.03(34).

(ii) "Net profit" is included in "income", and is defined in Section 94.5.03(23) of this Chapter. This section also provides that the net operating loss carryforward shall be calculated and deducted in the same manner as provided in division (1)(H) of Section 94.5.03. "Net profit" for a nonresident individual includes any net profit of the nonresident, but excludes the distributive share of net profit or loss of only pass through entity owned directly or indirectly by the nonresident.

(iii) "Pass Through Entity" is defined in Section 94.5.03(27).

(b) "Exempt Income" is defined in Section 94.5.03(11) of this Chapter.

(c) "Apportioned or situated to the Municipality as provided in Section 94.5.062 of this Chapter" includes the apportionment of net profit income attributable to work done or services performed in the Municipality. Treatment of net profits received by an individual taxpayer from rental real estate is provided in Section 94.5.062(E).

(d) "Allowable employee business expense deduction" as described in (20)(B) of Section 94.5.03 of this Chapter, is subject to the limitations provided in that section. For a nonresident of the Municipality, the deduction is limited to the extent the expenses are related to the performance of personal services by the nonresident in the Municipality.

(e) "Pre-2017 Net Operating Loss Carryforward" is defined in Section 94.5.03(32) of this Chapter.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.042 DOMICILE.

(A) As used in this section:

(1) "Domicile" means the true, fixed and permanent home of the taxpayer to which whenever absent, the taxpayer intends to return.

(2) An individual is presumed to be domiciled in the Municipality for all or part of a taxable year if the individual was domiciled in the Municipality on the last day of the immediately preceding taxable year or if the tax administrator reasonably concludes that the individual is domiciled in the Municipality for all or part of the taxable year.

(3) An individual may rebut the presumption of domicile described in division (A)(1) of this section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the Municipality for all or part of the taxable year.

(B) For the purpose of determining whether an individual is domiciled in the Municipality for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:

- (1) The individual's domicile in other taxable years;
- (2) The location at which the individual is registered to vote;
- (3) The address on the individual's driver's license;
- (4) The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;
- (5) The location and value of abodes owned or leased by the individual;
- (6) Declarations, written or oral, made by the individual regarding the individual's residency;
- (7) The primary location at which the individual is employed.

(8) The location of educational institutions attended by the individual's dependents as defined in section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation or state where the educational institution is located;

(9) The number of contact periods the individual has with the Municipality. For the purposes of this division, an individual has one "contact period" with the Municipality if the individual is away overnight from the individual's abode located outside of the Municipality and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the Municipality. For purposes of this section, the State's contact period test or bright-line test and resulting determination have no bearing on municipal residency or domicile.

(C) All applicable factors are provided in Ohio Revised Code Section 718.012.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.043 EXEMPTION FOR MEMBER OR EMPLOYEE OF GENERAL ASSEMBLY AND CERTAIN JUDGES

(A) Only the municipal corporation of residence shall be permitted to levy a tax on the income of any member or employee of the Ohio General Assembly, including the Lieutenant Governor, whose income is received as a result of services rendered as such member or employee and is paid from appropriated funds of this state.

(B) Only the municipal corporation of residence and the city of Columbus shall levy a tax on the income of the Chief Justice or a Justice of the Supreme Court received as a result of services rendered as the Chief Justice or Justice. Only the municipal corporation of residence shall levy a tax on the income of a judge sitting by assignment of the Chief Justice or on the income of a district court of appeals judge sitting in multiple locations within the district, received as a result of services rendered as a judge.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.05 COLLECTION AT SOURCE.

§ 94.5.051 COLLECTION AT SOURCE; WITHHOLDING FROM QUALIFYING WAGES.

(A) (1) Each employer, agent of an employer, or other payer located or doing business in the Municipality shall withhold from each employee an amount equal to the qualifying wages of the employee earned by the employee in the Municipality multiplied by the applicable rate of the Municipality's income tax, except for qualifying wages for which withholding is not required under section 94.5.052 of this Chapter or division (D) or (F) of this section. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

(2) In addition to withholding the amounts required under division (A)(1) of this section, an employer, agent of an employer, or other payer may also deduct and withhold, on the request of an employee, taxes for the municipal corporation in which the employee is a resident.

(B) (1) An employer, agent of an employer, or other payer shall remit to the Tax Administrator of the Municipality the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer, along with any report required by the Tax Administrator to accompany such payment, according to the following schedule:

(a) Any employer, agent of an employer, or other payer not required to make payments under division (B)(1)(b) of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the fifteenth day of the month following the end of each calendar quarter.

(b) Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the municipal corporation in the preceding calendar year exceeded two thousand three hundred ninety-nine dollars, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the Municipality in any month of the preceding calendar quarter exceeded two hundred dollars. Payment under division (B)(1)(b) of this section shall be made so that the payment is received by the Tax Administrator not later than fifteen days after the last day of each month.

(C) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by the Municipality as the return required of an employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer, unless the Municipality requires all resident individual taxpayers to file a tax return under section 94.5.091 of this Chapter,

(D) An employer, agent of an employer, or other payer is not required to withhold municipal income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.

(E) (1) An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.

(2) The failure of an employer, agent of an employer, or other payer to remit to the Municipality the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.

(F) Compensation deferred before June 26, 2003, is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

(G) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld, and such amount shall be deemed to be held in trust for the Municipality until such time as the withheld amount is remitted to the Tax Administrator.

(H) On or before the last day of February of each year, an employer shall file a Withholding Reconciliation Return with the Tax Administrator listing the names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the Municipality during the preceding calendar year, the amount of tax withheld, if any, from each such employee's qualifying wage, the total amount of qualifying wages paid to such employee during the preceding calendar year, the name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year, any other information required for federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee, and other information as may be required by the Tax Administrator.

(I) The officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. The dissolution of an employer, agent of an employer, or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of an employer, or other payer to file returns or pay any tax due.

(J) An employer is required to deduct and withhold municipal income tax on tips and gratuities received by the employer's employees and constituting qualifying wages only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.

(K) A Tax Administrator shall consider any tax withheld by an employer at the request of an employee when such tax is not otherwise required to be withheld by this Chapter to be tax required to be withheld and remitted for the purposes of this section.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.052 COLLECTION AT SOURCE; OCCASIONAL ENTRANT.

(A) The following terms as used in this section:

(1) "Employer" includes a person that is a related member to or of an employer.

(2) "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.

(3) "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.

(4) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.

(5) "Fixed location" means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.

(6) "Worksite location" means a construction site or other temporary worksite in this state at which the employer provides services for more than twenty days during the calendar year. "Worksite location" does not include the home of an

employee.

(7) "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (B)(1)(a) of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

For the purposes of this division, the location at which an employee spends a particular day shall be deemed in accordance with division (B)(2) of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

(B) (1) Subject to divisions (C), (E), (F), and (G) of this section, an employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in a municipal corporation that imposes such a tax if the employee performed such services in the municipal corporation on twenty or fewer days in a calendar year, unless one of the following conditions applies:

(a) The employee's principal place of work is located in the Municipality.

(b) The employee performed services at one or more presumed worksite locations in the Municipality. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in this state at which the employer provides services that can reasonably be expected by the employer to last more than twenty days in a calendar year. Services can "reasonably be expected by the employer to last more than twenty days" if either of the following applies at the time the services commence:

(i) The nature of the services are such that it will require more than twenty days of actual services to complete the services;

(ii) The agreement between the employer and its customer to perform services at a location requires the employer to perform actual services at the location for more than twenty days.

(c) The employee is a resident of the Municipality and has requested that the employer withhold tax from the employee's qualifying wages as provided in section 94.5.051 of this Chapter.

(d) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure within the Municipality.

(2) For the purposes of division (B)(1) of this section, an employee shall be considered to have spent a day performing services in a municipal corporation only if the employee spent more time performing services for or on behalf of the employer in that municipal corporation than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:

(a) Traveling to the location at which the employee will first perform services for the employer for the day;

(b) Traveling from a location at which the employee was performing services for the employer to any other location;

(c) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;

(d) Transporting or delivering property described in division (B)(2)(c) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;

(e) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.

(C) If the principal place of work of an employee is located in a municipal corporation that imposes an income tax in accordance with this chapter, the exception from withholding requirements described in division (B)(1) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to the municipal corporation in which the employee's principal place of work is located.

(D) (1) Except as provided in division (D)(2) of this section, if, during a calendar year, the number of days an employee spends performing personal services in a municipal corporation exceeds the twenty-day threshold described in division (B) (1) of this section, the employer shall withhold and remit tax to that municipal corporation for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in that municipal corporation.

(2) An employer required to begin withholding tax for a municipal corporation under division (D)(1) of this section may elect to withhold tax for that municipal corporation for the first twenty days on which the employer paid qualifying wages to the employee for personal services performed in that municipal corporation.

(3) If an employer makes the election described in division (D)(2) of this section, the taxes withheld and paid by such an employer during those first twenty days to the municipal corporation in which the employee's principal place of work is located are refundable to the employee.

(E) Without regard to the number of days in a calendar year on which an employee performs personal services in any municipal corporation, an employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the municipal corporation in which the employer's fixed location is located if the employer qualifies as a small employer as defined in Section 94.5.03 of this Chapter. To determine whether an employer qualifies as a small employer for a taxable year, a Tax Administrator may require the employer to provide the Tax Administrator with the employer's federal income tax return for the preceding taxable year.

(F) Divisions (B)(1) and (D) of this section shall not apply to the extent that a Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of section 94.5.051 of this Chapter.

(G) In the case of a person performing personal services at a petroleum refinery located in a municipal corporation that imposes a tax on income, an employer is not required to withhold municipal income tax on the qualifying wages of such a person if the person performs those services on twelve or fewer days in a calendar year, unless the principal place of work of the employer is located in another municipal corporation in this state that imposes a tax applying to compensation paid to the person for services performed on those days and the person is not liable to that other municipal corporation for tax on the compensation paid for such services. For the purposes of this division, a petroleum refinery is a facility with a standard industrial classification code facility classification of 2911, petroleum refining.

Notwithstanding division (D) of this section, if, during a calendar year, the number of days an individual performs personal services at a petroleum refinery exceeds twelve, the employer shall withhold tax for the municipal corporation for the first twelve days for which the employer paid qualifying wages to the individual and for all subsequent days in the calendar year on which the individual performed services at the refinery.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.053 COLLECTION AT SOURCE; CASINO AND VLT.

(A) The Municipality shall require a casino facility or a casino operator, as defined in Section 6(C)(9) of Article XV, Ohio Constitution, and section 3772.01 of the Ohio Revised Code, respectively, or a lottery sales agent conducting video lottery terminals sales on behalf of the state to withhold and remit municipal income tax with respect to amounts other than qualifying wages as provided in this section.

(B) If a person's winnings at a casino facility are an amount for which reporting to the internal revenue service of the amount is required by section 6041 of the Internal Revenue Code, as amended, the casino operator shall deduct and withhold municipal income tax from the person's winnings at the rate of the tax imposed by the municipal corporation in which the casino facility is located.

(C) Amounts deducted and withheld by a casino operator are held in trust for the benefit of the municipal corporation to which the tax is owed.

(1) On or before the tenth day of each month, the casino operator shall file a return electronically with the Tax Administrator of the Municipality, providing the name, address, and social security number of the person from whose winnings amounts were deducted and withheld, the amount of each such deduction and withholding during the preceding calendar month, the amount of the winnings from which each such amount was withheld, the type of casino gaming that resulted in such winnings, and any other information required by the Tax Administrator. With this return, the casino operator shall remit electronically to the Municipality all amounts deducted and withheld during the preceding month.

(2) Annually, on or before the thirty-first day of January, a casino operator shall file an annual return electronically with the Tax Administrator of the municipal corporation in which the casino facility is located, indicating the total amount deducted and withheld during the preceding calendar year. The casino operator shall remit electronically with the annual return any amount that was deducted and withheld and that was not previously remitted. If the name, address, or social security number of a person or the amount deducted and withheld with respect to that person was omitted on a monthly return for that reporting period, that information shall be indicated on the annual return.

(3) Annually, on or before the thirty-first day of January, a casino operator shall issue an information return to each person with respect to whom an amount has been deducted and withheld during the preceding calendar year. The information return shall show the total amount of municipal income tax deducted from the person's winnings during the preceding year. The casino operator shall provide to the Tax Administrator a copy of each information return issued under

this division. The administrator may require that such copies be transmitted electronically.

(4) A casino operator that fails to file a return and remit the amounts deducted and withheld shall be personally liable for the amount withheld and not remitted. Such personal liability extends to any penalty and interest imposed for the late filing of a return or the late payment of tax deducted and withheld.

(5) If a casino operator sells the casino facility or otherwise quits the casino business, the amounts deducted and withheld along with any penalties and interest thereon are immediately due and payable. The successor shall withhold an amount of the purchase money that is sufficient to cover the amounts deducted and withheld along with any penalties and interest thereon until the predecessor casino operator produces either of the following:

(a) A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid;

(b) A certificate from the Tax Administrator indicating that no amounts are due.

If the successor fails to withhold purchase money, the successor is personally liable for the payment of the amounts deducted and withheld and penalties and interest thereon.

(6) The failure of a casino operator to deduct and withhold the required amount from a person's winnings does not relieve that person from liability for the municipal income tax with respect to those winnings.

(D) If a person's prize award from a video lottery terminal is an amount for which reporting to the internal revenue service is required by section 6041 of the Internal Revenue Code, as amended, the video lottery sales agent shall deduct and withhold municipal income tax from the person's prize award at the rate of the tax imposed by the municipal corporation in which the video lottery terminal facility is located.

(E) Amounts deducted and withheld by a video lottery sales agent are held in trust for the benefit of the municipal corporation to which the tax is owed.

(1) The video lottery sales agent shall issue to a person from whose prize award an amount has been deducted and withheld a receipt for the amount deducted and withheld, and shall obtain from the person receiving a prize award the person's name, address, and social security number in order to facilitate the preparation of returns required by this section.

(2) On or before the tenth day of each month, the video lottery sales agent shall file a return electronically with the Tax Administrator of the Municipality providing the names, addresses, and social security numbers of the persons from whose prize awards amounts were deducted and withheld, the amount of each such deduction and withholding during the preceding calendar month, the amount of the prize award from which each such amount was withheld, and any other information required by the Tax Administrator. With the return, the video lottery sales agent shall remit electronically to the Tax Administrator all amounts deducted and withheld during the preceding month.

(3) A video lottery sales agent shall maintain a record of all receipts issued under division (E) of this section and shall make those records available to the Tax Administrator upon request. Such records shall be maintained in accordance with section 5747.17 of the Ohio Revised Code and any rules adopted pursuant thereto.

(4) Annually, on or before the thirty-first day of January, each video lottery terminal sales agent shall file an annual return electronically with the Tax Administrator of the municipal corporation in which the facility is located indicating the total amount deducted and withheld during the preceding calendar year. The video lottery sales agent shall remit electronically with the annual return any amount that was deducted and withheld and that was not previously remitted. If the name, address, or social security number of a person or the amount deducted and withheld with respect to that person was omitted on a monthly return for that reporting period, that information shall be indicated on the annual return.

(5) Annually, on or before the thirty-first day of January, a video lottery sales agent shall issue an information return to each person with respect to whom an amount has been deducted and withheld during the preceding calendar year. The information return shall show the total amount of municipal income tax deducted and withheld from the person's prize award by the video lottery sales agent during the preceding year. A video lottery sales agent shall provide to the Tax Administrator of the municipal corporation a copy of each information return issued under this division. The Tax Administrator may require that such copies be transmitted electronically.

(6) A video lottery sales agent who fails to file a return and remit the amounts deducted and withheld is personally liable for the amount deducted and withheld and not remitted. Such personal liability extends to any penalty and interest imposed for the late filing of a return or the late payment of tax deducted and withheld.

(F) If a video lottery sales agent ceases to operate video lottery terminals, the amounts deducted and withheld along with any penalties and interest thereon are immediately due and payable. The successor of the video lottery sales agent that purchases the video lottery terminals from the agent shall withhold an amount from the purchase money that is sufficient to cover the amounts deducted and withheld and any penalties and interest thereon until the predecessor video lottery sales agent operator produces either of the following:

(1) A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid;

(2) A certificate from the Tax Administrator indicating that no amounts are due.

If the successor fails to withhold purchase money, the successor is personally liable for the payment of the amounts

deducted and withheld and penalties and interest thereon.

(G) The failure of a video lottery sales agent to deduct and withhold the required amount from a person's prize award does not relieve that person from liability for the municipal income tax with respect to that prize award.

(H) If a casino operator or lottery sales agent files a return late, fails to file a return, remits amounts deducted and withheld late, or fails to remit amounts deducted and withheld as required under this section, the Tax Administrator of a municipal corporation may impose the following applicable penalty:

(1) For the late remittance of, or failure to remit, tax deducted and withheld under this section, a penalty equal to fifty per cent of the tax deducted and withheld;

(2) For the failure to file, or the late filing of, a monthly or annual return, a penalty of five hundred dollars for each return not filed or filed late. Interest shall accrue on past due amounts deducted and withheld at the rate prescribed in section 5703.47 of the Ohio Revised Code.

(I) Amounts deducted and withheld on behalf of a municipal corporation shall be allowed as a credit against payment of the tax imposed by the municipal corporation and shall be treated as taxes paid for purposes of section 94.5.07 of this Chapter. This division applies only to the person for whom the amount is deducted and withheld.

(J) The Tax Administrator shall prescribe the forms of the receipts and returns required under this section. (Ord. 3572. Passed 11-24-15.)

§ 94.5.06 INCOME SUBJECT TO NET PROFIT TAX.

§ 94.5.061 DETERMINING MUNICIPAL TAXABLE INCOME FOR TAXPAYERS WHO ARE NOT INDIVIDUALS.

"Municipal Taxable Income" for a taxpayer who is not an individual for the Municipality is calculated as follows:

(A) "Income" reduced by "Exempt Income" to the extent otherwise included in income, multiplied by apportionment, further reduced by any "Pre-2017 Net Operating Loss Carryforward" equals "Municipal Taxable Income".

(1) "Income" for a taxpayer that is not an individual means the "Net Profit" of the taxpayer.

(i) "Net Profit" for a person other than an individual is defined in Section94.5.03(23).

(ii) "Adjusted Federal Taxable Income" is defined in Section94.5.03(1) of this Chapter.

(2) "Exempt Income" is defined in Section94.5.03(11) of this Chapter.

(3) "Apportionment" means the apportionment as determined by Section94.5.062 of this Chapter.

(4) "Pre-2017 Net Operating Loss Carryforward" is defined in Section94.5.03 (32) of this Chapter. (Ord. 3572. Passed 11-24-15.)

§ 94.5.062 NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX; ALTERNATIVE APPORTIONMENT.

This section applies to any taxpayer engaged in a business or profession in the Municipality unless the taxpayer is an individual who resides in the Municipality or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745 of the Ohio Revised Code.

(A) 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 municipal income taxation in the same proportion as the average ratio of the following:

(1) The average original cost of the real property 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 original cost 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, tangible personal or 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 individuals employed in the business or profession for services performed in the Municipality to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under section 94.5.052 of this Chapter;

(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Municipality to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(B) (1) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the Municipality, the taxpayer may request, or the Tax Administrator of the Municipality may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

(a) Separate accounting;

(b) The exclusion of one or more of the factors;

(c) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the Municipality;

(d) A modification of one or more of the factors.

(2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by division (A) of Section 94.5.19 of this Chapter.

(3) A Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (B) (1) of this section only by issuing an assessment to the taxpayer within the period prescribed by division (A) of Section 94.5.19 of this Chapter.

(4) Nothing in division (B) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by a Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(C) As used in division (A)(2) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

(1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:

(a) The employer;

(b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;

(c) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.

(2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;

(3) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If a Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(D) For the purposes of division (A)(3) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

(1) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in a municipal corporation if, regardless of where title passes, the property meets any of the following criteria:

(a) The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.

(b) The property is delivered within the municipal corporation from a location outside the municipal corporation, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.

(c) The property is shipped from a place within the municipal corporation to purchasers outside the municipal corporation, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(2) Gross receipts from the sale of services shall be situated to the municipal corporation to the extent that such services are performed in the municipal corporation.

(3) To the extent included in income, gross receipts from the sale of real property located in the municipal corporation shall be situated to the municipal corporation.

(4) To the extent included in income, gross receipts from rents and royalties from real property located in the municipal corporation shall be situated to the municipal corporation.

(5) Gross receipts from rents and royalties from tangible personal property shall be situated to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.

(E) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual or by a disregarded entity owned by the individual shall be subject to tax only by the municipal corporation in which the property

generating the net profit is located and the municipal corporation in which the individual taxpayer that receives the net profit resides.

A municipal corporation shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.

(F) (1) Except as provided in division (F)(2) of this section, commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to a municipal corporation based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the municipal corporation to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

(2) An individual who is a resident of a municipal corporation that imposes a municipal income tax shall report the individual's net profit from all real estate activity on the individual's annual tax return for that municipal corporation. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such credit is allowed under Section 94.5.081 of this Chapter.

(G) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under divisions (11)(L) and (34)(A)(iv) of Section 94.5.03 of this Chapter, by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to a municipal corporation under this section.

(H) When calculating the ratios described in division (A) of this section for the purposes of that division or division (B) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.063 CONSOLIDATED FEDERAL INCOME TAX RETURN.

(A) As used in this section:

(1) "Affiliated group of corporations" means an affiliated group as defined in section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

(2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

(3) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (A)(1) of this section.

(4) "Incumbent local exchange carrier" has the same meaning as in section 4927.01 of the Revised Code.

(5) "Local exchange telephone service" has the same meaning as in section 5727.01 of the Revised Code.

(B) (1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the municipal income tax in that taxable year and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year.

(a) The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law.

(b) The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (B)(2) of this section; or

(c) A taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division (B)(1) of this section.

The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (B)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(C) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated municipal income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the municipal corporation. A taxpayer that is required to file a consolidated municipal income tax return for a taxable year shall file a consolidated municipal income tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.

(D) A taxpayer shall prepare a consolidated municipal income tax return in the same manner as is required under the United States Department of Treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(E) (1) Except as otherwise provided in divisions (E)(2), (3), and (4) of this section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in section 94.5.03(1) of this Chapter, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated municipal income tax return shall make any adjustment otherwise required under division (1) of 94.5.03 of this Chapter to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated municipal income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

(a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 94.5.062 of this Chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 94.5.062 of this Chapter, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

(a) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in Section 94.5.062 of this Chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation;

(b) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(F) Corporations filing a consolidated municipal income tax return shall make the computations required under Section 94.5.062 of this Chapter by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(G) Each corporation filing a consolidated municipal income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by a municipal corporation in accordance with this chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

(H) Corporations and their affiliates that made an election or entered into an agreement with a municipal corporation before January 1, 2016, to file a consolidated or combined tax return with such municipal corporation may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.064 TAX CREDIT FOR BUSINESSES THAT FOSTER NEW JOBS IN OHIO.

The Municipality, by Ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer to foster job creation in the Municipality. If a credit is granted under this section, it shall be measured as a percentage of the new income tax revenue the Municipality derives from new employees of the taxpayer and shall be for a term not exceeding fifteen years. Before the Municipality passes an ordinance granting a credit, the Municipality and the taxpayer shall enter into an agreement specifying all the conditions of the credit.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.065 TAX CREDITS TO FOSTER JOB RETENTION.

The Municipality, by Ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer for the purpose of fostering job retention in the Municipality. If a credit is granted under this section, it shall be measured as a percentage of the income tax revenue the Municipality derives from the retained employees of the taxpayer, and shall be for a term not exceeding fifteen years. Before the Municipality passes an ordinance allowing such a credit, the Municipality and the taxpayer shall enter into an agreement specifying all the conditions of the credit. (Ord. 3572. Passed 11-24-15.)

§ 94.5.07 DECLARATION OF ESTIMATED TAX.

(A) As used in this section:

(1) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for a municipal corporation's income tax for the current taxable year.

(2) "Tax liability" means the total taxes due to a municipal corporation for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.

(B) (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least two hundred dollars. For the purposes of this section:

(a) Taxes withheld from qualifying wages shall be considered as paid to the municipal corporation for which the taxes were withheld in equal amounts on each payment date. If the taxpayer establishes the dates on which all amounts were actually withheld, the amounts withheld shall be considered as paid on the dates on which the amounts were actually withheld.

(b) An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(c) A taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the Tax Administrator.

(d) Taxes withheld by a casino operator or by a lottery sales agent under section 718.031 of the Ohio Revised Code are deemed to be paid to the municipal corporation for which the taxes were withheld on the date the taxes are withheld from the taxpayer's winnings.

(2) Taxpayers filing joint returns shall file joint declarations of estimated taxes.

(3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of municipal income tax returns under division (G) of Section 94.5.091 of this Chapter or on or before the fifteenth day of the fourth month of the first taxable year after the taxpayer becomes subject to tax for the first time.

(4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.

(5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.

(C) (1) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the Municipality or Tax Administrator, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:

(a) On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half per cent of the tax liability for the taxable year;

(b) On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five per cent of the tax liability for the taxable year;

(c) On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half per cent of the tax liability for the taxable year;

(d) On or before the fifteenth day of the twelfth month of the taxable year, ninety per cent of the tax liability for the taxable year.

(2) A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates. The amended declaration must be filed on the next applicable due date as outlined in (C)(1)(a) through (d) of this section.

(3) On or before the fifteenth day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with section 94.5.091 of this Chapter.

(a) For taxpayers who are individuals, or who are not individuals and are reporting and filing on a calendar year basis, the annual tax return is due on the same date as the filing of the federal tax return, unless extended pursuant to division (G) of section 5747.08 of the Revised Code.

(b) For taxpayers who are not individuals, and are reporting and filing on a fiscal year basis or any period other than a calendar year, the annual return is due on the fifteenth day of the fourth month following the end of the taxable year or period.

(4) An amended declaration is required whenever the taxpayer's estimated tax liability changes during the taxable year. A change in estimated tax liability may either increase or decrease the estimated tax liability for the taxable year.

(D) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to section 94.5.10 of this Chapter upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:

(a) For the first payment of estimated taxes each year, twenty-two and one-half per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(b) For the second payment of estimated taxes each year, forty-five per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(c) For the third payment of estimated taxes each year, sixty-seven and one-half per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(d) For the fourth payment of estimated taxes each year, ninety per cent of the tax liability, less the amount of taxes paid by the date prescribed for that payment.

(2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.

(E) An underpayment of any portion of tax liability determined under division (D) of this section shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:

(1) The amount of estimated taxes that were paid equals at least ninety per cent of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.

(2) The amount of estimated taxes that were paid equals at least one hundred per cent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return with the municipal corporation under Section 94.5.091 of this Chapter for that year.

(3) The taxpayer is an individual who resides in the Municipality but was not domiciled there on the first day of January of the calendar year that includes the first day of the taxable year.

(F) A Tax Administrator may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors. (Ord. 3572. Passed 11-24-15.)

§ 94.5.08 CREDIT FOR TAX PAID.

§ 94.5.081 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

(A) Every individual taxpayer who resides in the City but who received net profits, qualified wages, commissions or other compensation for work done or services performed or rendered outside of the City, if he has paid a municipal income tax or Joint Economic Development District tax based on income, on such net profits, qualified wages, commissions or other compensation in another municipality, shall be allowed a credit for the amount so paid by him or in his behalf in such municipality. The credit shall not exceed the tax assessed by this Ordinance on such income earned in such other municipality or municipalities where such tax is paid.

(B) Notwithstanding the provisions contained in this Ordinance hereof, or any other provisions inconsistent herewith, a claim for refund or credit under this section shall be made in such manner as the Finance Director or his delegate may, by regulation, provide.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.082 REFUNDABLE CREDIT FOR QUALIFYING LOSS.

(A) As used in this section:

(1) "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.

(2) (a) Except as provided in division (A)(2)(b) of this section, "qualifying loss" means the excess, if any, of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan over the total amount of income the taxpayer has recognized for federal income tax purposes for all taxable years on a cumulative basis as compensation with respect to the taxpayer's receipt of money and property attributable to distributions in connection with the nonqualified deferred compensation plan.

(b) If, for one or more taxable years, the taxpayer has not paid to one or more municipal corporations income tax imposed on the entire amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan, then the "qualifying loss" is the product of the amount resulting from the calculation described in division (A)(2)(a) of this section computed without regard to division (A)(2)(b) of this section and a fraction the numerator of which is the portion of such compensation on which the taxpayer has paid income tax to one or more municipal corporations and the denominator of which is the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

(c) With respect to a nonqualified deferred compensation plan, the taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.

(3) "Qualifying tax rate" means the applicable tax rate for the taxable year for the which the taxpayer paid income tax to a municipal corporation with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan. If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the municipal corporation each year with respect to the nonqualified deferred compensation plan.

(B) (1) Except as provided in division (D) of this section, a refundable credit shall be allowed against the income tax imposed by a municipal corporation for each qualifying loss sustained by a taxpayer during the taxable year. The amount of the credit shall be equal to the product of the qualifying loss and the qualifying tax rate.

(2) A taxpayer shall claim the credit allowed under this section from each municipal corporation to which the taxpayer paid municipal income tax with respect to the nonqualified deferred compensation plan in one or more taxable years.

(3) If a taxpayer has paid tax to more than one municipal corporation with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.

(4) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to a municipal corporation for all taxable years with respect to the nonqualified deferred compensation plan.

(C) (1) For purposes of this section, municipal corporation income tax that has been withheld with respect to a nonqualified deferred compensation plan shall be considered to have been paid by the taxpayer with respect to the nonqualified deferred compensation plan.

(2) Any municipal income tax that has been refunded or otherwise credited for the benefit of the taxpayer with respect to a nonqualified deferred compensation plan shall not be considered to have been paid to the municipal corporation by the taxpayer.

(D) The credit allowed under this section is allowed only to the extent the taxpayer's qualifying loss is attributable to:

(1) The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or

(2) The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.083 CREDIT FOR PERSON WORKING IN JOINT ECONOMIC DEVELOPMENT DISTRICT OR ZONE.

A Municipality shall grant a credit against its tax on income to a resident of the Municipality who works in a joint economic development zone created under section 715.691 or a joint economic development district created under section 715.70, 715.71, or 715.72 of the Ohio Revised Code to the same extent that it grants a credit against its tax on income to its

residents who are employed in another municipal corporation, pursuant to Section 94.5.081 of this Chapter. (Ord. 3572. Passed 11-24-15.)

§ 94.5.084 CREDIT FOR TAX BEYOND STATUTE FOR OBTAINING REFUND.

(A) Income tax that has been deposited or paid to the Municipality, but should have been deposited or paid to another municipal corporation, is allowable by the Municipality as a refund, but is subject to the three-year limitation on refunds as provided in Section 94.5.096 of this Chapter.

(B) Income tax that should have been deposited or paid to the Municipality, but was deposited or paid to another municipal corporation, shall be subject to collection and recovery by the Municipality. To the extent a refund of such tax or withholding is barred by the limitation on refunds as provided in section 94.5.096, the Municipality will allow a non-refundable credit equal to the tax or withholding paid to the other municipality against the income tax the Municipality claims is due. If the Municipality's tax rate is higher, the tax representing the net difference of the tax rates is also subject to collection by the Municipality, along with any penalty and interest accruing during the period of nonpayment.

(C) No carryforward of credit will be permitted when the overpayment is beyond the three-year limitation for refunding of same as provided in Section 94.5.096 of this Chapter.

(D) Nothing in this section requires a Municipality to allow credit for tax paid to another municipal corporation if the Municipality has reduced credit for tax paid to another municipal corporation. Section 94.5.081 of this Chapter regarding any limitation on credit shall prevail.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.09 ANNUAL RETURN.

§ 94.5.091 RETURN AND PAYMENT OF TAX.

(A) (1) An annual return with respect to the income tax levied on Municipal Taxable Income by the Municipality shall be completed and filed by every taxpayer for any taxable year for which the taxpayer is subject to the tax, regardless of whether or not income tax is due.

(2) The Tax Administrator shall accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer located in the Municipality under subsection 94.5.051(C) of this Chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due to the Municipality.

(3) All resident individual taxpayers, 18 years of age and older, shall file an annual municipal income tax return with the Municipality, regardless of income or liability.

(B) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(C) If an individual is unable to complete and file a return or notice required by the Municipality in accordance with this chapter, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual. Such duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the duly authorized agent, guardian, conservator, fiduciary, or other person.

(D) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust. Such fiduciary shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the fiduciary.

(E) No municipal corporation shall deny spouses the ability to file a joint return.

(F) (1) Each return required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's social security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.

(2) A taxpayer who is an individual is required to include, with each annual return, amended return, or request for refund required under this section, copies of only the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040 or, in the case of a return or request required by a qualified municipal corporation, Ohio IT 1040; and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.

(3) A taxpayer that is not an individual is required to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.

(4) A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio business gateway or in some other manner shall either mail the documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio business gateway or a portal provided by Municipality. The department of taxation shall publish a method of electronically submitting the documents required under this division through the Ohio business gateway on or before January 1, 2016. The department shall transmit all documents submitted electronically under this division to the appropriate Tax Administrator.

(5) After a taxpayer files a tax return, the Tax Administrator shall request, and the taxpayer shall provide, any information, statements, or documents required by the Municipality to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under division (F) of this section apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.

(6) Any other documentation, including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses, or other pertinent factors on the return shall also be included to avoid delay in processing, or disallowance by the Tax Administrator of undocumented credits or losses.

(G) (1) (a) Except as otherwise provided in this chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under division (G) of section 5747.08 of the Ohio Revised Code. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the Municipality or Tax Administrator.

(b) Except as otherwise provided in this chapter, each annual net profit income tax return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the tax administrator on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year or period. The taxpayer shall complete and file the return or notice on forms prescribed by the tax administrator or on generic forms, together with remittance made payable to the Municipality or Tax Administrator.

(c) In the case of individual income tax return required to be filed by an individual, and net profit income tax return required to be filed by a taxpayer who is not an individual, no remittance is required if the amount shown to be due is ten dollars or less.

(2) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the Municipality in accordance with this chapter, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.

(3) With respect to taxpayers to whom Section 94.5.092 of this Chapter applies, to the extent that any provision in this division conflicts with any provision in Section 94.5.092 of this Chapter, the provision in Section 94.5.092 of this Chapter prevails.

(H) (1) For taxable years beginning after 2015, the Municipality shall not require a taxpayer to remit tax with respect to net profits if the amount due is ten dollars or less.

(2) Any taxpayer not required to remit tax to the Municipality for a taxable year pursuant to division (H)(1) of this section shall file with the Municipality an annual net profit return under division (F)(3) and (4) of this section.

(I) This division shall not apply to payments required to be made under division (B)(1)(b) or (c) of Section 94.5.051 of this Chapter.

(1) If any report, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under this chapter is delivered after that period or that to the Tax Administrator or other municipal official with which the report, claim, statement, or other document is required to be filed, or to which the payment is required to be made, the date of the postmark stamped on the cover in which the report, claim, statement, or other document, or payment is mailed shall be deemed to be the date of delivery or the date of payment. "The date of postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(2) If a payment is required to be made by electronic funds transfer, the payment is considered to be made when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. For purposes of this section, "submitted the payment" means the date which the taxpayer has designated for the delivery of payment, which may or may not be the same date as the date the payment was initiated by the taxpayer.

(J) The amounts withheld for the Municipality by an employer, the agent of an employer, or other payer as described in section 94.5.051 of this Chapter shall be allowed to the recipient of the compensation as credits against payment of the tax imposed on the recipient unless the amounts withheld were not remitted to the Municipality and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.

(K) Each return required by the Municipality to be filed in accordance with this section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the Tax Administrator to contact the preparer or other person concerning questions that arise during the examination or other review of the return and authorizes the preparer or other person only to provide the Tax Administrator with information that is missing from the return, to contact the Tax Administrator for information about the examination or other review of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the Tax Administrator and has shown to the preparer or other person. Authorization by the taxpayer of another person to communicate with the Tax Administrator about matters pertaining to the return does not preclude the Tax Administrator from contacting the taxpayer regarding such matters.

(L) The Tax Administrator of the Municipality shall accept for filing a generic form of any income tax return, report, or document required by the Municipality in accordance with this Chapter, provided that the generic form, once completed and filed, contains all of the information required by ordinances, resolutions, or rules adopted by the Municipality or Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this Chapter and of the Municipality's Ordinance or resolution governing the filing of returns, reports, or documents.

(M) When income tax returns, reports, or other documents require the signature of a tax return preparer, the Tax Administrator shall accept a facsimile of such a signature in lieu of a manual signature.

(N) (1) As used in this division, "worksite location" has the same meaning as in section 94.5.052 of this chapter.

(2) A person may notify a tax administrator that the person does not expect to be a taxpayer with respect to the municipal corporation for a taxable year if both of the following conditions apply:

(a) The person was required to file a tax return with the municipal corporation for the immediately preceding taxable year because the person performed services at a worksite location within the municipal corporation, and the person has filed all appropriate and required returns and remitted all applicable income tax and withholding payments as provided by this chapter. The tax administrator is not required to accept an affidavit from a taxpayer who has not complied with the provisions of this chapter.

(b) The person no longer provides services in the municipal corporation, and does not expect to be subject to the municipal corporation's income tax for the taxable year.

The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the municipal corporation. The affidavit also shall include the following statement:

"The affiant has no plans to perform any services within the municipal corporation, make any sales in the municipal corporation, or otherwise become subject to the tax levied by the municipal corporation during the taxable year. If the affiant does become subject to the tax levied by the municipal corporation for the taxable year, the affiant agrees to be considered a taxpayer and to properly register as a taxpayer with the municipal corporation, if such a registration is required by the municipal corporation's resolutions, ordinances, or rules." The person shall sign the affidavit under penalty of perjury.

(c) If a person submits an affidavit described in division (N)(2) of this section, the tax administrator shall not require the person to file any tax return for the taxable year unless the tax administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change, or the taxpayer has engaged in activity which results in work being performed, services provided, sales made, or other activity that results in municipal taxable income reportable to the Municipality in the taxable year. It shall be the responsibility of the taxpayer to comply with the provisions of this chapter relating to the reporting and filing of municipal taxable income on an annual municipal income tax return, even if an affidavit has been filed with the tax administrator for the taxable year. Nothing in division (N) of this section prohibits the tax administrator from performing an audit of the person. (Ord. 3572. Passed 11-24-15.)

§ 94.5.092 RETURN AND PAYMENT OF TAX; INDIVIDUALS SERVING IN COMBAT ZONE.

(A) Each member of the national guard of any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the President of the United States or an act of the Congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces, may apply to the Tax Administrator of the Municipality for both an extension of time for filing of the return and an extension of time for payment of taxes required by the Municipality in accordance with this chapter during the period of the member's or civilian's duty service and for one hundred eighty days thereafter. The application shall be filed on or before the one hundred eightieth day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

(B) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the one hundred eighty-first day after the applicant's active duty or service terminates. Except as provided in division (B)(3) of this section, the Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate.

(2) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the applicant

shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the Municipality before the one hundred eighty-first day after the applicant's active duty or service terminates.

(3) Taxes paid pursuant to a contract entered into under division (B)(1) of this section are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(C) (1) Nothing in this division denies to any person described in this division the application of divisions (A) and (B) of this section.

(2) (a) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by the Municipality in accordance with this chapter. The length of any extension granted under division (C)(2)(a) of this section shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this section, "qualifying taxpayer" means a member of the national guard or a member of a reserve component of the armed forces of the United States called to active duty pursuant to either an executive order issued by the President of the United States or an act of the Congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces.

(b) Taxes the payment of which is extended in accordance with division (C)(2)(a) of this section are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (C)(2)(a) of this section in calculating the penalty or interest due on any unpaid tax.

(D) For each taxable year to which division (A), (B), or (C) of this section applies to a taxpayer, the provisions of divisions (B)(2) and (3) or (C) of this section, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.093 USE OF OHIO BUSINESS GATEWAY; TYPES OF FILINGS AUTHORIZED.

(A) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file any municipal income tax return or, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.

(B) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.

(C) Nothing in this section affects the due dates for filing employer withholding tax returns or deposit of any required tax.

(D) The use of the Ohio Business Gateway by municipal corporations, taxpayers, or other persons does not affect the legal rights of municipalities or taxpayers as otherwise permitted by law. The State of Ohio shall not be a party to the administration of municipal income taxes or to an appeal of a municipal income tax matter, except as otherwise specifically provided by law.

(E) Nothing in this section shall be construed as limiting or removing the authority of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.094 EXTENSION OF TIME TO FILE.

(A) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. For tax years ending on or after January 11 2023, the extended due date of municipal income tax return for a taxpayer that is not an individual shall be the 15th day of the eleventh month after the last day of the taxable year to which the return relates.

(B) Any taxpayer that qualifies for an automatic federal extension for a period other than six-months for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as that of the extended federal income tax return.

(C) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the tax administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the request is received by the tax administrator on or before the date the municipal income tax return is due, the tax administrator shall grant the taxpayer's requested extension.

(D) An extension of time to file under this chapter is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

(E) If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G)

of section 5747.08 of the Ohio Revised Code, a taxpayer shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as the extended due date of the state income tax return.

(F) If a taxpayer receives an extension for the filing of a municipal income tax return under division (A), (B), (C), (D) or (E) of this section, the tax administrator shall not make any inquiry or send any notice to the taxpayer with regard to the return on or before the date the taxpayer files the return or on or before the extended due date to file the return, whichever occurs first.

If a tax administrator violates division (F) of this section, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to \$150.

Division (F) of this section does not apply to an extension received under division (B) of this section if the tax administrator has actual knowledge that the taxpayer failed to file for a federal extension as required to receive the extension under division (B) of this section or failed to file for an extension under division (C) of this section.

(Ord. 3572. Passed 11-24-15; Ord. 3759. Passed 11-28-23.)

§ 94.5.095 AMENDED RETURNS.

(A) (1) A taxpayer shall file an amended return with the Tax Administrator in such form as the Tax Administrator requires if any of the facts, figures, computations, or attachments required in the taxpayer's annual return to determine the tax due levied by the Municipality in accordance with this chapter must be altered.

(2) Within sixty days after the final determination of any federal or state tax liability affecting the taxpayer's municipal tax liability, that taxpayer shall make and file an amended municipal return showing income subject to the municipal income tax based upon such final determination of federal or state tax liability, and pay any additional municipal income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is ten dollars or less.

(3) If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the Tax Administrator before filing the amended return.

(B) (1) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. If the combined tax shown to be due is ten dollars or less, such amount need not accompany the amended return. Except as provided under division (B)(2) of this section, the amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless the applicable statute of limitations for civil actions or prosecutions under section 94.5.19 of this Chapter has not expired for a previously filed return.

(2) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations, and attachments were reopened.

(C) (1) In the case of an overpayment, a request for refund may be filed under this division within the period prescribed by division (A)(2) of section 94.5.19 of this Chapter for filing the amended return even if it is filed beyond the period prescribed in that division if it otherwise conforms to the requirements of that division. If the amount of the refund is ten dollars or less, no refund need be paid by the Municipality to the taxpayer. Except as set forth in division (C)(2) of this section, a request filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless it is also filed within the time prescribed in section 94.5.096 of this Chapter. Except as set forth in division (C)(2) of this section, the request shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return.

(2) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations, and attachments were reopened. (Ord. 3572. Passed 11-24-15.)

§ 94.5.096 REFUNDS.

(A) Upon receipt of a request for a refund, the Tax Administrator of the Municipality, in accordance with this section, shall refund to employers, agents of employers, other payers, or taxpayers, with respect to any income or withholding tax levied by the Municipality:

(1) Overpayments of more than ten dollars;

(2) Amounts paid erroneously if the refund requested exceeds ten dollars.

(B) (1) Except as otherwise provided in this chapter, returns setting forth a request for refund shall be filed with the Tax Administrator, within three years after the tax was due or paid, whichever is later. Any documentation that substantiates the taxpayer's claim for a refund must be included with the return filing. Failure to remit all documentation, including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses or other pertinent factors on the return will cause delay in processing, and / or disallowance of undocumented credits or losses.

(2) On filing of the refund request, the Tax Administrator shall determine the amount of refund due and certify such amount to the appropriate municipal corporation official for payment. Except as provided in division (B)(3) of this section, the administrator shall issue an assessment to any taxpayer whose request for refund is fully or partially denied. The assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the assessment.

(3) If a Tax Administrator denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the Tax Administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an assessment that may be appealed under Section 94.5.18 of this Chapter.

(C) A request for a refund that is received after the last day for filing specified in division (B) of this section shall be considered to have been filed in a timely manner if any of the following situations exist:

(1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request.

(2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven days of such last day.

(3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven days of the last day for making the request.

(D) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in division (A)(4) of Section 94.5.10 of this Chapter.

(E) As used in this section, "withholding tax" has the same meaning as in section 94.5.10 of this Chapter. (Ord. 3572. Passed 11-24-15.)

§ 94.5.10 PENALTY, INTEREST, FEES, AND CHARGES.

(A) As used in this section:

(1) "Applicable law" means this chapter, the resolutions, ordinances, codes, directives, instructions, and rules adopted by the Municipality provided such resolutions, ordinances, codes, directives, instructions, and rules impose or directly or indirectly address the levy, payment, remittance, or filing requirements of a municipal income tax.

(2) "Federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year.

(3) "Income tax," "estimated income tax," and "withholding tax" mean any income tax, estimated income tax, and withholding tax imposed by a municipal corporation pursuant to applicable law, including at any time before January 1, 2016.

(4) "Interest rate as described in division (A) of this section" means the federal short-term rate, rounded to the nearest whole number per cent, plus five per cent. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance with division (A)(2) of this section.

(5) "Return" includes any tax return, report, reconciliation, schedule, and other document required to be filed with a Tax Administrator or municipal corporation by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.

(6) "Unpaid estimated income tax" means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.

(7) "Unpaid income tax" means income tax due but not paid by the date the income tax is required to be paid under applicable law.

(8) "Unpaid withholding tax" means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.

(9) "Withholding tax" includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee's qualifying wages.

(B) (1) This section shall apply to the following:

(a) Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;

(b) Income tax, estimated income tax, and withholding tax required to be paid or remitted to the Municipality on or after January 1, 2016 for taxable years beginning on or after January 1,

(2) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the ordinances or rules,, as adopted from time to time before January 1, 2016 of this Municipality..

(C) The Municipality shall impose on a taxpayer, employer, any agent of the employer, and any other payer, and will attempt to collect, the interest amounts and penalties prescribed in this section when the taxpayer, employer, any agent of the employer, or any other payer for any reason fails, in whole or in part, to make to the Municipality timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the Municipality any return required to be filed.

(1) Interest shall be imposed at the rate defined as "interest rate as described in division (A) of this section", per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month.

(2) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to fifteen percent of the amount not timely paid shall be imposed.

(3) With respect to any unpaid withholding tax, a penalty equal to fifty percent of the amount not timely paid shall be imposed.

(4) (a) For tax years ending on or before December 31, 2022, with respect to returns other than estimated income tax returns, the Municipality shall impose a monthly penalty of twenty-five dollars for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfilled regardless of the liability shown thereon. The penalty shall not exceed a total of one hundred fifty dollars in assessed penalty for each failure to timely file a return.

(b) For tax years ending on or after January 1, 2023, with respect to returns other than estimated income tax returns, the municipality may impose a penalty not exceeding \$25 for each failure to timely file each return, regardless of the liability shown thereon, except that the municipality shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.

(D) With respect to income taxes, estimated income taxes, withholding taxes, and returns, the Municipality shall not impose, seek to collect, or collect any penalty, amount of interest, charges or additional fees not described in this section.

(E) With respect to income taxes, estimated income taxes, withholding taxes, and returns, the Municipality shall not refund or credit any penalty, amount of interest, charges, or additional fees that were properly imposed or collected before January 1, 2016.

(F) The Tax Administrator may, in the Tax Administrator's sole discretion, abate or partially abate penalties or interest imposed under this section when the Tax Administrator deems such abatement or partial abatement to be appropriate. Such abatement or partial abatement shall be properly documented and maintained on the record of the taxpayer who received benefit of such abatement or partial abatement.

(G) The Municipality may impose on the taxpayer, employer, any agent of the employer, or any other payer the Municipality's post-judgment collection costs and fees, including attorney's fees.

(Ord. 3572. Passed 11-24-15; Ord. 3759. Passed 11-28-23.)

§ 94.5.11 AUDIT.

(A) At or before the commencement of an audit, as defined in Section94.5.03(3) of this Chapter, the Tax Administrator shall provide to the taxpayer a written description of the roles of the Tax Administrator and of the taxpayer during an audit and a statement of the taxpayer's rights, including any right to obtain a refund of an overpayment of tax. At or before the commencement of an audit, the Tax Administrator shall inform the taxpayer when the audit is considered to have commenced.

(B) Except in cases involving suspected criminal activity, the Tax Administrator shall conduct an audit of a taxpayer during regular business hours and after providing reasonable notice to the taxpayer. A taxpayer who is unable to comply with a proposed time for an audit on the grounds that the proposed time would cause inconvenience or hardship must offer reasonable alternative dates for the audit.

(C) At all stages of an audit by the Tax Administrator, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. The Tax Administrator shall prescribe a form by which a taxpayer may designate such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the Tax Administrator. If a taxpayer has not submitted such a form, the Tax Administrator may accept other evidence, as the Tax Administrator considers appropriate, that a person is the authorized representative of a taxpayer.

A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner. This division does not authorize the practice of law by a person who is not an attorney.

(D) A taxpayer may record, electronically or otherwise, the audit examination.

(E) The failure of the Tax Administrator to comply with a provision of this section shall neither excuse a taxpayer from payment of any taxes owed by the taxpayer nor cure any procedural defect in a taxpayer's case.

(F) If the Tax Administrator fails to substantially comply with the provisions of this section, the Tax Administrator, upon application by the taxpayer, shall excuse the taxpayer from penalties and interest arising from the audit.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.12 ROUNDING.

A person may round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher, or other document required under this chapter. Any fractional part of a dollar that equals or exceeds fifty cents shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than fifty cents shall be dropped, rounding down to the nearest whole dollar. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.13 AUTHORITY AND POWERS OF THE TAX ADMINISTRATOR.

94.5.131 AUTHORITY OF TAX ADMINISTRATOR; ADMINISTRATIVE POWERS OF THE TAX ADMINISTRATOR.

The Tax Administrator has the authority to perform all duties and functions necessary and appropriate to implement the provisions of this Chapter, including without limitation:

(A) Exercise all powers whatsoever of an inquisitorial nature as provided by law, including, the right to inspect books, accounts, records, memorandums, and federal and state income tax returns, to examine persons under oath, to issue orders or subpoenas for the production of books, accounts, papers, records, documents, and testimony, to take depositions, to apply to a court for attachment proceedings as for contempt, to approve vouchers for the fees of officers and witnesses, and to administer oaths; provided that the powers referred to in this division of this section shall be exercised by the Tax Administrator only in connection with the performance of the duties respectively assigned to the Tax Administrator under a municipal corporation income tax ordinance or resolution adopted in accordance with this chapter;

(B) Appoint agents and prescribe their powers and duties;

(C) Confer and meet with officers of other municipal corporations and states and officers of the United States on any matters pertaining to their respective official duties as provided by law;

(D) Exercise the authority provided by law, including orders from bankruptcy courts, relative to remitting or refunding taxes, including penalties and interest thereon, illegally or erroneously imposed or collected, or for any other reason overpaid, and, in addition, the Tax Administrator may investigate any claim of overpayment and make a written statement of the Tax Administrator's findings, and, if the Tax Administrator finds that there has been an overpayment, approve and issue a refund payable to the taxpayer, the taxpayer's assigns, or legal representative as provided in this chapter;

(E) Exercise the authority provided by law relative to consenting to the compromise and settlement of tax claims;

(F) Exercise the authority provided by law relative to the use of alternative apportionment methods by taxpayers in accordance with section 94.5.062 of this Chapter;

(G) Make all tax findings, determinations, computations, assessments and orders the Tax Administrator is by law authorized and required to make and, pursuant to time limitations provided by law, on the Tax Administrator's own motion, review, redetermine, or correct any tax findings, determinations, computations, assessments or orders the Tax Administrator has made, but the Tax Administrator shall not review, redetermine, or correct any tax finding, determination, computation, assessment or order which the Tax Administrator has made for which an appeal has been filed with the Local Board of Tax Review or other appropriate tribunal, unless such appeal or application is withdrawn by the appellant or applicant, is dismissed, or is otherwise final;

(H) Destroy any or all returns or other tax documents in the manner authorized by law;

(I) Enter into an agreement with a taxpayer to simplify the withholding obligations described in section 94.5.051 of this Chapter.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.132 AUTHORITY OF TAX ADMINISTRATOR; COMPROMISE OF CLAIM AND PAYMENT OVER TIME.

(A) As used in this section, "claim" means a claim for an amount payable to the Municipality that arises pursuant to the municipal income tax imposed in accordance with this chapter.

(B) The Tax Administrator may do either of the following if such action is in the best interests of the Municipality:

(1) Compromise a claim;

(2) Extend for a reasonable period the time for payment of a claim by agreeing to accept monthly or other periodic

payments, upon such terms and conditions as the Tax Administrator may require.

(C) The Tax Administrator's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable.

(D) A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall inure to the benefit of only the parties to the compromise or agreement, and shall not extinguish or otherwise affect the liability of any other person.

(E) (1) A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due.

(2) The Tax Administrator shall have sole discretion to determine whether or not penalty, interest, charges or applicable fees will be assessed through the duration of any compromise or payment-over-time agreement.

(F) The Tax Administrator may require that the taxpayer provide detailed financial documentation and information, in order to determine whether or not a payment-over-time agreement will be authorized. The taxpayer's failure to provide the necessary and required information by the Tax Administrator shall preclude consideration of a payment-over-time agreement.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.133 AUTHORITY OF TAX ADMINISTRATOR; RIGHT TO EXAMINE.

(A) The Tax Administrator, or any authorized agent or employee thereof may examine the books, papers, records, and federal and state income tax returns of any employer, taxpayer, or other person that is subject to, or that the Tax 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 filed, to ascertain the tax due under this Chapter. Upon written request by the Tax Administrator or a duly authorized agent or employee thereof, every employer, taxpayer, or other person subject to this section is required to furnish the opportunity for the Tax Administrator, authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.

(B) The records and other documents of any taxpayer, employer, or other person that is subject to, or that a Tax Administrator believes is subject to, the provisions of this Chapter shall be open to the Tax Administrator's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the Tax Administrator, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The Tax Administrator of a municipal corporation may require any person, by notice served on that person, to keep such records as the Tax Administrator determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by the Municipality or for the withholding of such tax.

(C) The Tax Administrator may examine under oath any person that the Tax Administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Tax Administrator may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and federal and state income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

(D) No person issued written notice by the Tax Administrator compelling attendance at a hearing or examination or the production of books, papers, records, or federal and state income tax returns under this section shall fail to comply.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.134 AUTHORITY OF TAX ADMINISTRATOR; REQUIRING IDENTIFYING INFORMATION

(A) The Tax Administrator may require any person filing a tax document with the Tax Administrator to provide identifying information, which may include the person's social security number, federal employer identification number, or other identification number requested by the Tax Administrator. A person required by the Tax Administrator to provide identifying information that has experienced any change with respect to that information shall notify the Tax Administrator of the change before, or upon, filing the next tax document requiring the identifying information.

(B) (1) If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within thirty days of making the request, nothing in this chapter prohibits the Tax Administrator from imposing a penalty upon the person to whom the request was directed pursuant to section 94.5.10 of this Chapter, in addition to any applicable penalty described in section 94.5.99 of this Chapter.

(2) If a person required by the Tax Administrator to provide identifying information does not notify the Tax Administrator of a change with respect to that information as required under division (A) of this section within thirty days after filing the next tax document requiring such identifying information, nothing in this chapter prohibits the Tax Administrator from imposing a penalty pursuant to section 94.5.10 of this Chapter.

(3) The penalties provided for under divisions (B)(1) and (2) of this section may be billed and imposed in the same

manner as the tax or fee with respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in section 94.5.99 of this Chapter for a violation of 94.5.15 of this Chapter, and any other penalties that may be imposed by the Tax Administrator by law.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.14 CONFIDENTIALITY.

(A) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by ORC 718 or by the charter or ordinance of the Municipality is confidential, and no person shall access or disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the Municipality as authorized by ORC 718 or the charter or ordinance authorizing the levy. The Tax Administrator of the Municipality or a designee thereof may furnish copies of returns filed or otherwise received under this chapter and other related tax information to the Internal Revenue Service, the State Tax Commissioner, and Tax Administrators of other municipal corporations.

(B) This section does not prohibit the Municipality from publishing or disclosing statistics in a form that does not disclose information with respect to particular taxpayers.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.15 FRAUD.

No person shall knowingly make, present, aid, or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim, or document authorized or required by municipal corporation ordinance or state law to be filed with the Tax Administrator, or knowingly procure, counsel, or advise the preparation or presentation of such report, return, schedule, statement, claim, or document, or knowingly change, alter, or amend, or knowingly procure, counsel or advise such change, alteration, or amendment of the records upon which such report, return, schedule, statement, claim, or document is based with intent to defraud the Municipality or the Tax Administrator.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.16 OPINION OF THE TAX ADMINISTRATOR.

(A) An "opinion of the Tax Administrator" means an opinion issued under this section with respect to prospective municipal income tax liability. It does not include ordinary correspondence of the Tax Administrator.

(B) A taxpayer may submit a written request for an opinion of the Tax Administrator as to whether or how certain income, source of income, or a certain activity or transaction will be taxed. The written response of the Tax Administrator shall be an "opinion of the Tax Administrator" and shall bind the Tax Administrator, in accordance with divisions (C), (G), and (H) of this section, provided all of the following conditions are satisfied:

(1) The taxpayer's request fully and accurately describes the specific facts or circumstances relevant to a determination of the taxability of the income, source of income, activity, or transaction, and, if an activity or transaction, all parties involved in the activity or transaction are clearly identified by name, location, or other pertinent facts.

(2) The request relates to a tax imposed by the Municipality in accordance with this Chapter.

(3) The Tax Administrator's response is signed by the Tax Administrator and designated as an "opinion of the Tax Administrator."

(C) An opinion of the Tax Administrator shall remain in effect and shall protect the taxpayer for whom the opinion was prepared and who reasonably relies on it from liability for any taxes, penalty, or interest otherwise chargeable on the activity or transaction specifically held by the Tax Administrator's opinion to be taxable in a particular manner or not to be subject to taxation for any taxable years that may be specified in the opinion, or until the earliest of the following dates:

(1) The effective date of a written revocation by the Tax Administrator sent to the taxpayer by certified mail, return receipt requested. The effective date of the revocation shall be the taxpayer's date of receipt or one year after the issuance of the opinion, whichever is later;

(2) The effective date of any amendment or enactment of a relevant section of the Ohio Revised Code, uncodified state law, or the Municipality's income tax ordinance that would substantially change the analysis and conclusion of the opinion of the Tax Administrator;

(3) The date on which a court issues an opinion establishing or changing relevant case law with respect to the Ohio Revised Code, uncodified state law, or the Municipality's income tax ordinance;

(4) If the opinion of the Tax Administrator was based on the interpretation of federal law, the effective date of any change in the relevant federal statutes or regulations, or the date on which a court issues an opinion establishing or changing relevant case law with respect to federal statutes or regulations;

(5) The effective date of any change in the taxpayer's material facts or circumstances;

(6) The effective date of the expiration of the opinion, if specified in the opinion.

(D) (1) A taxpayer is not relieved of tax liability for any activity or transaction related to a request for an opinion that

contained any misrepresentation or omission of one or more material facts.

(2) If the taxpayer knowingly has misrepresented the pertinent facts or omitted material facts with intent to defraud the Municipality in order to obtain a more favorable opinion, the taxpayer may be in violation of section 94.5.15 of this Chapter.

(E) If a Tax Administrator provides written advice under this section, the opinion shall include a statement that:

(1) The tax consequences stated in the opinion may be subject to change for any of the reasons stated in division (C) of this section;

(2) It is the duty of the taxpayer to be aware of such changes.

(F) A Tax Administrator may refuse to offer an opinion on any request received under this section.

(G) This section binds a Tax Administrator only with respect to opinions of the Tax Administrator issued on or after January 1, 2016.

(H) An opinion of a Tax Administrator binds that Tax Administrator only with respect to the taxpayer for whom the opinion was prepared and does not bind the Tax Administrator of any other municipal corporation.

(I) A Tax Administrator shall make available the text of all opinions issued under this section, except those opinions prepared for a taxpayer who has requested that the text of the opinion remain confidential. In no event shall the text of an opinion be made available until the Tax Administrator has removed all information that identifies the taxpayer and any other parties involved in the activity or transaction.

(J) An opinion of the Tax Administrator issued under this section or a refusal to offer an opinion under subsection (F) may not be appealed.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.17 ASSESSMENT; APPEAL BASED ON PRESUMPTION OF DELIVERY.

(A) (1) The Tax Administrator shall serve an assessment either by personal service, by certified mail, or by a delivery service authorized under section 5703.056 of the Ohio Revised Code.

(2) The Tax Administrator may deliver the assessment through alternative means as provided in this section, including, but not limited to, delivery by secure electronic mail. Such alternative delivery method must be authorized by the person subject to the assessment.

(3) Once service of the assessment has been made by the Tax Administrator or other municipal official, or the designee of either, the person to whom the assessment is directed may protest the ruling of that assessment by filing an appeal with the Local Board of Tax Review within sixty days after the receipt of service. The delivery of an assessment of the Tax Administrator as prescribed in Section 718.18 of the Revised Code is prima facie evidence that delivery is complete and that the assessment is served.

(B) (1) A person may challenge the presumption of delivery and service as set forth in this division. A person disputing the presumption of delivery and service under this section bears the burden of proving by a preponderance of the evidence that the address to which the assessment was sent was not an address with which the person was associated at the time the Tax Administrator originally mailed the assessment by certified mail. For the purposes of this section, a person is associated with an address at the time the Tax Administrator originally mailed the assessment if, at that time, the person was residing, receiving legal documents, or conducting business at the address; or if, before that time, the person had conducted business at the address and, when the assessment was mailed, the person's agent or the person's affiliate was conducting business at the address. For the purposes of this section, a person's affiliate is any other person that, at the time the assessment was mailed, owned or controlled at least twenty per cent, as determined by voting rights, of the addressee's business.

(2) If a person elects to appeal an assessment on the basis described in division (B)(1) of this section, and if that assessment is subject to collection and is not otherwise appealable, the person must do so within sixty days after the initial contact by the Tax Administrator or other municipal official, or the designee of either, with the person. Nothing in this division prevents the Tax Administrator or other official from entering into a compromise with the person if the person does not actually file such an appeal with the Local Board of Tax Review.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.18 LOCAL BOARD OF TAX REVIEW; APPEAL TO LOCAL BOARD OF TAX REVIEW.

(A) (1) The legislative authority of the Municipality shall maintain a Local Board of Tax Review to hear appeals as provided in Ohio Revised Code Chapter 718.

(2) The Local Board of Tax Review shall consist of three members. Members may be domiciled, but appointing authority may decide. The three members of the Local Board of Tax Review may be domiciled in the Municipality, but the appointing authority may consider membership from individuals who are not domiciled within the Municipality.

Two members shall be appointed by the legislative authority of the Municipality, and may not be employees, elected officials, or contractors with the Municipality at any time during their term or in the five years immediately preceding the date

of appointment. One member shall be appointed by the top administrative official of the Municipality. This member may be an employee of the Municipality, but may not be the Director of Finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(3) The term for members of the Local Board of Tax Review appointed by the legislative authority of the Municipality shall be two years. There is no limit on the number of terms that a member may serve should the member be reappointed by the legislative authority. The board member appointed by the top administrative official of the Municipality shall serve at the discretion of the administrative official.

(4) Members of the Board of Tax Review appointed by the legislative authority may be removed by the legislative authority as set forth in Section 718.11(A)(4) of the Ohio Revised Code.

(5) A member of the board who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.

(6) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the board shall impair the power and authority of the remaining members to exercise all the powers of the board.

(7) If a member is temporarily unable to serve on the board due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the board in the member's place. This appointment shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

(8) No member of the Local Board of Tax Review shall receive compensation, fee, or reimbursement of expenses for service on the board.

(9) A member of a Local Board of Tax Review shall not be appointed to or serve on another such board simultaneously.

(B) Whenever a Tax Administrator issues an assessment, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment, and the address to which the appeal should be directed, and to whom the appeal should be directed.

(C) Any person who has been issued an assessment may appeal the assessment to the board by filing a request with the board. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty days after the taxpayer receives the assessment.

(D) The Local Board of Tax Review shall schedule a hearing to be held within sixty days after receiving an appeal of an assessment under division (C) of this section, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the board and/or may be represented by an attorney at law, certified public accountant, or other representative. The board may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within one hundred twenty days after the first day of the hearing unless the parties agree otherwise.

(E) The board may affirm, reverse, or modify the Tax Administrator's assessment or any part of that assessment. The board shall issue a final determination on the appeal within ninety days after the board's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the board's final determination as provided in section 5717.011 of the Ohio Revised Code.

(F) The Local Board of Tax Review created pursuant to this section shall adopt rules governing its procedures, including a schedule of related costs, and shall keep a record of its transactions. The rules governing the Local Board of Tax Review procedures shall be in writing, and may be amended as needed by the Local Board of Tax Review. Such records are not public records available for inspection under section 149.43 of the Ohio Revised Code. For this reason, any documentation, copies of returns or reports, final determinations, or working papers for each case must be maintained in a secure location under the control of the Tax Administrator. No member of the Local Board of Tax Review may remove such documentation, copies of returns or reports, final determinations, or working papers from the hearing. Hearings requested by a taxpayer before a Local Board of Tax Review created pursuant to this section are not meetings of a public body subject to section 121.22 of the Ohio Revised Code. For this reason, such hearings shall not be open to the public, and only those parties to the case may be present during the hearing. (Ord. 3572. Passed 11-24-15.)

§ 94.5.19 ACTIONS TO RECOVER; STATUTE OF LIMITATIONS.

(A) (1) (a) Civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within the latter of:

(i) Three years after the tax was due or the return was filed, whichever is later; or

(ii) One year after the conclusion of the qualifying deferral period, if any.

(b) The time limit described in division (A)(1)(a) of this section may be extended at any time if both the Tax Administrator and the employer, agent of the employer, other payer, or taxpayer consent in writing to the extension. Any extension shall also extend for the same period of time the time limit described in division (C) of this section.

(2) As used in this section, "qualifying deferral period" means a period of time beginning and ending as follows:

(a) Beginning on the date a person who is aggrieved by an assessment files with a Local Board of Tax Review the request described in Section 94.5.18 of this Chapter. That date shall not be affected by any subsequent decision, finding, or holding by any administrative body or court that the Local Board of Tax Review with which the aggrieved person filed the request did not have jurisdiction to affirm, reverse, or modify the assessment or any part of that assessment.

(b) Ending the later of the sixtieth day after the date on which the final determination of the Local Board of Tax Review becomes final or, if any party appeals from the determination of the Local Board of Tax Review, the sixtieth day after the date on which the final determination of the Local Board of Tax Review is either ultimately affirmed in whole or in part or ultimately reversed and no further appeal of either that affirmation, in whole or in part, or that reversal is available or taken.

(B) Prosecutions for an offense made punishable under a resolution or ordinance imposing an income tax 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 per cent or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

(C) A claim for a refund of municipal income taxes shall be brought within the time limitation provided in Section 94.5.096 of this Chapter.

(D) (1) Notwithstanding the fact that an appeal is pending, the petitioner may pay all or a portion of the assessment that is the subject of the appeal. The acceptance of a payment by the Municipality does not prejudice any claim for refund upon final determination of the appeal.

(2) If upon final determination of the appeal an error in the assessment is corrected by the Tax Administrator, upon an appeal so filed or pursuant to a final determination of the Local Board of Tax Review created under Section 94.5.18 of this Chapter, of the Ohio Board of Tax Appeals, or any court to which the decision of the Ohio Board of Tax Appeals has been appealed, so that the amount due from the party assessed under the corrected assessment is less than the amount paid, there shall be issued to the appellant or to the appellant's assigns or legal representative a refund in the amount of the overpayment as provided by Section 94.5.096 of this Chapter, with interest on that amount as provided by division (D) of this section.

(E) No civil action to recover municipal income tax or related penalties or interest shall be brought during either of the following time periods:

(1) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties;

(2) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.20 ADOPTION OF RULES.

(A) Pursuant to Section 718.30 of the Ohio Revised Code, the Municipality, pursuant to this Chapter, grants authority to the Tax Administrator to adopt rules to administer the income tax imposed by the Municipality.

(B) All rules adopted under this section shall be published and posted on the internet.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.201 LANDLORD REPORTING.

(A) Every owner of two (2) or more rental units and every owner or operator of a mobile home park is hereby directed and required to furnish to the Finance Director or his delegate a yearly roster of the names and addresses of persons residing in the rental units or mobile home park. The listing must include any changes during the year. The yearly roster shall be filed in the following year on or before January 31st. Larger entities may be required to file on a quarterly or semi-annually basis at the Finance Director's discretion.

(B) Every condominium association, owners' organizations of condominium units, or other owners'/residents' cooperative dwelling affiliations is hereby required to furnish a yearly roster of the names and addresses of their members that own, rent, or have an interest in properties located in the City of West Carrollton to the Finance Director or his delegate. This roster must include any changes during the year such as new owners or forwarding addresses. The yearly roster shall be filed in the following year on or before January 31st. Larger entities may be required to file on a quarterly or semi-annually basis at the Finance Director's discretion.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.97 COLLECTION AFTER TERMINATION OF CHAPTER.

(A) This chapter shall continue in full force and effect 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 any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue in full force and effect 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 Section 94.5.19.

(B) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Section 94.5.091 as though the same were continuing.

(Ord. 3572. Passed 11-24-15.)

§ 94.5.98 SAVINGS CLAUSE.

If any sentence, clause, section or part of this chapter, or any tax imposed against, or exemption from tax granted to, any taxpayer or forms of income 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 so found and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of the legislative authority of the Municipality that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included in this chapter. (Ord. 3572. Passed 11-24-15.)

§ 94.5.99 VIOLATIONS; PENALTY.

(A) Except as provided in division (B) of this section, whoever violates Section 94.5.15 of this Chapter, division (A) of Section 94.5.14 of this Chapter, or Section 94.5.051 of this Chapter by failing to remit municipal income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars or imprisonment for a term of up to six months, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.

(B) Any person who discloses information received from the Internal Revenue Service in violation of Internal Revenue Code Sec. 7213(a), 7213A, or 7431 shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than five thousand dollars plus the costs of prosecution, or imprisonment for a term not exceeding five years, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.

(C) Each instance of access or disclosure in violation of division (A) of Section 94.5.14 of this Chapter constitutes a separate offense.

(D) Whoever violates any provision of this Chapter for which violation no penalty is otherwise provided, is guilty of a misdemeanor of the third degree on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the second degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the first degree. By way of an illustrative enumeration, violations of this Chapter shall include but not be limited to the following acts, conduct, and/or omissions:

- (1) Fail, neglect or refuse to make any return or declaration required by this Chapter; or
- (2) Knowingly make any incomplete return; or
- (3) Willfully fail, neglect, or refuse to pay the tax, penalties, and interest, or any combination thereof, imposed by this Chapter; or
- (4) Cause to not be remitted the city income tax withheld from qualifying wages of employees to the Municipality municipal corporation as required by Section 94.5.051; or
- (5) Neglect or refuse to withhold or remit municipal income tax from employees; or
- (6) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or her books, records, papers, federal and state income tax returns, or any documentation relating to the income or net profits of a taxpayer; or
- (7) Fail to appear before the Tax Administrator and to produce his or her books, records, papers, federal and state income tax returns, or any documentation relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator; or
- (8) Refuse to disclose to the Tax Administrator any information with respect to such person's income or net profits, or in the case of a person responsible for maintaining information relating to his or her employers' income or net profits, such person's employer's income or net profits; or
- (9) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator; or
- (10) To avoid imposition or collection of municipal income tax, willfully give to an employer or prospective employer false information as to his or her true name, correct social security number and residence address, or willfully fail to promptly notify an employer or a prospective employer of any change in residence address and date thereof; or
- (11) Fail, as an employer, agent of an employer, or other payer, to maintain proper records of employees residence addresses, total qualifying wages paid and municipal tax withheld, or to knowingly give the Tax Administrator false information; or
- (12) Willfully fail, neglect, or refuse to make any payment of estimated municipal income tax for any taxable year or any part of any taxable year in accordance with this Chapter; or
- (13) 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.

(14) For purposes of this Section, any violation that does not specify a culpable mental state or intent, shall be one of strict liability and no culpable mental state or intent shall be required for a person to be guilty of that violation.

(15) For purposes of this Section, the term "person" shall, in addition to the meaning prescribed in Section 94.5.03, include in the case of a corporation, association, pass-through entity or unincorporated business entity not having any resident owner or officer within the city, any employee or agent of such corporation, association, pass-through entity or unincorporated business entity who has control or supervision over or is charged with the responsibility of filing the municipal income tax returns and making the payments of the municipal income tax as required by this Chapter. (Ord. 3572. Passed 11- 24-15.)

§ 94.6.01 FILING NET PROFIT TAXES; ELECTION TO BE SUBJECT TO PROVISIONS OF CHAPTER.

(A) A taxpayer may elect to be subject to sections 94.6.1 to 94.6.16 of the Codified Ordinances in lieu of the provisions set forth in the remainder of this chapter. Notwithstanding any other provision of this chapter, upon the taxpayer's election, both of the following shall apply:

(1) The state tax commissioner shall serve as the sole administrator of the municipal net profit tax for which the taxpayer as defined in 94.6.02(C) other than an individual of the Codified Ordinances is liable for the term of the election;

(2) The commissioner shall administer the tax pursuant to sections 718.80 to 718.95 of the Revised Code, sections 94.6.1 to 94.6.16 of the Codified Ordinances, and any applicable provision of Chapter 5703 of the Revised Code.

(B) (1) A taxpayer shall make the initial election on or before the first day of the third month after the beginning of the taxpayer's taxable year by notifying the tax commissioner and the City of West Carrollton, on a form prescribed by the tax commissioner.

(2) (a) The election, once made by the taxpayer, applies to the taxable year in which the election is made and to each subsequent taxable year until the taxpayer notifies the tax commissioner and the City of West Carrollton of its termination of the election.

(b) A notification of termination shall be made, on a form prescribed by the tax commissioner, on or before the first day of the third month of any taxable year.

(c) Upon a timely and valid termination of the election, the taxpayer is no longer subject to sections 94.6.1 to 94.6.16 of the Codified Ordinances, and is instead subject to the provisions set forth in the remainder of this chapter.

(C) The tax commissioner shall enforce and administer sections 94.6.1 to 94.6.16 of the Codified Ordinances. In addition to any other powers conferred upon the tax commissioner by law, the tax commissioner may:

(1) Prescribe all forms necessary to administer those sections;

(2) Adopt such rules as the tax commissioner finds necessary to carry out those sections;

(3) Appoint and employ such personnel as are necessary to carry out the duties imposed upon the tax commissioner by those sections.

(D) The tax commissioner shall not be considered a tax administrator, as that term is defined in section 718.01 of the Revised Code and Section 94.5.03(44) of the City of West Carrollton Codified Ordinances. (Ord. 3629. Passed 2-27-18.)

§ 94.6.02 DEFINITIONS.

If a term used in sections 94.6.1 to 94.6.16 of the Codified Ordinances that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall have control over the use of the term in Title LVII of the Revised Code, unless the term is defined in Chapter 5703. of the Revised Code, in which case the definition in that chapter shall control. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States related to federal income taxes. If a term is defined in both this section and section 94.5.03 of the Codified Ordinances, the definition in this section shall control for all uses of that term in sections 94.6.1 to 94.6.16 of the Codified Ordinances.

As used in sections 94.6.1 to 94.6.16 of the Codified Ordinances only:

(A) "Municipal taxable income" means income apportioned or situated to the municipal corporation under section 94.5.03(20)(A) of the Codified Ordinances, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the municipal corporation.

(B) "Adjusted federal taxable income," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation as described in division (D)(5) of section 718.01 of the Revised Code and section 94.5.03(1) of the Codified Ordinances, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of

income.

(2) Add an amount equal to five per cent of intangible income deducted under division (B)(1) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code.

(3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.

(4) (a) Except as provided in division (B)(4)(b) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.

(b) Division (B)(4)(a) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.

(6) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.

(7) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Revised Code.

(8) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.

(9) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division E(3)(b) of section 94.5.063 of the Codified Ordinances.

(10) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with division E(3)(b) of section 94.5.063 of the Codified Ordinances.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (A) of section 94.6.01 of the Codified Ordinances, and is not a publicly traded partnership that has made the election described in division (A) of section 94.6.01 of the Codified Ordinances, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or

former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (B) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(C) "Taxpayer" has the same meaning as in section 94.5.03(47)(A) of the Codified Ordinances, except that "taxpayer" does not include natural persons or entities subject to the tax imposed under Chapter 5745. of the Revised Code. "Taxpayer" may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.

(D) "Tax return" or "return" means the notifications and reports required to be filed pursuant to sections 94.6.1 to 94.6.16 of the Codified Ordinances for the purpose of reporting municipal income taxes, and includes declarations of estimated tax.

(E) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the calculation of the taxpayer's adjusted federal taxable income is based pursuant to this chapter. If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of sections 94.6.1 to 94.6.16 of the Codified Ordinances is changed accordingly but may consist of an aggregation of more than one taxable year for federal income tax purposes. The tax commissioner may prescribe by rule an appropriate period as the taxable year for a taxpayer that has had a change of its taxable year for federal income tax purposes, for a taxpayer that has two or more short taxable years for federal income tax purposes as the result of a change of ownership, or for a new taxpayer that would otherwise have no taxable year.

(F) "Assessment" means a notice of underpayment or nonpayment of a tax issued pursuant to section 94.5.17 of the Codified Ordinances.

§ 94.6.03 APPLICABILITY; TAXABLE SITUS; APPORTIONMENT.

This section applies to any taxpayer that is engaged in a business or profession in the City of West Carrollton and that has made the election under section 94.6.01 of the Codified Ordinances.

(A) Except as otherwise provided in divisions (B) and (H) of this section, net profit from a business or profession conducted both within and without the boundaries of the City of West Carrollton shall be considered as having a taxable situs in the City of West Carrollton for purposes of municipal income taxation in the same proportion as the average ratio of the following:

(1) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the City of West Carrollton during the taxable period to the average original cost 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, tangible personal or 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 individuals employed in the business or profession for services performed in the City of West Carrollton to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under section 94.5.052 of the Codified Ordinances;

(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City of West Carrollton to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(B) (1) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the City of West Carrollton, the taxpayer may request, or the tax commissioner may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

(a) Separate accounting;

(b) The exclusion of one or more of the factors;

(c) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;

(d) A modification of one or more of the factors.

(2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the tax commissioner denies the request in an assessment issued within the period prescribed by division (A) of section 94.6.03 of the Codified Ordinances.

(3) The tax commissioner may require a taxpayer to use an alternative apportionment method as described in division (B)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by division (A) of section 94.6.03 of the Codified Ordinances.

(C) As used in division (A)(2) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

(1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:

(a) The employer;

(b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;

(c) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.

(2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;

(3) Any other location, if the tax commissioner determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the tax commissioner makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the tax commissioner's determination was unreasonable.

(D) For the purposes of division (A)(3) of this section, and except as provided in division (H) of this section, receipts from sales and rentals made and services performed shall be situated to the City of West Carrollton as follows:

(1) Gross receipts from the sale of tangible personal property shall be situated to the City of West Carrollton only if, regardless of where title passes, the property meets either of the following criteria:

(a) The property is shipped to or delivered within the City of West Carrollton from a stock of goods located within the City of West Carrollton.

(b) The property is delivered within the City of West Carrollton from a location outside the City of West Carrollton, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of West Carrollton and the sales result from such solicitation or promotion.

(2) Gross receipts from the sale of services shall be situated to the City of West Carrollton to the extent that such services are performed in the City of West Carrollton.

(3) To the extent included in income, gross receipts from the sale of real property located in the City of West Carrollton shall be situated to the City of West Carrollton.

(4) To the extent included in income, gross receipts from rents and royalties from real property located in the City of West Carrollton shall be situated to the City of West Carrollton.

(5) Gross receipts from rents and royalties from tangible personal property shall be situated to the City of West Carrollton based upon the extent to which the tangible personal property is used in the City of West Carrollton.

(E) Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the City of West Carrollton in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the City of West Carrollton based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the City of West Carrollton to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

(F) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under divisions (C)(12) and (R)(1)(d) of section 94.6.03 of the Codified Ordinances by the City of West Carrollton or substantially similar provision of the codified ordinances of another municipal corporation, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to the City of West Carrollton. In no case shall a taxpayer be required to add to its net profit that was apportioned to the City of West Carrollton any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to the City of West Carrollton under this section.

(G) When calculating the ratios described in division (A) of this section for the purposes of that division or division (B) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

(H) (1) As used in this division:

(a) **QUALIFYING REMOTE EMPLOYEE OR OWNER** means an individual who is an employee of a taxpayer or who is a partner or member holding an ownership interest in a taxpayer that is treated as a partnership for federal income tax purposes, provided that the individual meets both of the following criteria:

1. The taxpayer has assigned the individual to a qualifying reporting location.
2. The individual is permitted or required to perform services for the taxpayer at a qualifying remote work location.

(b) **QUALIFYING REMOTE WORK LOCATION** means a permanent or temporary location at which an employee or owner chooses or is required to perform services for the taxpayer, other than a reporting location of the taxpayer or any other location owned or controlled by a customer or client of the taxpayer. "Qualifying remote work location" may include the residence of an employee or owner and may be located outside of a municipal corporation that imposes an income tax in accordance with this chapter. An employee or owner may have more than one qualifying remote work location during a taxable year.

(c) **REPORTING LOCATION** means either of the following:

1. A permanent or temporary place of doing business, such as an office, warehouse, storefront, construction site, or similar location, that is owned or controlled directly or indirectly by the taxpayer;
2. Any location in this state owned or controlled by a customer or client of the taxpayer, provided that the taxpayer is required to withhold taxes under Section D of this chapter, on qualifying wages paid to an employee for the performance of personal services at that location.

(d) **QUALIFYING REPORTING LOCATION** means one of the following:

1. The reporting location in this state at which an employee or owner performs services for the taxpayer on a

regular or periodic basis during the taxable year;

2. If no reporting location exists in this state for an employee or owner under division (G)(1)(d)1. of this section, the reporting location in this state at which the employee's or owner's supervisor regularly or periodically reports during the taxable year;

3. If no reporting location exists in this state for an employee or owner under division (G)(1)(d)1. or 2. of this section, the location that the taxpayer otherwise assigns as the employee's or owner's qualifying reporting location, provided the assignment is made in good faith and is recorded and maintained in the taxpayer's business records. A taxpayer may change the qualifying reporting location designated for an employee or owner under this division at any time.

(2) For tax years ending on or after December 31, 2023, a taxpayer may elect to apply the provisions of this division to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of division (F) of this section apply to such apportionment except as otherwise provided in this division.

A taxpayer shall make the election allowed under this division in writing on or with the taxpayer's net profit return or, if applicable, a timely filed amended net profit return or a timely filed appeal of an assessment. The election applies to the taxable year for which that return or appeal is filed and for all subsequent taxable years, until the taxpayer revokes the election.

The taxpayer shall make the initial election with the tax administrator of each municipal corporation with which, after applying the apportionment provisions authorized in this division, the taxpayer is required to file a net profit tax return for that taxable year. A taxpayer shall not be required to notify the tax administrator of a municipal corporation in which a qualifying remote employee's or owner's qualifying remote work location is located, unless the taxpayer is otherwise required to file a net profit return with that municipal corporation due to business operations that are unrelated to the employee's or owner's activity at the qualifying remote work location.

After the taxpayer makes the initial election, the election applies to every municipal corporation in which the taxpayer conducts business. The taxpayer shall not be required to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in such municipal corporation.

Nothing in this division prohibits a taxpayer from making a new election under this division after properly revoking a prior election.

(3) For the purpose of calculating the ratios described in division (F)(1) of this section, all of the following apply to a taxpayer that has made the election described in division (G)(2) of this section:

(a) For the purpose of division (F)(1)(a) of this section, the average original cost of any tangible personal property used by a qualifying remote employee or owner at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(b) For the purpose of division (F)(1)(b) of this section, any wages, salaries, and other compensation paid during the taxable period to a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(c) For the purpose of division (F)(1)(c) of this section, and notwithstanding division (F)(4) of this section, any gross receipts of the business or profession from services performed during the taxable period by a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(4) Nothing in this division prevents a taxpayer from requesting, or a tax administrator from requiring, that the taxpayer use, with respect to all or a portion of the income of the taxpayer, an alternative apportionment method as described in division (F)(2) of this section. However, a tax administrator shall not require an alternative apportionment method in such a manner that it would require a taxpayer to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in that municipal corporation.

(5) Except as otherwise provided in this division, nothing in this division is intended to affect the withholding of taxes on qualifying wages pursuant to Section D of this Chapter.

(Ord. 3629. Passed 2-27-18; Ord. 3759. Passed 11-28-23.)

§ 94.6.04 INFORMATION PROVIDED TO TAX ADMINISTRATORS; CONFIDENTIALITY.

(A) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by sections 94.6.1 to 94.6.16 of the Codified Ordinances is confidential, and no person shall disclose such information, except for official purposes, in accordance with a proper judicial order, or as provided in section 4123.271 or 5703.21 of the Revised Code. The tax commissioner may furnish the internal revenue service with copies of returns filed. This section does not prohibit the publication of statistics in a form which does not disclose information with respect to particular taxpayers.

(B) In May and November of each year, the tax commissioner shall provide the City of West Carrollton tax administrator with the following information for every taxpayer that filed tax returns with the commissioner under sections 94.6.16 of the Codified Ordinances and that had municipal taxable income apportionable to the City of West Carrollton under this chapter for any prior year:

(1) The taxpayer's name, address, and federal employer identification number;

(2) The taxpayer's apportionment ratio for, and amount of municipal taxable income apportionable to, the City of West Carrollton pursuant to section 94.5.061 of the Codified Ordinances;

(3) The amount of any pre-2017 net operating loss carryforward utilized by the taxpayer;

(4) Whether the taxpayer requested that any overpayment be carried forward to a future taxable year;

(5) The amount of any credit claimed under section 718.94 of the Revised Code.

(C) Not later than thirty days after each distribution made to municipal corporations under section 718.83 of the Revised Code, the tax commissioner shall provide to the City of West Carrollton a report stating the name and federal identification number of every taxpayer that made estimated payments that are attributable to the City of West Carrollton and the amount of each such taxpayer's estimated payment.

(D) The information described under divisions (B) and (C) of this section shall be provided to the individual or individuals designated by the City of West Carrollton tax administrator under section 718.83(D) of the Revised Code.

(E) (1) The City of West Carrollton expects that the tax commissioner will, pursuant to section 718.84(E) of the Revised Code, provide tax returns and other information it receives in the performance of its administration of the municipal net profits tax for taxpayers making the election provided in section 94.6.01 of the Codified Ordinances. The tax administrator shall review these returns and information, as well as the information received pursuant to divisions (B) and (C) of this section, and has discretion to refer any taxpayer for audit by the tax commissioner. Such referral shall be made on a form prescribed by the commissioner and shall include any information that forms the basis for the referral.

(2) If the tax commissioner declines to audit a taxpayer referred by the tax administrator under this section, the City of West Carrollton reserves its right to pursue any and all remedies, whether at law or in equity, to ensure that the correct tax liability has been calculated and paid by the taxpayer. (Ord. 3629. Passed 2-27-18.)

§ 94.6.05 FILING OF ANNUAL RETURN; REMITTANCE; DISPOSITION OF FUNDS.

(A) (1) For each taxable year, every taxpayer shall file an annual return. Such return, along with the amount of tax shown to be due on the return less the amount paid for the taxable year under section 94.5.09 of the Codified Ordinances, shall be submitted to the tax commissioner, on a form and in the manner prescribed by the commissioner, on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year.

(2) If a taxpayer has multiple taxable years ending within one calendar year, the taxpayer shall aggregate the facts and figures necessary to compute the tax due under this chapter, in accordance with the West Carrollton Codified Ordinances onto its annual return.

(3) The remittance shall be made payable to the treasurer of state and in the form prescribed by the tax commissioner. If the amount payable with the tax return is ten dollars or less, no remittance is required.

(B) (1) Each return required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's identification number. Each return shall be verified by a declaration under penalty of perjury.

(2) (a) The tax commissioner may require a taxpayer to include, with each annual tax return, amended return, or request for refund filed with the commissioner under sections 94.6.01 to 94.6.16 of the Codified Ordinances, copies of any relevant documents or other information.

(b) A taxpayer that files an annual tax return electronically through the Ohio business gateway or in another manner as prescribed by the tax commissioner shall either submit the documents required under this division electronically as prescribed at the time of filing or, if electronic submission is not available, mail the documents to the tax commissioner. The department of taxation shall publish a method of electronically submitting the documents required under this division on or before January 1, 2019.

(3) After a taxpayer files a tax return, the tax commissioner may request, and the taxpayer shall provide, any information, statements, or documents required to determine and verify the taxpayer's municipal income tax.

(D) (1) (a) Any taxpayer that has duly requested an automatic extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a tax return with the commissioner under this section. The extended due date of the return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates.

(b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the commissioner grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the commissioner receives the request on or before the date the municipal income tax return is due, the commissioner shall grant the taxpayer's extension request.

(c) An extension of time to file under division (D)(1) of this section is not an extension of the time to pay any tax due unless the tax commissioner grants an extension of that date.

(2) If the commissioner considers it necessary in order to ensure payment of a tax imposed in accordance with the West Carrollton Codified Ordinances, the commissioner may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.

(E) Each return required to be filed in accordance with this section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the tax commissioner about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the commissioner to contact the preparer or other person concerning questions that arise during the examination or other review of the return and authorizes the preparer or other person only to provide the commissioner with information that is missing from the return, to contact the commissioner for information about the examination or other review of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the commissioner and has shown to the preparer or other person.

(F) When income tax returns or other documents require the signature of a tax return preparer, the tax commissioner shall accept a facsimile or electronic version of such a signature in lieu of a manual signature.

(Ord. 3629. Passed 2-27-18.)

§ 94.6.06 ELECTRONIC FILING.

(A) All taxpayers that have made the election allowed under section 94.6.01 of the Codified Ordinances shall file any tax return or extension for filing a tax return, and shall make payment of amounts shown to be due on such returns, electronically, either through the Ohio business gateway or in another manner as prescribed by the tax commissioner.

(B) A taxpayer may apply to the commissioner, on a form prescribed by the commissioner, to be excused from the requirement to file returns and make payments electronically. For good cause shown, the commissioner may excuse the applicant from the requirement and permit the applicant to file the returns or make the payments by nonelectronic means.

(C) The tax commissioner may adopt rules establishing the following:

- (1) The format of documents to be used by taxpayers to file returns and make payments by electronic means;
- (2) The information taxpayers must submit when filing tax returns by electronic means. (Ord. 3629. Passed 2-27-18.)

§ 94.6.07 CONSOLIDATED RETURNS.

(A) As used in this section:

(1) "Affiliated group of corporations" means an affiliated group as defined in section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

(2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

(3) "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (A)(1) of this section.

(4) "Incumbent local exchange carrier" has the same meaning as in section 4927.01 of the Revised Code.

(5) "Local exchange telephone service" has the same meaning as in section 5727.01 of the Revised Code.

(B) (1) A taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated tax return for a taxable year if at least one member of the affiliated group of corporations is subject to municipal income tax in that taxable year and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated tax returns under division (B)(2) of this section or a taxpayer receives permission from the tax commissioner. The tax commissioner shall approve such a request for good cause shown.

(2) An election to discontinue filing consolidated tax returns under this section must be made on or before the fifteenth day of the fourth month of the year following the last year of a five-year consolidated tax return election period in effect under division (B)(1) of this section. The election to discontinue filing a consolidated tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (B)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(4) When a taxpayer makes the election allowed under section 94.6.01 of the Codified Ordinances, a valid election made by the taxpayer under division (B)(1) or (2) of section 94.6.07 of the Codified Ordinances is binding upon the tax commissioner for the remainder of the five-year period.

(5) When an election made under section 94.6.01 of the Codified Ordinances is terminated, a valid election made under this section is binding upon the tax administrator for the remainder of the five-year period.

(C) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated tax return for that taxable year if the tax commissioner determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to a municipal corporation. A taxpayer that is required to file a consolidated tax return for a taxable year shall file a consolidated tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the commissioner to file a separate return or a taxpayer has experienced a change in circumstances.

(D) A taxpayer shall prepare a consolidated tax return in the same manner as is required under the United States department of treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(E) (1) Except as otherwise provided in divisions (E)(2), (3), and (4) of this section, corporations that file a consolidated tax return shall compute adjusted federal taxable income, as defined in section 94.6.02 of the Codified Ordinances, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated tax return shall make any adjustment otherwise required under division (B) of section 94.6.07 of the Codified Ordinances to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

(a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 94.6.07 of the Codified Ordinances, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 94.6.07 of the Codified Ordinances, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

(a) The corporation filing the consolidated tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in section 94.6.07 of the Codified Ordinances, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation;

(b) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with sections 94.6.1 to 94.6.16 of the Codified Ordinances on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(F) Corporations filing a consolidated tax return shall make the computations required under section 94.6.07 of the Codified Ordinances by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(G) Each corporation filing a consolidated tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts applicable under section 94.6.1 to 94.6.16 of the Codified Ordinances or Chapter 5703. of the Revised Code to the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group. (Ord. 3629. Passed 2-27-18.)

§ 94.6.08 FAILURE TO PAY TAX.

If a taxpayer that has made the election allowed under 94.6.01 of the Codified Ordinances fails to pay any tax as required under sections 94.6.1 to 94.6.16 of the Codified Ordinances, or any portion of that tax, on or before the date prescribed for its payment, interest shall be assessed, collected, and paid, in the same manner as the tax, upon such unpaid amount at the rate per annum prescribed by section 5703.47 of the Revised Code from the date prescribed for its payment until it is paid or until the date an assessment is issued under section 94.6.11 of the Codified Ordinances, whichever occurs first.

(Ord. 3629. Passed 2-27-18.)

§ 94.6.09 DECLARATION OF ESTIMATED TAXES.

(A) As used in this section:

(1) "Combined tax liability" means the total amount of a taxpayer's income tax liabilities to all municipal corporations in this state for a taxable year.

(2) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's combined tax liability for the current taxable year.

(B) (1) Except as provided in division (B)(4) of this section, every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the tax commissioner, if the amount payable as estimated taxes is at least two hundred dollars.

(2) Except as provided in division (B)(4) of this section, a taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the commissioner.

(3) The declaration of estimated taxes shall be filed on or before the fifteenth day of the fourth month after the beginning of the taxable year or on or before the fifteenth day of the fourth month after the taxpayer becomes subject to tax for the first time.

(4) The tax commissioner may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors.

(C) Each taxpayer shall file the declaration of estimated taxes with, and remit estimated taxes to, the tax commissioner at the times and in the amounts prescribed in division (C)(1) of this section. Remitted taxes shall be made payable to the treasurer of state.

(1) The required portion of the combined tax liability for the taxable year that shall be paid through estimated taxes shall be as follows:

(a) On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half per cent of the combined tax liability for the taxable year;

(b) On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five per cent of the combined tax liability for the taxable year;

(c) On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half per cent of the combined tax liability for the taxable year;

(d) On or before the fifteenth day of the twelfth month of the taxable year, ninety per cent of the combined tax liability for the taxable year.

(2) If the taxpayer determines that its declaration of estimated taxes will not accurately reflect the taxpayer's tax liability for the taxable year, the taxpayer shall increase or decrease, as appropriate, its subsequent payments in equal installments to result in a more accurate payment of estimated taxes.

(3) (a) Each taxpayer shall report on the declaration of estimated taxes the portion of the remittance that the taxpayer estimates that it owes to each municipal corporation for the taxable year.

(b) Upon receiving a payment of estimated taxes under this section, the commissioner shall immediately forward the payment to the treasurer of state. The treasurer shall credit the payment in the same manner as in division (B) of section 718.85 of the Revised Code.

(D) (1) In the case of any underpayment of estimated taxes, there shall be added to the taxes an amount determined at the rate per annum prescribed by section 5703.47 of the Revised Code upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:

(a) For the first payment of estimated taxes each year, twenty-two and one-half per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;

(b) For the second payment of estimated taxes each year, forty-five per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;

(c) For the third payment of estimated taxes each year, sixty-seven and one-half per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;

(d) For the fourth payment of estimated taxes each year, ninety per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment.

(2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently due.

(3) All amounts collected under this section shall be considered as taxes collected under sections 94.6.1 to 94.6.16 of

the Codified Ordinances and shall be credited and distributed to municipal corporations in accordance with section 718.83 of the Revised Code.

(E) An underpayment of any portion of a combined tax liability shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:

(1) The amount of estimated taxes that were paid equals at least ninety per cent of the combined tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.

(2) The amount of estimated taxes that were paid equals at least one hundred per cent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a municipal income tax return for that year.

(Ord. 3629. Passed 2-27-18.)

§ 94.6.10 ADDITIONAL PENALTIES.

(A) In addition to any other penalty imposed by sections 94.6.1 to 94.6.16 of the Codified Ordinances or Chapter 5703. of the Revised Code, the following penalties shall apply:

(1) If a taxpayer required to file a tax return under sections 94.6.1 to 94.6.16 of the Codified Ordinances fails to make and file the return within the time prescribed, including any extensions of time granted by the tax commissioner, the commissioner may impose a penalty not exceeding twenty-five dollars per month or fraction of a month, for each month or fraction of a month elapsing between the due date, including extensions of the due date, and the date on which the return is filed. The aggregate penalty, per instance, under this division shall not exceed one hundred fifty dollars.

(2) If a person required to file a tax return electronically under sections 94.6.1 to 94.6.16 of the Codified Ordinances fails to do so, the commissioner may impose a penalty not to exceed the following:

(a) For each of the first two failures, five per cent of the amount required to be reported on the return;

(b) For the third and any subsequent failure, ten per cent of the amount required to be reported on the return.

(3) If a taxpayer that has made the election allowed under section 94.6.01 of the Codified Ordinances fails to timely pay an amount of tax required to be paid under this chapter, the commissioner may impose a penalty equal to fifteen per cent of the amount not timely paid.

(4) If a taxpayer files what purports to be a tax return required by sections 94.6.1 to 94.6.16 of the Codified Ordinances that does not contain information upon which the substantial correctness of the return may be judged or contains information that on its face indicates that the return is substantially incorrect, and the filing of the return in that manner is due to a position that is frivolous or a desire that is apparent from the return to delay or impede the administration of sections 94.6.1 to 94.6.16 of the Codified Ordinances, a penalty of up to five hundred dollars may be imposed.

(5) If a taxpayer makes a fraudulent attempt to evade the reporting or payment of the tax required to be shown on any return required under sections 94.6.1 to 94.6.16 of the Codified Ordinances, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the tax required to be shown on the return.

(6) If any person makes a false or fraudulent claim for a refund under the West Carrollton Codified Ordinances, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the claim. Any penalty imposed under this division, any refund issued on the claim, and interest on any refund from the date of the refund, may be assessed under section 94.6.11 of the Codified Ordinances without regard to any time limitation for the assessment imposed by division (A) of that section.

(B) For purposes of this section, the tax required to be shown on a tax return shall be reduced by the amount of any part of the tax paid on or before the date, including any extensions of the date, prescribed for filing the return.

(C) Each penalty imposed under this section shall be in addition to any other penalty imposed under this section. All or part of any penalty imposed under this section may be abated by the tax commissioner. The commissioner may adopt rules governing the imposition and abatement of such penalties.

(D) All amounts collected under this section shall be considered as taxes collected under sections 94.6.1 to 94.6.16 of the Codified Ordinances and shall be credited and distributed to municipal corporations in the same proportion as the underlying tax liability is required to be distributed to such municipal corporations under section 718.83 of the Revised Code.

(Ord. 3629. Passed 2-27-18.)

§ 94.6.11 ASSESSMENTS AGAINST TAXPAYER.

(A) If any taxpayer required to file a return under section 94.6.1 to 94.6.16 of the Codified Ordinances fails to file the return within the time prescribed, files an incorrect return, or fails to remit the full amount of the tax due for the period covered by the return, the tax commissioner may make an assessment against the taxpayer for any deficiency for the period for which the return or tax is due, based upon any information in the commissioner's possession.

The tax commissioner shall not make or issue an assessment against a taxpayer more than three years after the later of

the date the return subject to assessment was required to be filed or the date the return was filed. Such time limit may be extended if both the taxpayer and the commissioner consent in writing to the extension. Any such extension shall extend the three-year time limit in section 94.5.19 of the Codified Ordinances for the same period of time. There shall be no bar or limit to an assessment against a taxpayer that fails to file a return subject to assessment as required by sections 94.6.1 to 94.6.16 of the Codified Ordinances, or that files a fraudulent return. The commissioner shall give the taxpayer assessed written notice of the assessment as provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the taxpayer assessed files with the tax commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment signed by the authorized agent of the taxpayer assessed having knowledge of the facts, the assessment becomes final, and the amount of the assessment is due and payable from the taxpayer to the treasurer of state. The petition shall indicate the taxpayer's objections, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the tax commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the taxpayer has an office or place of business in this state, the county in which the taxpayer's statutory agent is located, or Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the taxpayer assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for municipal income taxes," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

If the assessment is not paid in its entirety within sixty days after the day the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the commissioner issues the assessment until the assessment is paid or until it is certified to the attorney general for collection under section 131.02 of the Revised Code, whichever comes first. If the unpaid portion of the assessment is certified to the attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(D) All money collected under this section shall be credited to the municipal income tax fund and distributed to the municipal corporation to which the money is owed based on the assessment issued under this section.

(E) If the tax commissioner believes that collection of the tax will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the taxpayer liable for the tax. Immediately upon the issuance of the jeopardy assessment, the commissioner shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (C) of this section.

Notice of the jeopardy assessment shall be served on the taxpayer assessed or the taxpayer's legal representative in the manner provided in section 5703.37 of the Revised Code within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the taxpayer assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(F) Notwithstanding the fact that a petition for reassessment is pending, the taxpayer may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the tax commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the taxpayer under the corrected assessment is less than the portion paid, there shall be issued to the taxpayer, its assigns, or legal representative a refund in the amount of the overpayment as provided by section 95.5.19 of the Codified Ordinances, with interest on that amount as provided by that section.

(Ord. 3629. Passed 2-27-18.)

§ 94.6.12 REFUND APPLICATIONS.

(A) An application to refund to a taxpayer the amount of taxes paid on any illegal, erroneous, or excessive payment of tax under sections 94.6.1 to 94.6.16 of the Codified Ordinances, including assessments, shall be filed with the tax commissioner within three years after the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (A) of section 94.6.11 of the Codified Ordinances. The application shall be filed in the form prescribed by the tax commissioner.

(B) (1) On the filing of a refund application, the tax commissioner shall determine the amount of refund to which the applicant is entitled. The amount determined shall be based on the amount overpaid per return or assessment. If the amount is greater than ten dollars and not less than that claimed, the commissioner shall certify that amount to the director of

budget and management and the treasurer of state for payment from the tax refund fund created in section 5703.052 of the Revised Code. If the amount is greater than ten dollars but less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(2) Upon issuance of a refund under this section, the commissioner shall notify each municipal corporation of the amount refunded to the taxpayer attributable to that municipal corporation, which shall be deducted from the municipal corporation's next distribution under section 718.83 of the Revised Code.

(C) Any portion of a refund determined under division (B) of this section that is not issued within ninety days after such determination shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the ninety-first day after such determination until the day the refund is paid or credited. On an illegal or erroneous assessment, interest shall be paid at that rate from the date of payment on the illegal or erroneous assessment until the day the refund is paid or credited.

(Ord. 3629. Passed 2-27-18.)

§ 94.6.13 AMENDED RETURNS.

(A) If any of the facts, figures, computations, or attachments required in an annual return filed by a taxpayer that has made the election allowed under section 94.6.01 of the Codified Ordinances and used to determine the tax due under sections 94.6.1 to 94.6.16 of the Codified Ordinances must be altered as the result of an adjustment to the taxpayer's federal income tax return, whether initiated by the taxpayer or the internal revenue service, and such alteration affects the taxpayer's tax liability under those sections, the taxpayer shall file an amended return with the tax commissioner in such form as the commissioner requires. The amended return shall be filed not later than sixty days after the adjustment is agreed upon or finally determined for federal income tax purposes or after any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first. If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the commissioner before filing the amended return.

(B) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. An amended return required by this section is a return subject to assessment under section 94.6.11 of the Codified Ordinances for the purpose of assessing any additional tax due under this section, together with any applicable penalty and interest. The amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal tax return.

(C) In the case of an overpayment, an application for refund may be filed under this division within the sixty-day period prescribed for filing the amended return, even if that period extends beyond the period prescribed in section 94.6.12 of the Codified Ordinances, if the application otherwise conforms to the requirements of that section. An application filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return unless it is also filed within the time prescribed in section 94.6.12 of the Codified Ordinances. The application shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return.

(Ord. 3629. Passed 2-27-18.)

§ 94.6.14 EXAMINATION OF RECORDS AND OTHER DOCUMENTS AND PERSONS.

(A) The tax commissioner, or any authorized agent or employee thereof, may examine the books, papers, records, and federal and state income tax returns of any taxpayer or other person that is subject to sections 94.6.1 to 94.6.16 of the Codified Ordinances for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due as required under those sections. Upon written request by the commissioner or a duly authorized agent or employee thereof, every taxpayer or other person subject to this section is required to furnish the opportunity for the commissioner, authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.

(B) The records and other documents of any taxpayer or other person that is subject to sections 94.6.1 to 94.6.16 of the Codified Ordinances shall be open to the tax commissioner's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The commissioner may require any person, by notice served on that person, to keep such records as the commissioner determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by a municipal corporation.

(C) The tax commissioner may examine under oath any person that the commissioner reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The commissioner may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and federal income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

(D) No person issued written notice by the tax commissioner compelling attendance at a hearing or examination or the production of books, papers, records, or federal income tax returns under this section shall fail to comply.

(Ord. 3629. Passed 2-27-18.)

§ 94.6.15 CREDITS.

(A) A credit, granted by resolution or ordinance of the City of West Carrollton pursuant to section 94.5.064 or 94.5.065 of the Codified Ordinances, shall be available to a taxpayer that has made the election allowed under section 94.6.01 of the Codified Ordinances, against the municipal corporation's tax on income. A municipal corporation shall submit the following information to the tax commissioner on or before the later of January 31, 2018, or the thirty-first day of January of the first year in which the taxpayer is eligible to receive the credit:

(1) A copy of the agreement entered into by the City of West Carrollton and taxpayer under section 94.5.064 or 94.5.065 of the Codified Ordinances;

(2) A copy of the ordinance or resolution authorizing the agreement entered into between the City of West Carrollton and the taxpayer.

(B) (1) Each taxpayer that claims a credit shall submit, with the taxpayer's tax return, documentation issued by the City of West Carrollton granting the credit that confirms the eligibility of the taxpayer for the credit, the amount of the credit for which the taxpayer is eligible, and the tax year to which the credit is to be applied.

(2) Such documentation shall be provided in the form prescribed by the tax commissioner.

(3) Nothing in this section shall be construed to authorize the tax commissioner to enter into an agreement with a taxpayer to grant a credit, to determine if a taxpayer meets the conditions of a tax credit agreement entered into by the City of West Carrollton and taxpayer under section 94.5.064 or 94.5.065 of the Codified Ordinances, or to modify the terms or conditions of any such existing agreement.

(Ord. 3629. Passed 2-27-18.)

§ 94.6.16 RECKLESS VIOLATIONS; PENALTIES.

(A) Except as provided in division (B) of this section, whoever recklessly violates division (A) of section 94.6.11 of the Codified Ordinances shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars or imprisonment for a term of up to six months, or both.

(B) Each instance of access or disclosure in violation of division (A) of section 94.6.11 of the Codified Ordinances constitutes a separate offense.

(C) These specific penalties shall not be construed to prevent the City of West Carrollton from prosecuting any and all other offenses that may apply.

(Ord. 3629. Passed 2-27-18.)

CHAPTER 95: PARKS AND RECREATION

Section

Rates

- 95.01 Fees and charges related to the Parks and Recreation Department
- 95.02 Use and conformance with rules and regulations
- 95.03 Softball tournament fees

Rules and Regulations

- 95.10 Removal, destruction of property
- 95.11 Deposit of materials
- 95.12 Fires
- 95.13 Camping
- 95.14 Weapons
- 95.15 Commercial activities
- 95.16 Hours
- 95.17 Traffic

Time and manner of use of the recreation facilities will be according to rules and regulations established and approved by the parks and recreation director. The right to waive fees for special events and groups shall be recommended by the parks and recreation director, and approved by the city manager. (Ord. 1831, passed 3-12-74) Penalty, see § 95.99

§ 95.03 SOFTBALL TOURNAMENT FEES.

The following softball tournament fees are hereby established:

(A) Reservation fee. \$50 is required to hold the fields for each tournament. This reservation fee will automatically become the damage and clean up fee which will be returned if everything is in order.

(B) Diamond fee. \$25 per diamond per day for residents; \$35 per diamond per day for nonresidents.

(Res. 7-83, passed 3-8-83; amend. Res. 6-94, passed 2-8-94)

RULES AND REGULATIONS

§ 95.10 REMOVAL, DESTRUCTION OF PROPERTY.

(A) No person shall remove from a park or write upon, cut, mutilate, deface, or damage any building, equipment, or other property which is owned, leased, or otherwise controlled by the city.

(B) No person shall dig, move, or carry away any rock, stone, sod, sand, earth, tree, wood, shrub, plant, flowers, or seed in a park, or trample upon, injure, destroy, break, cut, chop, or deface any stone, tree, shrub, plant, or flower in a park.

(C) No person shall remove any property, or part thereof which is owned, leased, or otherwise controlled by the city from a park, without the written permission of the city.

(D) The divisions of this section shall not apply to the city in the development, construction, maintenance, and conservation of park areas or activities performed in the best interest of the city.

(Ord. 2056, passed 1-24-78) Penalty, see §95.99

§ 95.11 DEPOSIT OF MATERIALS.

(A) No person shall deposit or discard in or adjacent to a park any paper, garbage, fireplace or stove ashes, refuse, or other noxious or waste material, other than in receptacles provided for the disposal of these materials.

(B) No person shall bring into a park any garbage, ashes, refuse, or other noxious or waste material, and deposit or discard the same in or adjacent to a park.

(C) No person shall, while in or adjacent to a park, discharge, throw, drop, or cause to flow into park waters any noxious or deleterious substance, either solid or liquid.

(D) The divisions of this section shall not apply to the city in the development, construction, maintenance, and conservation of park areas or activities performed in the best interest of the city.

(Ord. 2056, passed 1-24-78) Penalty, see §95.99

§ 95.12 FIRES.

No person shall:

(A) Start or maintain a fire in a park, except in a fireplace or at a site designated;

(B) Start a fire in a park, and leave the vicinity without fully extinguishing the fire;

(C) Scatter coals other than in receptacles provided; or

(D) Burn wood found in a park, except as provided by the city in designated containers. (Ord. 2056, passed 1-24-78) Penalty, see § 95.99

§ 95.13 CAMPING.

It shall be unlawful for any person to camp in a park other than in an area designated, and with the written permission of the city.

(Ord. 2056, passed 1-24-78) Penalty, see §95.99

§ 95.14 WEAPONS.

No person in a park shall carry on or about his person firearms, air or gas guns, or discharge any missile throwing device except in areas so designated for archery purposes. This section shall not apply to any duly appointed or acting law enforcement officer while in the lawful performance of his duties.

(Ord. 2056, passed 1-24-78) Penalty, see §95.99

§ 95.15 COMMERCIAL ACTIVITIES.

No person shall sell or offer for sale any article, privilege, or service in a park, without written permission from the city.

(Ord. 2056, passed 1-24-78) Penalty, see §95.99

§ 95.16 HOURS.

No person shall enter into or remain in an area of a park at the time when the area is not open to the public. Hours shall be established by the city manager, and posted in the park. The parks and recreation director or police shift supervisor in charge at the time shall be authorized to close a park if the public safety requires. (Ord. 2056, passed 1-24-78) Penalty, see § 95.99

§ 95.17 TRAFFIC.

(A) It shall be unlawful for any person to:

(1) Operate a motor vehicle, whether licensed or unlicensed, in a park, except on and within the paths and roads provided for motor vehicles. No person shall drive a motor vehicle, licensed or unlicensed, on paths or roads to be only for the use of specific types of vehicles.

(2) Operate a motor vehicle in a park in excess of the posted speed limit.

(3) Park any vehicle in a park except in places designated by the city for that purpose.

(4) Park or leave a vehicle in an area of a park at a time when the area is not open to the public.

(5) Drive a vehicle on a road or path in a park in a direction other than the direction indicated by signs designating the road or path a one-way road.

(6) Operate a motorized bicycle, commonly known as a "Moped," as the term is defined in R.C. § 4511.01(G), on lands, paved walks, or paths on any property owned or controlled by the city, except within those areas specifically designated for motorized vehicular traffic.

(7) The provisions of this section shall not apply to vehicles used in the maintenance of city property, nor to city vehicles operated on city property by city employees, nor to vehicles operated on city property pursuant to a public event sponsored or approved by the city, nor to emergency or police vehicles.

(B) Any vehicle parked in violation of this section may be removed by a police officer to the nearest garage or other place of safety. (Ord. 2056, passed 1-24-78) Penalty, see § 95.99

Cross-reference:

Use of motor vehicles in city parks, §72.41

§ 95.18 WATER AREAS.

It shall be unlawful for any person to swim in any park pond, or to operate any boat on any park ponds, except with written permission.

(Ord. 2056, passed 1-24-78) Penalty, see §95.99

§ 95.19 BEER OR INTOXICATING LIQUOR.

(A) No person shall sell or consume any intoxicating liquor or beer in or upon a city owned or controlled park, playground, building, or other premises.

(B) No person shall possess or have control over any intoxicating liquor or beer in or upon any city owned or controlled park, playground, building, or other premises. (Ord. 2056, passed 1-24-78) Penalty, see § 95.99

§ 95.20 HORSES AND OTHER ANIMALS; HUNTING.

(A) No person being the owner of or having charge or care of a horse, mule, jackass, or other animal, shall take them or permit them to be in or upon any city owned or operated park or recreational facility.

(B) No person shall hunt, trap, or in any other way abuse, molest, injure, or chase or destroy any animal or bird within a park. This section shall not apply to any public safety or humane society officers acting within the scope of their authority.

(Ord. 2056, passed 1-24-78) Penalty, see §95.99

§ 95.21 APPLICABILITY OF OTHER ORDINANCES.

This chapter shall not be construed to preclude the applicability of any other provision of the city ordinances or state statutes, unless the provision is inconsistent with the terms of this chapter. (Ord. 2056, passed 1-24-78) Penalty, see § 95.99

SWIMMING POOL

§ 95.30 FEES.

(A) The following fees are hereby established for use of the West Carrollton Swimming Pool:

(1) **Daily Admission Rates**

Resident Resident (after 5 p.m.)

Children (0 - 3 years of age) Free Free

Youth (age 4 to 17) \$3.00 \$1.50

Adult (age 18 and over) \$3.75 \$2.00

Senior (age 55 and over) \$3.00 \$1.50

Non-Resident Non-Resident (after 5 p.m.)

Children (0 - 3 years of age) Free Free

Youth (age 4 to 17) \$4.25 \$2.25

Adult (age 18 and over) \$5.00 \$2.50

Senior (age 55 and over) \$4.25 \$2.25

(2) **10 Admission Passes**

Resident Non-Resident

Youth (age 4 - 17) \$27.00 \$38.25

Adult (age 18 and over) 33.75 45.00

Senior (age 55 and over) 27.00 38.25

(3) **Pre-Season Passes (Prior to Pool Opening)**

Youth \$55.00 \$70.00

Adult 65.00 80.00

Senior 55.00 70.00

Family (4 pass limit) 140.00 170.00

(each extra person over limit) 20.00 30.00

(4) **Season Passes (After Pool Opens)**

Youth \$60.00 \$75.00

Adult 70.00 85.00

Senior 60.00 75.00

Family (4 pass limit) 150.00 180.00

(each extra person over limit 20.00 30.00

Family Pass is limited to a maximum of **4 passes** in any combination of adult(s) or children permanently residing in the same household. Additional adult(s) or children permanently residing in same household are subject to the above "extra person" fee.

Note: 50% discount on season pass purchase after July 24, 2006, for the 2006 pool season.

West Carrollton YMCA Discount:

Current members of the West Carrollton YMCA shall receive a 15% discount on the purchase of both pre- season and season pool passes. This includes both resident rates and non-resident rates.

(Res. 5-2006. Passed 2-28-05.)

City Employee Discount:

Employees of the City of West Carrollton shall receive a 50% discount on both Pre-Season Passes and Season Passes.

(Res. 20-2006. Passed 6-27-06.)

(5) **Swim Lessons**

Youth and adult \$30.00 \$35.00

(6) **Birthday Party Rates:**

Youth \$5.25 \$6.00

Adult 6.00 6.75

(7) **Special Group Rental Fee**

(a) Residents: \$175.00 per hour, minimum charge \$350.00, plus a \$50.00 deposit, for 100 or fewer persons; \$200.00 per hour, minimum charge \$400.00, plus a \$50.00 deposit, for more than 100 persons; \$225.00 per hour, minimum charge \$450.00, plus a \$50.00 deposit, for more than 300 persons.

(b) Non-residents: \$175.00 per hour; minimum charge \$350.00, plus a \$50.00 deposit, for 100 or fewer persons; \$200.00 per hour, minimum charge \$400.00, plus a \$50.00 deposit, for more than 100 persons; \$225.00 per hour, minimum charge \$450.00, plus a \$50.00 deposit for more than 300 persons.

(B) The resident fee will be given to nonresidents who either pay city income tax or property taxes on property which they own within the city.

(C) Time and manner of use will be according to rules and regulations established and approved by the Director of Parks and Recreation.

(Res. 5-2006. Passed 2-28-06.)

§ 95.99 PENALTY.

Whoever violates any provision of this chapter for which another penalty is not already provided shall be guilty of a minor misdemeanor, and shall be fined not more than \$100.

(Ord. 2056, passed 1-24-78)

CHAPTER 96: LOST OR ABANDONED PROPERTY

Section

96.01 City's possession of lost or abandoned property

96.02 Locating the owner

96.03 Establishing right to property

96.04 Disposal of unclaimed property

§ 96.01 CITY'S POSSESSION OF LOST OR ABANDONED PROPERTY.

When the city comes into possession of property that has been lost, abandoned, stolen, or lawfully seized or forfeited, the property shall be safely kept until it is no longer needed as evidence and then disposed of according to rules and regulations established by the City Manager.

(Ord. 2465, passed 9-11-84)

§ 96.02 LOCATING THE OWNER.

The city shall make a reasonable effort to locate the owner or person entitled to possession of the property and to notify him of when and where it may be claimed. If the owner or person entitled to possession of the property is unknown, the city shall advertise in a newspaper of general circulation in the city once per week for three consecutive weeks, briefly describing the property in possession of the city, and inviting persons to view and establish their right to it.

(Ord. 2465, passed 9-11-84)

§ 96.03 ESTABLISHING RIGHT TO PROPERTY.

In order to establish his right to such property, a person must file a claim with the city within 30 days of the date of the last publication notice and shall be filed under rules and regulations adopted by the City Manager.

(Ord. 2465, passed 9-11-84)

§ 96.04 DISPOSAL OF UNCLAIMED PROPERTY.

If no claim to such property is filed within the time herein stated, or if the City Manager determines that no valid claim to such property has been filed, then the property shall be disposed of according to rules and regulations adopted by the City Manager.

(Ord. 2465, passed 9-11-84)

CHAPTER 97: RIGHTS OF WAY

Section

- 97.01 Declaration of findings and purpose, scope and definitions
- 97.02 General requirements
- 97.03 Certification of registration applications and responsibilities
- 97.04 Termination of certificate of registration
- 97.05 Revocable street permit requirements
- 97.06 Indemnification and liability
- 97.07 Penalties for violation, liquidated damages and rights of appeal.

§ 97.01 DECLARATION OF FINDINGS AND PURPOSE, SCOPE AND DEFINITIONS.

(A) Findings and Purpose.

(1) The City of West Carrollton, Ohio is vitally concerned with the use of the various Rights of Way in the City as such Rights of Way are a valuable and limited resource, which must be utilized to promote the public health, safety and welfare, including the economic development of the City.

(2) Changes in the utilities and communication industries have increased the demand and need for access to Public Rights of Way and placement of Facilities and structures herein.

(3) It is necessary to comprehensively plan and manage access to, and structures and Facilities in, the Public Rights of Way to promote efficiency, lessen the public inconvenience of uncoordinated work in the Rights of Way, and promote public safety.

(4) In recognition of the limited space available in the City Rights of Way, the City shall promote the collocation of utilities to minimize intrusions into the Rights of Way.

(5) While not a principal purpose of this chapter, an ingredient or component of this chapter is to protect the public welfare by protecting real estate from impairment and destruction of value by taking into account aesthetic considerations in the requirement by the City, when it would be practical in the opinion of the City, the underground placement of any Element of a public or private Utility System located in the Public Rights of Way may be required.

(6) The City has rights under the Laws and Constitution of the State of Ohio, including but not limited to Article 18, Sections 3, 4, and 7, to regulate public and private entities which use the Public Rights of Way.

(B) **Scope.** The provisions of this chapter shall apply to all users of the Rights of Way as provided herein, except as provided elsewhere in the Codified Ordinances of City of West Carrollton. To the extent that any provision in this chapter conflicts with other provisions of the Codified Ordinances of West Carrollton, or provisions of the Ohio Revised Code, the provisions of this chapter shall control.

(C) **Definitions.** For the purpose of this chapter of the Codified Ordinances of City of West Carrollton, the following terms, phrases, words, and their derivations shall have the meanings as set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meanings. References hereafter to "Sections" are, unless otherwise specified, references to Sections in this chapter. Defined terms remain defined terms whether or not capitalized.

(1) Certificate of Registration means a document issued by the City to a Utility Service Provider required before any Element of its Utility System is permitted to be located in the City Public Right of Way.

(2) City means the City of West Carrollton, Ohio.

(3) City Council means the elected legislative decision-making body for the City of West Carrollton, Ohio.

(4) City Manager means the administrative head of the municipal government known as the City of West Carrollton, Ohio, or the official designee appointed by the City Manager to implement all or some of the provisions of this chapter.

(5) Codified Ordinances means the Code of Ordinances of the City of West Carrollton, Ohio.

(6) Element means any tangible thing located in the Public Right of Way that is part of a Utility System. Electromagnetic radiation that is not visible to the human eye shall not be considered a tangible thing.

(7) Equipment means any Element of a Utility System.

(8) Facility or Facilities means any tangible thing located in the Public Right of Way that is part of a Utility System. Electromagnetic radiation that is not visible to the human eye shall not be considered a tangible thing.

(9) Law(s) means any local, state, or federal legislation, judicial or administrative order, certificates, statute, constitution,

ordinance, resolution, regulation, rule, tariff, or other requirement in effect either at the time of execution of this Title or at any time during the location of, and/or while a Provider's Facilities are located in, the Public Rights of Way.

(10) Permit means a Revocable Street Permit.

(11) Person means any natural or corporate person, business association, or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

(12) Provider means a Utility Service Provider.

(13) Public Right(s) of Way or Right(s) of Way means the surface and space in, on, above, within, over, below, under or through any real property in which the City has an interest in Law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, path, parkway, river, tunnel, viaduct, bridge, conduit, easement, or any other place, area, or real property owned by or under the legal or equitable control of the City that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing or replacing a public or private Utility System. Public Rights of Way shall not include a public building, public park, or other public property or easement that has not been dedicated to a compatible use, except to the extent the use or occupation of such property is specifically granted in a Permit or approved by Law.

(14) Revocable Street Permit means the Permit for special licenses and privileges that must be obtained from the City Manager pursuant to City of West Carrollton Codified Ordinance Chapter 92, et seq., which is entitled "Street and Sidewalk Excavations and Obstructions" and to this chapter of the Codified Ordinances.

(15) System means a Utility System.

(16) Title means a Chapter or Title of the Codified Ordinances of the City of West Carrollton, Ohio.

(17) Utility Service Provider means a Person that owns, operates, or controls a Utility System.

(18) Utility System means a functionally related group of Facilities or Elements that deliver a service, such as but not limited to, water, sanitary sewage collection, storm water collection, gas, fuel, heat, steam, electricity, electric powered trolley bus, electric powered light or heavy rail transit, telephone, integrated service digital network (ISDN), cellular telephone, personal communication services (PCS), competitive access Providers (CAPs) or competitive local exchange carriers (CLECs) that provide telephone service, paging and signaling systems, satellite phone service, radio, television, cable television, digital television (DTV), video, open video services (OVS), wireless television systems, direct broadcast satellite (DBS) video systems, telecommunications, data transmission, fibre optic network information transmission, private fibre optic data transmission lines between buildings, computer interconnection, roadway traffic signal interconnection, Internet computer access including e-mail communications, rail transportation, or water transportation. (Ord. 3166. Passed 8-8-2000.)

§ 97.02 GENERAL REQUIREMENTS.

(A) **Administration.** The City Manager shall be the principal City official responsible for the administration of this chapter except as otherwise provided herein. The City Manager may delegate any or all of the duties hereunder to an official designee.

(B) **Utility Service Provider Required to Have Certificate of Registration** No Utility Service Provider shall occupy or use the City Public Rights of Way without having a valid Certificate of Registration issued by City pursuant to this chapter. Use shall include construction, maintenance, or the performance of any work on a Utility System.

(C) **Utility System in Place Without a Valid Certificate of Registration** Beginning one year after the effective date of this section, any Utility System or Element of a Utility System located in a Public Right of Way in the City for which a valid Certificate of Registration for the Utility Service Provider is required and has not been obtained from the City shall be deemed to be a nuisance and an unauthorized use of the Public Right of Way. The City may exercise any remedies or rights it has, including, but not limited to abating the nuisance; taking possession of the Utility System or any Element of the Utility System; and/or prosecuting the violator.

(D) **When Permit Required by a Utility Service Provider.**

(1) If the location or proposed location of any Element of a public or private Utility System is in a Public Right of Way, then, the consent of the City, evidenced by the issuance by the City of a Revocable Street Permit in accordance with Chapter 92 of the Codified Ordinances, must be obtained by that Utility Service Provider before the construction, demolition or removal of any Element of the Utility System is permitted or any excavation by that Utility Service Provider in the Public Right of Way is permitted.

(2) This chapter does not require any Utility Service Provider that, as of the effective date of this section, occupies, or has obtained the consent of a City to occupy, a Public Right of Way in the City, to apply for additional or continued consent of the City as to any existing lines, poles, pipes, conduits, ducts, Equipment, and related appurtenances and Facilities that are in place on the effective date of this section.

(E) **Utility Service Provider Not Exempt from Permit Requirement or Revocation of The Permit.** No language or provisions set forth in City of West Carrollton Codified Ordinance Chapter 92, et seq. shall be interpreted as exempting a

Utility Service Provider from the requirement of obtaining a Revocable Street Permit or providing a Utility Service Provider an exception to the power of the City Manager to revoke any such Permit issued.

(F) Exemptions.

(1) The City shall not be required to obtain a Certificate of Registration for any Utility System for which the City is the Utility Service Provider.

(2) In the case where a Utility Service Provider has a valid franchise agreement with the City and the City Manager is of the opinion that one or more of the requirements of this chapter of the Codified Ordinances are adequately addressed in that franchise agreement; then, the City Manager, at his or her sole discretion, may exempt such a Utility Service Provider from one or more of the requirements of this chapter of the Codified Ordinances.

(G) Severability. If any Section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any Permit, right or any portions of this chapter are illegal or unenforceable, then any such Permit or right granted or deemed to exist hereunder shall be considered as a Revocable Street Permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a Revocable Street Permit shall be the same requirements and conditions as set forth in the Permit, right or registration, respectively, except for conditions relating to the term of the Permit and the right of termination. If a Permit or right shall be considered a Revocable Street Permit as provided herein, the Provider must acknowledge the authority of the City to issue such Permit and the power to revoke it.

(H) Reservation of Regulatory And Police Powers. The City, by the granting of a Permit, or by issuing a Certificate of Registration under this Title, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has or may hereafter have, which are vested in the City under the Constitution and Laws of the United States, state of Ohio, and under the Charter of the City of West Carrollton to regulate the use of the Rights of Way. The Provider by its acceptance of a Permit, or by applying for and being issued a Certificate of Registration, agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Provider is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general Laws enacted by the City pursuant to such powers.

(I) Method of Service. Any notice or order of the City or City Manager shall be deemed to be properly served if a copy thereof is delivered personally; or successfully transmitted via facsimile transmission to the last known fax number of the Person to be served; or left at the usual place of business of the Person to whom it is to be served upon and with someone who is 18 years of age or older; or sent by certified, pre-paid U.S. mail to the last known address; or if the notice is attempted to be served by certified, pre-paid U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular, pre-paid, first-class U.S. mail; or if the notice is attempted to be served by regular, first class U.S. mail, postage prepaid, the letter is then returned showing that the letter was not delivered, or is not returned within fourteen (14) days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property affected by such notice.

(J) Applies to All Providers. This Title shall apply to all Providers unless expressly exempted.

(K) Police Powers. All Persons' rights are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety, and welfare of the public. All Persons shall comply with all applicable Laws enacted by the City pursuant to its police or other powers. In particular, all Persons shall comply with City zoning and other land use requirements pertaining to the placement and specifications of Facilities.

(L) Compliance. No Person shall be relieved of his/her obligation to comply with any of the provisions of this Title by reason of any failure of the City to enforce prompt compliance.

(M) Choice of Law And Forum. This Title and the terms and conditions of any Certificate of Registration or Permit shall be construed and enforced in accordance with the substantive Laws of the State of Ohio. All Providers, as a condition for the grant of any Permit or issuance of any Certificate of Registration, agree that all disputes shall be resolved in the court of competent jurisdiction in Montgomery County, Ohio or as otherwise agreed to in writing by the City.

(N) Force Majeure. In the event any Person's performance of any of the terms, conditions, or obligations required by this chapter is prevented by a cause or event not within such Person's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this Chapter, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(O) No Warranty. The City makes no representation or warranty regarding its right to authorize the construction of Facilities on any particular Rights of Way. The burden and responsibility for making such determination shall be upon the Person constructing Facilities in the Rights of Way.

(P) Continuing Obligation and Holdover. In the event a Provider continues to operate all or any part of the Facilities

after the term of a Certificate of Registration, such Provider shall continue to comply with all applicable provisions of this Title and other laws throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Certificate of Registration, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution. Any conflict between the issuance of a Certificate of Registration or of a Permit and any other present or future lawful exercise of the City's regulatory or police powers shall be resolved in favor of the latter.

(Q) **Appeals.** All appeals provided for by this chapter and any notification to the City required by this chapter shall be in writing and sent via certified mail to the City Manager as specified in Section 97.07.

(R) **City Standards.** As part of City required standards wherever Rights of Way are under construction, if deemed advisable and practicable by the City Manager, the City may install all such Facilities deemed necessary to accommodate future Provider needs. Any such installed Facilities shall be City property and may be conveyed to any Person under such terms and conditions as are deemed advisable by the City Manager.

(S) **Chapter And Section Headings.** Chapter and Section headings are for convenience only and shall not be used to interpret any portion of this chapter.

(Ord. 3166. Passed 8-8-2000.)

§ 97.03 CERTIFICATE OF REGISTRATION APPLICATIONS AND RESPONSIBILITIES.

(A) Certificate of Registration Applications.

(1) Unless exempted in this chapter, a valid Certificate of Registration shall be required for each Utility Service Provider with any Element of a Utility System located in a Public Right of Way in the City.

(2) The Utility Service Provider shall apply to the City Manager for a Certificate of Registration or the renewal of a Certificate of Registration. The City Manager shall determine the form of the application. An application shall include the following information and fee:

(a) Detailed identification information about the Utility Service Provider; a copy of the current incorporation certificate of the applicant, if applicable; both regular and emergency contact information for the Utility Service Provider; a brief description of each utility service provided or proposed to be provided; a copy of each approval required by law, by any applicable authority, to provide any utility service described in the application; evidence of reasonable insurance coverage by the Utility Service Provider; and, any other relevant information the City Manager deems necessary to determine the fitness of the Utility Service Provider.

(b) If requested by the City Manager or the applicant, the applicant Utility Service Provider and the City shall meet to coordinate future plans for the Public Right of Way between the Utility Service Provider and the City.

(c) An application fee of five hundred dollars (\$500.00) shall be paid to the City at the time an application for a Certificate of Registration is filed with the City. No part of an application fee is returnable to the applicant.

(B) **Maximum Decision Time.** Unless the applicant agrees to an extension of the maximum decision time, the City shall have a maximum time period of one hundred twenty (120) consecutive calendar days from the date a complete application for a Certificate of Registration by a Utility Service Provider is received by the City to make a decision on the application. Unless the applicant agrees to an extension of the maximum decision time, failure of the City to make a decision on an application for a Certificate of Registration shall be considered the same as an approval of the application by the City.

(C) **Criteria for Issuance.** In deciding whether to issue a Certificate of Registration, the City Manager shall consider: whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens; whether issuing of the Certificate of Registration will be consistent with this chapter; whether the applicant has submitted a complete application and has secured all certificates and other authorizations required by law in order to construct and operate a system in the manner proposed by the applicant; whether the applicant is delinquent on any taxes or other obligations owed to the City, Montgomery County, Ohio, or the State of Ohio; whether the applicant has the requisite financial, managerial, and technical ability to fulfill all the obligations under this Ordinance and the issuance of a Certificate of Registration; and, any other applicable law.

(D) **Denial of Application.** The City Manager shall have right to deny an application for a Certificate of Registration for adequate cause. If requested in writing by the applicant, the City Manager must provide to the applicant in written form specific factual findings in support of the decision by the City Manager to deny the application for a Certificate of Registration. Any decision by the City Manager to deny an application for a Certificate of Registration is appealable by the applicant to the City Council in the manner set forth in Section 97.07.

(E) **Expiration of Certificate of Registration.** Unless terminated by the City at an earlier date, a Certificate of Registration shall expire one year from the date of issuance by the City.

(F) Responsibilities of a Utility Service Provider With a Valid Certificate of Registration

(1) When required by the Codified Ordinances, a Utility Service Provider with a valid Certificate of Registration must obtain a Revocable Street Permit.

(2) The Provider must keep all information required in the application by the City current.

(3) When requested by the City, a public or private Utility Service Provider with a Utility System Element located or proposed to be located in a Public Right of Way in the City must meet with the City to coordinate future plans for the Public Right of Way between the Utility Service Provider and the City.

(4) A Utility Service Provider with any Utility System Element located or proposed to be located in a Right of Way in the City must provide the City with up-to-date accurate plans in sufficient detail and in a format acceptable to the City showing the location of all Elements of the Utility System located in the Right of Way in the City.

(5) In addition to a Certificate of Registration, Providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such services from the appropriate federal, state and local authorities and upon the City's reasonable request, shall provide copies of such documents to the City.

(6) A Certificate of Registration issued pursuant to this chapter shall not entitle a Provider to use, alter, convert to, or interfere with, the Facilities, easements, poles, conduits, lines, pipelines, wires, fiber, cable, or any other real or personal property of any kind whatsoever under the management or control of the City or under the management or control of another Utility Provider that is legally occupying the City Right of Way.

(G) **Nature of Issuance.** A Certificate of Registration shall not convey equitable or legal title in the Rights of Way. A Certificate of Registration is only the nonexclusive, limited right to occupy Rights of Way in the City for the limited purpose and for the limited period stated in the Certificate of Registration and in accordance with this chapter and any associated Permit. For those Providers with a valid gas or electric franchise, the provisions of a Certificate of Registration shall be deemed as regulatory in nature and shall not be interpreted to limit the right to occupy the Rights of Way which may have been granted by such franchise. The rights to occupy the Right of Way itself may not be subdivided or subleased; provided, however, that two or more Providers may collocate Facilities in the same area of the Rights of Way so long as each such Provider complies with the provisions of this chapter. A Certificate of Registration does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its Facilities on Facilities of others, including the City's Facilities. A Certificate of Registration does not prevent a Provider from leasing space in or on the Provider's System, so long as the sharing of Facilities does not cause a violation of Law, including the provisions of this chapter. A Certificate of Registration does not excuse a Provider from complying with any provisions of this chapter and other applicable Law.

(H) Relocation of Equipment.

(1) A Provider must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its Equipment and Facilities in the Right of Way whenever the City Manager requests such removal and relocation, and shall restore the Right of Way to the same condition it was in prior to said removal or relocation.

The City Manager may make such request to prevent interference by the Company's Equipment or Facilities with (i) a present or future City use of the Right of Way, (ii) a public improvement undertaken by the City, (iii) an economic development project in which the City has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the Right of Way.

(2) Notwithstanding the foregoing, a Person shall not be required to remove or relocate its Equipment from any Right of Way which has been vacated in favor of a non-municipal entity unless and until the reasonable costs thereof are first paid to the Person therefor.

(I) **Pre-excavation Equipment Location.** Before the start date of any Right of Way excavation, each Provider who has Equipment in the area to be excavated shall contact Ohio Utility Protection Service (OUPS) and shall mark the horizontal and approximate vertical placement of all said Equipment. Any Provider whose Equipment is estimated to be less than twenty (20) inches below a concrete or asphalt surface shall notify and work closely with the excavation contractor to establish the exact location of its Equipment and the best procedure for excavation.

(J) Damage to Other Equipment.

(1) When the City does or causes to be done work in the Right of Way and finds it necessary to maintain, support, or move a Provider's Equipment to protect it, the City Manager shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that Provider and must be paid within thirty (30) days from the date of billing.

(2) Each Provider shall be responsible for the cost of repairing any Equipment in the Right of Way which it or its Equipment damages. Each Provider shall be responsible for the cost of repairing any damage to the Equipment of another Provider caused during the City's response to an emergency occasioned by that Provider's Equipment.

(K) Right of Way Vacation.

(1) If the City vacates a Right of Way which contains the Equipment of a Provider, and if the vacation does not require the relocation of the Provider's Equipment, the City shall reserve, to and for itself and all Providers having Equipment in the vacated Right of Way, the right to install, maintain and operate any Equipment in the vacated Right of Way and to enter upon such Right of Way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

(2) If the vacation requires the relocation of the Provider's Equipment; and (a) if the vacation proceedings are initiated by the Provider, the Provider must pay the relocation costs; or (b) if the vacation proceedings are initiated by the City, the Provider must pay the relocation costs unless otherwise agreed to by the City and the Provider; or (c) if the vacation proceedings are initiated by a Person or Persons other than the Provider, such other Person or Persons must pay the relocation costs.

(L) Discontinued Operations And Abandoned Equipment

(1) Discontinued Operations. A Provider who has determined to discontinue its operations in the City must either:

(a) Provide information satisfactory to the City Manager that the Provider's obligations for its Equipment in the Right of Way under this Title have been lawfully assumed by another Provider; or

(b) Submit to the City Manager a proposal and instruments for transferring ownership of its Equipment to the City. If a Provider proceeds under this clause, the City may, at its option: purchase the Equipment; require the Provider, at its own expense, to remove it; or require the Provider to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Equipment.

(2) Abandoned Equipment. Equipment of a Provider who fails to comply with the discontinued operations provisions of this chapter and which remains unused shall be deemed to be abandoned. Unused Equipment means Facilities located in the Rights of Way which have remained unused for a period of two years and for which the Provider is unable to: (i) provide the City with a credible plan detailing the procedure by which the Provider intends to begin actively using such Facilities within the next twelve months; or (ii) that it has a potential purchaser or user of the Facilities who will be actively using the Facilities within the next twelve months; or (iii) that the availability of such Facilities is required by the Provider to adequately and efficiently operate its System. Abandoned Equipment is deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to: (i) abating the nuisance; (ii) taking possession of the Equipment and restoring it to a useable condition; or (iii) requiring removal of the Equipment by the Provider, or the Provider's successor in interest.

(3) Removal. Any Provider who has unused and abandoned Equipment in any Right of Way shall remove it from that Right of Way during the next scheduled excavation, or at such different time as designated by the City Manager, unless this requirement is waived by the City Manager.

(4) In the event of any conflict with the provisions of subsection (L) hereof with Federal law known as the Miller Act, the provisions of the Miller Act shall control.

(Ord. 3166. Passed 8-8-2000.)

§ 97.04 TERMINATION OF CERTIFICATE OF REGISTRATION.

(A) **Written Notice of Violation.** The City Manager shall give written notice of violation to a Provider if it is determined that a Provider has: violated any material provision or requirement of the issuance or acceptance of a Certificate of Registration or any Law of the City, state, or federal government; or attempted to evade any provision or requirement of the issuance of a Certificate of Registration or the acceptance of it; or practiced any fraud or deceit upon the City; or made a material misrepresentation of fact in its Application for a Certificate of Registration.

(B) **Failure to Cure Violation.** If a Provider fails to cure a violation within thirty (30) calendar days after such notice is served by the City then such violation shall be a material breach and City may exercise any remedies or rights it has at Law or in equity to terminate the Certificate of Registration. If the City Manager decides there is cause or reason to terminate, the following procedure shall be followed:

(1) City shall serve a Provider with a written notice of the reason or cause for proposed termination and shall allow a Provider a minimum of ten (10) calendar days to cure its breach.

(2) If the Provider fails to cure within ten (10) calendar days, the City Manager may declare the Certificate of Registration terminated.

(3) The determination of the City Manager shall be final.

(Ord. 3166. Passed 8-8-2000.)

§ 97.05 REVOCABLE STREET PERMIT REQUIREMENTS.

(A) **Application for Permit.** An application for a Revocable Street Permit shall be in accordance with Chapter 92 of the Codified Ordinances including any additional requirements contained in this Chapter 97 of the Codified Ordinances.

(B) **Permit Requirements.** The requirements in this chapter shall be in addition to any requirement set forth in Codified Ordinances Chapter 92, et seq.

(1) A Utility Service Provider must have a valid Certificate of Registration on File with the City, or be exempt under Section 97.02(F), before the City may issue a Revocable Street Permit.

(2) The construction, demolition, or removal of any Element of a Utility System in a Public Right of Way by a Utility Service Provider must be accomplished in a practical manner which, in the opinion of the City, results in the least potential amount of damage and disruption of the Public Right of Way.

(3) The Permit applicant shall provide a specific timetable for the work covered under the Permit application to be accomplished including: detailed plans, accurate scale drawings, and specifications in sufficient detail acceptable to the City to describe the area of work covered in the Permit application. In addition, the City may require the applicant to provide up-to-date, accurate, comprehensive master plans of the existing and proposed Utility System. These master plans are intended to allow the City to consider the broader context of the Utility Service Provider's plans upon which the Permit

application is based.

(C) Limitations on Placement of Utility System Elements And/or Permissive Denial of Permit

(1) To protect the public health, safety, and welfare in recognition of the limitation of space in the Public Right of Way, the City Manager shall have the power to prohibit or limit the placement of a new Utility System or additional Elements of an existing Utility System within a Public Right of Way if there is insufficient space to accommodate all of the requests of Persons to occupy and use the Public Right of Way. In making such decisions, the City Manager shall strive to the extent possible to accommodate all existing and potential users of the Public Right of Way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the Public Right of Way, the time of year with respect to essential utilities, the protection of existing Elements of Utility Systems in the Public Right of Way, and future City plans for public improvements and development projects which have been determined to be in the public interest.

(2) The City Manager may deny a Permit to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the Public Right of Way, or when necessary to protect the Public Right of Way and its users. The City Manager, in his or her discretion, may consider one or more of the following factors: the extent to which Public Right of Way space where the Permit is sought is available; the competing demands for the particular space in the Right of Way; the availability of other locations in the Public Right of Way or in other public rights of way for the Utility System Elements of the Permit applicant; the applicability of ordinance or other regulations of the Right of Way that affect location of Utility System Elements in the Right of Way; the degree of compliance of the applicant with the terms and conditions of its franchise, this Title, and other applicable ordinances and regulations; the degree of disruption to surrounding communities and businesses that will result from the use of that part of the Public Right of Way; the condition and age of the Public Right of Way, and whether and when it is scheduled for total or partial reconstruction; the balancing of the costs of disruption to the public and damage to the Public Right of Way, against the benefits to that part of the public served by the expansion into additional parts of the Public Right of Way; and the feasibility of accomplishing the desired goal outside of the Public Right of Way.

(D) Underground Utility Areas within the Public Right-of-way.

(1) Purpose and intent. The purpose of this section is to establish general procedures and standards for underground utility areas within the City of West Carrollton, Ohio rights-of-way.

(2) Underground utility areas. From the effective date of this section, all Utility System Elements located in the public right-of-way, except poles, shall be placed underground within the following areas which shall be described as "Underground Utility Areas";

(a) Central Avenue:

1. North side from Cedar Street to North Locust Street.
2. North side from North Elm Street to Weir Street.

(b) Fame Road.

(c) Fortune Road.

(d) Progress Road.

(e) Gargrave Road.

(3) Annexed property. All property annexed into the city after the effective date of this legislation shall be automatically deemed as an Underground Utility Area.

(4) Waiver. In the event of practical difficulties, the City Manager may grant a waiver from the requirements of this section for good cause shown.

(Ord. 3166. Passed 8-8-2000; Ord. 3636. Passed 7-10-18.)

§ 97.06 INDEMNIFICATION AND LIABILITY.

(A) **City Does Not Accept Liability.** By reason of the acceptance of an application or the grant of a Permit, the City does not assume any liability: for injuries to Persons, damage to property, or loss of Service claims; or for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of Facilities.

(B) **Indemnification.** By applying for and being issued a Certificate of Registration with the City a Provider agrees, or by accepting a Permit a Provider is required and agrees, to defend, indemnify, and hold harmless the City's agents, elected officials, officers, employees, volunteers and subcontractors from all costs, liabilities, claims, and suits for damages of any kind arising out of the construction, presence, installation, maintenance, repair or operation of its Facilities, or out of any activity undertaken in or near a Rights of Way, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit, excepting only negligent acts or omissions that are willful and wanton or intentional torts and for which immunity is not provided by the Ohio Revised Code for such acts, omissions, or intentional torts. This exception shall not extend to acts, omissions, or intentional torts occurring as a result of or in response to an emergency. A Provider further agrees that it will not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City's agents, elected officials, officers, employees, volunteers and subcontractors or any claim nor

for any award arising out of the presence, installation, maintenance or operation of its Facilities, or any activity undertaken in or near a Right of Way, whether the act or omission complained of is authorized, allowed or prohibited by a Permit. This Chapter is not, as to third parties, a waiver of any defense or immunity otherwise available to the Provider or to the City; and the Provider, in defending any action on behalf of the City, if allowable by Law, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. Any and all exercises of the above shall be consistent with, but not limited to, the following:

(1) To the fullest extent permitted by Law, each Provider shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its agents, elected officials, officers, employees, volunteers and subcontractors from and against any and all lawsuits, claims (including without limitation Workers' Compensation claims against the City or others), causes of action, liability, and judgments for injury or damages including but not limited to expenses for reasonable legal fees and disbursements assumed by the City related to the following:

(a) Injuries or damages to persons or property, in any way arising out of or through the acts or omissions of Provider, its subcontractors, agents or employees attributable to the occupation by the Provider of the Rights of Way, to which Provider's negligence shall in any way contribute, and regardless of whether the City's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage.

(b) Arising out of any claim for invasion of the right of privacy, for defamation of Person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any Person, firm and corporation by the Provider, by excluding claims arising out of or related to City programming.

(c) Arising out of Provider's failure to comply with the provisions of any Law applicable to the Provider.

(2) The foregoing indemnification is conditioned upon the City:

(a) Giving Provider reasonable notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought;

(b) Affording the Provider the opportunity to fully participate in any discussions concerning any compromise, settlement, or other resolution or disposition of

any claim or proceeding subject to indemnification, as well as the sole right to approve any compromise or settlement or financial commitment, which approval shall not be unreasonably withheld;

(c) Cooperating in the defense of such claim and making available to the Provider all pertinent information under the City's control.

(3) The City shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the Provider shall pay all reasonable fees and expense of such separate counsel if employed.

(Ord. 3166. Passed 8-8-2000.)

§ 97.07 PENALTIES FOR VIOLATION, LIQUIDATED DAMAGES, AND RIGHTS OF APPEAL.

(A) **Penalties For Violation.** It shall be unlawful to violate any provision of this chapter. Violation of any provision of this chapter or failure to comply with any requirement of this chapter (including a violation of a condition or safeguard established in connection with a Certificate of Registration, Permit, or any other City approval) shall constitute a misdemeanor of the second degree. Each and every failure to comply shall be considered a distinct and separate offense. Each day a violation continues shall be considered a distinct and separate offense.

(B) **Non-exclusive Remedy.** The remedies provided in this chapter are not exclusive or in lieu of other rights and remedies that the City may have. The City is hereby authorized at any time to seek legal and equitable relief for actual or threatened injury to the Rights of Way, including damages to the Rights of Way, whether caused by a violation or any of the provisions of this Title or other provisions of applicable Law.

(C) **Liquidated Damages.** In addition to any other penalties set forth in this chapter, and the remedy of specific performance which may be enforced in a court of competent jurisdiction, the City Manager may assess an additional penalty of civil forfeiture for failure to comply with any provision of this chapter. Said penalty shall be a monetary sum, payable to the City, in the amount of Five Hundred Dollars (\$500.00) per twenty-four (24) hour day of violation and any subsequent portion of a day less than twenty-four (24) hours in length. Prior to assessing said penalty, the City Manager shall provide written notice to the Provider detailing the failure to comply with a specific provision of this chapter. Said notice shall indicate that said penalty shall be assessed in fifteen (15) calendar days after receipt of service of the notice if compliance is not achieved. If a Provider desires to challenge said penalty, Provider shall request a hearing before the City Manager within ten (10) days of service of the notice. Said hearing shall be held within thirty (30) days of the Provider's request. If Provider requests such hearing before the City Manager, said penalty shall be temporarily suspended. However, if, after the hearing, the City Manager determines that Provider failed to comply with the specific provision of this chapter referenced in the notice, said penalty shall be assessed starting fifteen (15) calendar days after service of the notice referenced in this Chapter and continuing for each day thereafter until compliance is achieved. The determination of the City Manager shall be final.

(D) **Rights of Appeal.**

(1) Authorization. The following decisions of the City Manager pursuant to this chapter are appealable to the City Council: (i) the decision of the City Manager with respect to the issuance of an exemption to the requirement of a Certificate of Registration under Section 97.02(F)(2); (ii) the denial of an application for a Certificate of Registration under Section 97.03(D); (iii) denial of a Permit under Section 97.05(C)(2) and (iv) denial of an exception under Section 97.02(F). An appeal from the decision of the City Manager with respect to any of these decisions may be taken to the City Council by any aggrieved Provider.

(2) Filing Fee. The filing fee for any appeal under this chapter shall be One Hundred and 00/100 Dollars (\$100.00).

(3) Time for Appeals. Appeals to the City Council shall be filed within thirty (30) days from the decision of the City Manager by filing a written notice of appeal with the Clerk of the City Council. The notice of appeal shall specify the grounds for such appeal, and shall be on the form prescribed by the Clerk of the City Council. Upon receipt of an appropriately completed notice of appeal and filing fee, the Clerk of the City Council shall transmit to the members of the City Council all papers constituting the record upon which the decisions being appealed were based.

(4) Hearing on Appeal. The City Council shall schedule the hearing for the appeal within a reasonable period of time at a regularly-scheduled City Council meeting or at a special City Council meeting. Written notice of the hearing shall be sent to the aggrieved Provider at least ten (10) days prior to the hearing. The failure of delivery of such notice, however, shall not invalidate any subsequent proceedings. The aggrieved Provider or its representative may appear and be heard at the hearing, and present any evidence the Provider desires in support of its position.

(5) Decision on Appeals. The City Council may affirm, reverse, or modify, in whole or in part, the decision appealed from, and to that end, the City Council shall have all the powers of the City Manager with respect to such decision. The concurring vote of a majority of the members of the City Council shall be necessary to reverse or modify any decision of the City Manager under this chapter. The City Council shall render a written decision on the appeal without unreasonable delay after the close of the hearing, and in all cases within thirty (30) days after the close of the hearing.

(6) Records of Appeals. The Clerk of the City Council shall maintain complete records of all actions of the City Council with respect to appeals.

(Ord. 3166. Passed 8-8-2000.)

CHAPTER 98: EMERGENCY SERVICES

Section

98.01 Fees; policies.

§ 98.01 FEES; POLICIES.

(A) The fees as set forth and established in Section 37.19 of Chapter 37, General Fee Schedule, of the Codified Ordinances of the City of West Carrollton, are to be charged for the provision of public safety services at the scenes of motor vehicle accidents and other emergency services provided by the City.

(B) The following policies are hereby established by Council to govern the collection procedures to be used by the City in recovering said charges:

(1) City personnel will make reasonable efforts to obtain the address and insurance information of all recipients of emergency services at scenes of motor vehicle accidents and other emergency services.

(2) All recipients of emergency services will be sent an informational letter explaining the charges established herein and requesting additional insurance information as necessary.

(3) Claims will be filed with recipients' insurance carriers for reimbursement of charges.

(4) Recipients will be furnished a statement showing insurance payment collected.

(5) Under no circumstances will threats of litigation be issued or suits be filed by the City in an effort to collect charges established herein, without prior approval of Council.

(C) All revenue for emergency services collected by the City shall be used for the purpose of providing and maintaining emergency services within the City. (Ord. 3268. Passed 5-11-04; amend. Ord. 3436. Passed 12-22- 09.)

CHAPTER 99: SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES

Section

99.01 Purpose and intent

99.02 Applicability

- 99.03 Definitions
- 99.04 Application required
- 99.05 Application review timeframes and process
- 99.06 Small cell design guidelines
- 99.07 Standard conditions of permit approval
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- 99.12 Appeals
- 99.13 Severability
- 99.99 Penalty

§ 99.01 PURPOSE AND INTENT.

(A) The purpose of this chapter is to establish general procedures and standards, consistent with all applicable federal, state, and local laws, for the siting, construction, installation, collocation, modification, operation, and removal of small cell facilities and wireless support structures within the right-of-way.

(B) The intent of this chapter is to:

(1) Establish basic criteria for applications to locate small cell facilities and wireless support structures in the right-of-way and authorize the City Manager or his or her designee to develop, publish, and from time to time amend applications and other associated materials to provide clear guidance to applicants;

(2) Ensure that small cell facilities and wireless support structures are carefully designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations;

(3) Preserve the character of the City of West Carrollton by minimizing the potentially adverse visual impact of small cell facilities and wireless support structures through careful design, siting, landscaping and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable;

(4) Enhance the ability of wireless service providers to deploy small cell facilities and wireless support structures in the city quickly, effectively, and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability;

(5) Establish an application process and structure for payment of fees and charges to be uniformly applied to all applicants, operators and owners of small cell facilities and wireless support structures for such facilities; and

(6) Comply with, and not conflict with or preempt, all applicable state and federal laws, including without limitation Section 101(a) and Section 704 of the Telecommunications Act, Pub. L. 104104, 101 Stats. 56, 70 (Feb. 8, 1996) (codified as 47 U.S.C. §§ 253(a), 332(c)(7)), as may be amended or superseded, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)), as may be amended or superseded, and all FCC rules and regulations to interpret and implement applicable federal statutes.

(Ord. 3636, passed 7-10-18)

§ 99.02 APPLICABILITY.

(A) Subject to the Ohio Revised Code and approval of an application under this chapter, an operator may collocate a small cell facility and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the city right-of-way as follows:

(1) An operator shall comply with generally applicable standards that are consistent with Chapter 97: Rights of Way and this chapter and any rules, regulations, and design guidelines adopted by the city for the collocation of a small cell facility and construction, maintenance, modification, operation, or replacement of wireless support structures in, along, across, upon, and under the city right-of-way, unless otherwise prohibited by state or federal law.

(2) All wireless support structures and small cell facilities shall be constructed and maintained so as not to impede or impair public safety or the legal use of the right-of-way by the city, the traveling public, or other public utilities.

(B) *Exclusions.*

(1) *Amateur radio facilities.* This chapter shall not govern the installation of any amateur radio facility that is owned or operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

(2) *Certain over-the-air receiving devices (OTARD).* This chapter shall not govern the installation of any OTARD

antennas covered under FCC regulations codified in 47 C.F.R. §§ 1.4000 et seq., as may be amended or superseded. OTARD antennas include, without limitation, direct-to-home satellite dish antennas less than one meter in diameter, television antennas and wireless cable antennas.

(3) *Handsets and user equipment.* This chapter shall not govern the use of personal wireless devices (e.g., cell phones) or other consumer-grade mobile user equipment used in the right-of-way.

(C) The permitting procedures and authorizations set forth herein shall apply only to small cell facilities and wireless support structures in the right-of-way, and do not authorize the construction and operation of a wireline backhaul facility, which continues to be governed by Chapter 97: Rights of Way.

(D) *Relationship to other chapters.* This chapter shall supersede all conflicting requirements of other titles and chapters of this Code regarding the locating and permitting of small cell facilities and wireless support structures in the right-of-way.

(E) Nothing in this chapter precludes the city from applying its generally applicable health, safety, and welfare regulations when granting consent for a small cell facility or wireless support structure in the city right-of-way.

(Ord. 3636, passed 7-10-18)

§ 99.03 DEFINITIONS.

(A) General use of terms.

- (1) The terms, phrases, words, and their derivations used in this chapter shall have the meanings given in this section.
- (2) When consistent with the context, words used in the present tense also include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number.
- (3) All terms used in the definition of any other term shall have their meaning as otherwise defined in this section.
- (4) The words "shall" and "will" are mandatory and "may" is permissive.
- (5) Words not defined shall be given their common and ordinary meaning.

(B) Defined terms.

ABANDONED. Any small cell facilities or wireless support structures that are unused for a period of 365 days without the operator otherwise notifying the city and receiving the city's approval.

AFFILIATE. When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

AGENT. A person that provides the city written authorization to work on behalf of a public utility.

ANTENNA. Communications equipment that transmits or receives radio frequency signals in the provision of wireless service.

APPLICANT. Any person that submits an application to the city to site, install, construct, collocate, modify, and/or operate a small cell facility or wireless support structure in the right-of-way according to the requirements of this chapter.

CABLE OPERATOR. Any person or group of persons: (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

CABLE SERVICE.

- (a) The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and
- (b) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

CABLE FRANCHISE. An initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. 522 Section 546), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

CITY. The municipal government known as the City of West Carrollton, Ohio.

CITY MANAGER. The administrative head of the municipal government known as the City of West Carrollton, Ohio, or the official designee appointed by the City Manager to implement all or some of the provisions of this chapter.

CLEAR ZONE. The unobstructed, traversable area provided beyond the edge of the through traveled way for the recovery of errant vehicles. The clear zone includes shoulders, bike lanes, and auxiliary lanes, except those auxiliary lanes that function like through lanes. As defined in the ODOT Location and Design Manual, Volume 1, Section 600—Roadside Design.

COLLOCATION or COLLOCATE. To install, mount, maintain, modify, operate, or replace wireless small cell facilities on a wireless support structure.

DECORATIVE POLE. A pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following: (1) Electric lighting; (2) Specially designed informational or directional signage; (3) Temporary holiday or special event attachments.

DESIGN GUIDELINES. Those detailed design guidelines, specifications and examples promulgated by the City Manager for the design and installation of small cell facilities and wireless support structures, which are effective insofar as they do not conflict with federal and state law, rule and regulations.

ELIGIBLE FACILITIES REQUEST. The same as defined by the FCC in 47 U.S.C. 1455 (a)(2), as may be amended, which defines that term as any request for modification of an existing support structure that does not substantially change the physical dimensions of such support structure, involving: (1) Collocation of new small cell facilities; (2) Removal of small cell facilities; or (3) Replacement of small cell facilities.

FRANCHISE AUTHORITY. See **CABLE FRANCHISE**.

FCC. The U.S. Federal Communications Commission and any legally appointed, designated, or elected agent or successor.

HISTORIC DISTRICT. A building, property, or site, or group of buildings, properties, or sites that are either of the following: (1) Listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C; (2) A registered historic district as defined in R.C. § 149.311.

MICRO WIRELESS FACILITY. A small cell facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length suspended on cable strung between wireless support structures.

MUNICIPAL INFRASTRUCTURE. The structures, facilities, fixtures, and other such appurtenances owned by the city, including but not limited to: poles, fixtures, manholes, pipes, wires, fiber, transformers, hydrants, valves, catch basins, roadways, traffic signals, sidewalks, curb and gutters, street signs, junction boxes.

OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (OMUTCD). The uniform system of traffic control devices promulgated by the Ohio Department of Transportation.

OCCUPY or USE. With respect to the right-of-way, to place a tangible thing in the right-of-way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.

OPERATOR. A wireless service provider, cable operator, or a video service provider that operates a small cell facility and provides wireless service. For the purpose of this chapter, **OPERATOR** includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.

PERSON. Any natural person, corporation, or partnership and also includes any governmental entity.

PUBLIC UTILITY or UTILITY. A facilities-based provider of wireless service to one or more end users in this state, or any company described in R.C. § 4905.03 and as further defined in R.C. § 4905.02, including but not limited to the following types of companies: telephone, electric light, gas, natural gas, pipe-lines, water-works, and sewage disposal systems.

RIGHT-OF-WAY. The surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public bike path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated or otherwise designated for the same now or hereafter held by the city "right-of-way" shall not include private easements or public property, except to the extent the use or occupation of public property is specifically granted in a right-of-way permit or by administrative regulation.

RIGHT-OF-WAY PERMIT, GENERAL. A permit issued by the city, subject to Chapter 97: Rights of Way, that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of the right-of-way, including, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, or installing, as well as the act of opening and cutting into the surface of any paved or improved surface that is part of the right-of-way. Also, a permit issued by the city that must be obtained in order to occupy the city right-of-way.

RIGHT-OF-WAY PERMIT, SMALL CELL. A permit issued by the city for the collocation, construction, maintenance, operation, or replacement of small cell facility(ies) and/or wireless support structures in, along, across, upon and under the right-of-way.

SMALL CELL FACILITY. A wireless facility that meets both of the following requirements:

- (a) Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.
- (b) All other wireless equipment associated with the facility is cumulatively not more than 28 cubic feet in volume. The

calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

SUBSTANTIAL CHANGE. Has the same meaning as described in 47 C.F.R. § 1.40001(b)(7).

TOLLING or **TOLL PERIOD.** The pausing or delaying of the running of a required time period.

UTILITY POLE. A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. **UTILITY POLE** excludes street signs and decorative poles.

VIDEO SERVICE PROVIDER. A person granted a video service authorization under R.C. §§ 1332.21 to 1332.34.

WIRELESS FACILITY.

(a) Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:

1. Equipment associated with wireless communications;
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

(b) The term includes small cell facilities.

(c) The term does not include any of the following:

1. The structure or improvements on, under, or within which the equipment is collocated;
2. Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

WIRELESS SERVICE. Any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.

WIRELESS SERVICE PROVIDER. A person who provides wireless service as defined herein.

WIRELESS SUPPORT STRUCTURE. A pole, street light pole, traffic signal pole, a 15-foot or taller sign pole, or utility pole capable of supporting small cell facilities, excluding utility poles or other facilities used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

WIRELINE BACKHAUL FACILITY. A facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

(Ord. 3636, passed 7-10-18)

§ 99.04 APPLICATION REQUIRED.

(A) *General requirements.* The following requirements shall apply to all small cell facilities and wireless support structures proposed within the right-of-way.

- (1) No person shall occupy or use the right-of-way except in accordance with law.
- (2) In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare.
- (3) No person shall occupy or use the right-of-way without first obtaining, under this chapter, Chapter 97: Rights of Way, or R.C. § 1332.24 or 4939.031, any requisite consent of the city. Before placing small cell facilities or wireless support structures in the right-of-way, an operator must apply for and receive a general right-of-way permit as provided by Chapter 97: Rights of Way.

(B) *Pre-application conference.* Applicants are strongly encouraged to contact the city and request a pre-application conference. This meeting will provide an opportunity for early coordination regarding proposed small cell facilities and wireless support structure locations and design, and the application submittal and review process, in order to avoid any potential delays in the processing of an application and deployment of small cell facilities and wireless support structures in the city.

(C) *Application required.* In accordance with federal and state law and the city code, an operator may apply to the city to collocate a small cell facility on an existing wireless support structure and to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the city rights-of-way. Anyone seeking to collocate a small cell facility on an existing wireless support structure and/or to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the city rights-of-way shall first duly file a written application with the city, in accordance with the requirements in this section and additional requirements set forth in the Design Guidelines as modified from time to time by the City Manager.

(D) *Required application materials.* Unless otherwise required by state or federal law, all applicants shall submit to the city materials and information associated with each application as outlined in the Design Guidelines in order for the

application to be considered complete.

(Ord. 3636, passed 7-10-18)

§ 99.05 APPLICATION REVIEW TIMEFRAMES AND PROCESS.

(A) Permit application review timeframes.

(1) *Collocation of small cell facilities on existing wireless support structures.* The city shall grant or deny its consent for requests to collocate, or to replace or modify a small cell facility on, or associated with, an existing wireless support structure not later than 90 days after the date of filing by an entity of a completed application.

(2) *New wireless support structures and associated small cell facilities.* The city shall grant or deny its consent for requests to construct, modify, or replace a wireless support structure associated with a small cell facility within the right-of-way not later than 120 days after the date of filing by an entity of a completed application.

(3) *Wireless support structure and/or small cell facilities removal.* The city shall grant or deny its consent for requests to remove wireless support structures associated with small cell facilities from the right-of-way typical to the review timeframes for the general right-of-way permit required for this activity.

(4) *Eligible facilities request.* The city shall approve eligible facilities requests in accordance with R.C. Chapter 4939, 47 C.F.R. § 1.40001, and with this chapter not later than 60 days after the date of filing by an entity of a submitted application.

(B) *Failure to grant or deny within prescribed timeframes.* If the city fails to approve or deny a request for consent under this section or a request for a relevant work permit within the timeframes required under division (A) of this section, provided the time period is not tolled under division (D) of this section or extended with the written consent of the applicant and the City Manager, the request shall be deemed granted upon the requesting entity providing notice to the city that the time period for acting on the request has lapsed.

(C) Application denials.

(1) The city shall not unreasonably withhold or deny consent for small cell facilities and wireless support structures within the right-of-way.

(2) If a request for consent is denied, the city shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information as the applicant may reasonably request to obtain consent. The denial of consent shall not unreasonably discriminate against the entity requesting the consent.

(3) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the city, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(D) Tolling of required timeframes.

(1) The time periods required in division (A) of this section may be tolled only:

- (a) By mutual agreement between the entity requesting consent and the city;
- (b) In cases where the city determines that the application is incomplete; or

(c) If the number of requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time limits set forth in division (A) of this section due to the lack of resources of the city, then the city may toll the time limits as follows:

1. The time period may be tolled for up to 21 days for the first 15 small cell facility or wireless support structure requests received by the city above the thresholds provided in the table below within any consecutive 30-day period:

Population of City at Time Small Cell Facility or Wireless Support Structure Applications are Received	Number of Applications
30,000 persons or less	15 applications or more
30,001 to 40,000 persons	20 applications or more
40,001 to 50,000 persons	25 applications or more
50,001 to 60,000 persons	30 applications or more
60,001 to 100,000 persons	60 applications or more

2. Further, for every additional 15 requests that the city receives above the thresholds provided in the table above the city may toll the time period for those requests for up to 15 days in addition to the time period provided in division (D)(1) of this section.

3. In no instance shall the city toll the time period for any small cell facility or wireless support structure request by

more than 90 consecutive days. Upon request, the city shall provide an operator written notice of the time limit for a small cell facility or wireless support structure request.

(2) To toll the time period for incompleteness, the city shall provide written notice to the person requesting consent not later than 30 days after receiving the request, clearly and specifically delineating all missing documents or information. The missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described in R.C. § 4939.0313 or documentation intended to illustrate the need for the request or to justify the business decision for the request, in accordance with state and federal law, does not toll the time period for incompleteness.

(3) The time period for granting or denying consent resumes when the entity makes a supplemental submission in response to the city's notice of incompleteness.

(4) If a supplemental submission is inadequate, the city shall notify the entity not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice that delineated missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (D)(1) to (D)(3) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(E) Consolidated application for multiple small cell facilities and/or wireless support structures.

(1) Applicants seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure may file, at the applicant's discretion, a consolidated application for up to 30 small cell facility requests or up to 30 wireless support structure requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the small cell facilities or wireless support structures subject to the following:

(a) This single application may be filed for multiple small cell facilities or multiple wireless support structures only if they are of substantially the same type.

(b) The city may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.

(2) In the case of a consolidated application, the fees provided for in R.C. § 4939.0316 and §99.04 may be cumulative. However, the city, at its discretion may opt to reduce such fees in order to encourage consolidated application submittals.

(3) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under R.C. § 4939.036 and division (D)(1) of this section. A request by a single operator for a new or replacement wireless support structure and associated small cell facility constitutes one request.

(4) If multiple applications are received by the city to install two or more wireless support structures that would violate the requirements of § 99.06 Design Guidelines, or to collocate two or more small cell facilities on the same wireless support structure, the city shall process and render a decision in the order they are received.

(5) In the event that an application is received by the city to install a wireless support structure or small cell facility in a location in common with another application for a facility in the ROW, preference shall be granted in the following order of service provided:

- (a) Municipal infrastructure
- (b) Water
- (c) Electricity
- (d) Gas
- (e) Landline telephone
- (f) Fiber
- (g) CATV
- (h) Petroleum pipelines
- (i) Wireless service

(F) Timeframe for completion of permit.

(1) Collocations of small cell facilities on existing wireless support structures and the construction of new wireless support structures and/or associated small cell facilities for which permits have been granted shall be completed by the operator or its agent within 180 days after issuance of the permit, unless:

- (a) The city and the operator agree to extend this period; or

(b) A delay is caused by make-ready work for a city-owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that:

1. The operator has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services; and

2. The additional time to complete installation does not exceed 360 days after issuance of the permit.

(2) If divisions (F)(1)(a) and (b) of this section cannot be met, the permit shall be void unless the city grants an extension in writing to the operator.

(G) *Small cell facility and wireless support structure activities not requiring consent.*

(1) City consent shall not be required for either of the following activities conducted in the right-of-way:

(a) Routine maintenance of wireless facilities;

(b) The replacement of wireless facilities with wireless facilities that are consistent with the city's current design requirements and guidelines and that are either:

1. Substantially similar to the existing wireless facilities; or

2. The same size or smaller than the existing wireless facilities.

(2) The city may require a general right-of-way permit for any activity described in division (G)(1) of this section and for any activity for which consent is authorized herein and in accordance with state and federal law.

(H) *Amendments.* Amendments to an application in process which are not part of a response to a notice of incompleteness or a correction notice shall be treated as a new application.

(Ord. 3636, passed 7-10-18)

§ 99.06 SMALL CELL DESIGN GUIDELINES.

(A) The City Manager shall promulgate detailed Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all of the following, which the city shall consider in reviewing an application:

(1) The location of any ground-mounted small cell facilities;

(2) The location of a small cell facility on a wireless support structure;

(3) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, and landscaping;

(4) The design and appearance of a wireless support structure.

(B) The Design Guidelines shall describe small cell facilities preferences.

(C) The provisions in this section shall not limit or prohibit the City Manager's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.

(D) The City Manager shall have authority to update or supplement the Design Guidelines to address relevant changes in law, technology, or administrative processes. In the event of any conflict between the Design Guidelines and the standards articulated in this chapter, the language of this chapter shall take precedence over the language of the Design Guidelines.

(Ord. 3636, passed 7-10-18)

§ 99.07 STANDARD CONDITIONS OF PERMIT APPROVAL.

(A) *Standard conditions of approval.* Permission to site small cell facilities and wireless support structures in the right-of-way shall be conditioned on compliance with the standard conditions of approval provided in this section. The City Manager or his or her designee may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare.

(B) *Small cell facility permit duration.*

(1) The city's approval term of an attachment to a wireless support structure shall be for a period of not less than ten years, with presumption of renewal for successive five year terms, subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the operator and the city, except for generally applied permitting to safeguard the public health, safety, and welfare. An operator may remove its small cell facilities at any time subject to applicable permit requirements and may stop paying annual charges or fees under division (M) of this section.

(2) In the event that any court of competent jurisdiction invalidates any portion of state or federal law which mandates approval of any permit, such permit shall automatically expire one year from the date of the judicial order and all appeals have been exhausted.

(C) *Compliance with all applicable laws.*

(1) Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.

(2) If state or federal standards and regulations are amended, the owners of the small cell facilities and/or wireless support structures governed by this chapter shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring small cell facilities and/or wireless support structures into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.

(D) *Inspections; emergencies.* The city or its designee may inspect small cell facilities and wireless support structures in the right-of-way upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The city reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

(E) *Relocation or adjustment as requested by city.* If requested by the city, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an operator shall relocate or adjust its facilities within the right-of-way at no cost to the city, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with law.

(F) *Contact information for responsible parties.* Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the City Manager.

(G) *Indemnification.* Any operator who owns or operates small cell facilities or wireless support structures in the right-of-way shall indemnify, protect, defend, and hold the city and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates small cell facilities and wireless service in the right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right-of-way.

(H) *Interference with public safety radio services.* In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare. Permittees shall comply with the applicable provisions of 47 CFR §§ 22.970-973 and 47 CFR §§ 90.672-675 respectively, which define unacceptable interference, state the obligations of licensees to abate unacceptable interference, provide interference resolution procedures, and set forth a discretionary information exchange between public safety licensees and other licensees.

(I) *Adverse physical impacts on adjacent properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse physical impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the small cell facility and/or wireless support structure.

(J) *Good condition required.* Small cell facilities and wireless support structures including but not limited to all landscaping, fencing, and related equipment shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the health, safety or welfare of any person or property. Examples of poor condition include, but are not limited to: peeling, flaking, or blistered paint; rust or other visible deterioration of materials; or failure to maintain required landscape screening. All small cell facilities and wireless support structures including but not limited to all landscaping, fencing, and related equipment shall be subject to generally applicable property maintenance requirements as provided in the Property Maintenance Code, and to visual inspection by code enforcement officers to ensure compliance. Enforcement procedures for any property maintenance violation by a small cell facility and/or wireless support structure shall be as provided in the Property Maintenance Code.

(K) *Graffiti abatement.* Permittee shall remove any graffiti on the small cell facility at permittee's sole expense.

(L) *RF exposure compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.

(M) *Removal of small cell facilities if use discontinued or abandoned.*

(1) In the event that the use of a small cell facility and/or wireless support structure is discontinued, the owner or operator of the small cell facility and/or wireless support structure shall submit a request for consent to remove the wireless support structure or small cell facility, as provided in § 99.05(A)(3), which shall serve as the notice to the city of its intent to discontinue use and the date when the use shall be discontinued. If the small cell facility and/or wireless support structure is not removed within 365 days of discontinued use, the small cell facility and/or wireless support structure shall be considered abandoned and the city may remove it at the owner's expense.

(2) Small cell facilities and wireless support structures determined by the city to be abandoned without notice from the owner may be removed by the city at the owner's expense to ensure the public health, safety, and welfare.

(3) The city reserves the right to inspect and to request information from the operator, which the operator shall provide

following such request, as to the continued use of the operator's small cell facility(ies) or wireless support structure(s) within the right-of-way.

(N) *Site restoration.* Upon completion of the new work, the contractor shall restore the street and/or alley pavement; all concrete walks, driveway aprons, and other concrete; and all tree lawns and/or sod strips with topsoil and sod as required.

(O) *General construction.* All work and designs shall comply with the following general standards for construction in the city right-of-way:

- (1) City of West Carrollton Codified Ordinances;
- (2) City of West Carrollton Standard Construction Drawings;
- (3) City of West Carrollton Construction and Material Specifications;
- (4) Ohio Department of Transportation (ODOT) Location and Design Manual;
- (5) ODOT Standard Drawings;
- (6) ODOT Construction and Material Specifications;
- (7) Ohio Manual of Traffic Control Devices;
- (8) American Association of State Highway Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets;
- (9) AASHTO Roadside Design Guide;
- (10) AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities;
- (11) AASHTO Guide for Development of Bicycle Facilities;
- (12) United States Access Board (USAB) Proposed Guidelines for Pedestrians in the Public Right-of-Way;
- (13) USAB American with Disabilities Act Accessibility Guidelines;
- (14) National Fire Protection Association 70 National Electric Code; and
- (15) All other applicable local, state, and federal codes and regulations.

(P) *Taxes and assessments.* To the extent taxes or other assessments are imposed by taxing authorities on the use of city property as a result of an applicant's use or occupation of the right-of-way, the applicant shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority.

(Q) *Setbacks for visibility and access.* Any new small cell facility or wireless support structure and other improvements associated with a new small cell facility or wireless support structure or an existing small cell facility or wireless support structure must be setback from intersections, alleys and driveways and placed in locations where it will not obstruct motorists' sightlines or pedestrian access, as determined by the City Manager.

(R) *Obstructions.* Any new small cell facility or wireless support structure and other improvements associated with a new small cell facility or wireless support structure or an existing small cell facility or wireless support structure shall not obstruct any:

- (1) Worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;
- (2) Access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop (including, without limitation, bus stops, streetcar stops, and bike share stations);
- (3) Worker access to above- ground or underground infrastructure owned or operated by any public or private utility agency;
- (4) Fire hydrant access;
- (5) Access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the right-of-way; or
- (6) Access to any fire escape.

(S) No placement of any small cell facility or wireless support structure shall necessitate tree trimming, cause removal of, or otherwise damage any tree located within the city right-of-way or a designated utility easement.

(Ord. 3636, passed 7-10-18)

§ 99.08 SAFETY REQUIREMENTS.

(A) *Prevention of failures and accidents.* Any person who owns a small cell facility and/or wireless support structure sited in the right-of-way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard

technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

(B) *Compliance with fire safety and FCC Regulations.* Small cell facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.

(C) *Surety bond or equivalent financial tool for cost of removal.* All owners must procure and provide to the city a bond, or must provide proof of an equivalent financial mechanism, to specifically cover the cost of removal of unused or abandoned small cell facilities and/or wireless support structures or damage to city property caused by an operator or its agent of each small cell facility and/or wireless support structure in case the city has to remove or pay for its removal. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.

(Ord. 3636, passed 7-10-18)

§ 99.09 RECOVERY OF COSTS.

(A) *Application processing fee.* For processing an application for consent, the city may charge a fee for each small cell facility and wireless support structure requested as prescribed under R.C. § 4939.0316 and as listed in Chapter 37: General Fee Schedule.

(B) *Annual collocation fee.* For reimbursement for operator's attachment of small cell facilities to wireless support structures owned or operated by the city and located in the right-of-way, the city may charge an annual fee as prescribed in R.C. § 4939.022 and as listed in Chapter 37: General Fee Schedule.

(C) Tax liabilities and assessments not applicable. Placement of small cell facilities in the right-of-way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject the city to any state or local tax liabilities or assessments.

(Ord. 3636, passed 7-10-18)

§ 99.10 NONCONFORMITY.

A nonconforming small cell facility and/or wireless support structure shall immediately lose its nonconforming designation and must be brought into compliance with all of the provisions of this chapter, and all other applicable city laws and ordinances or be removed if any of the following conditions are present:

(A) The nonconforming small cell facility and/or wireless support structure or a part of the nonconforming small cell facility and/or wireless support structure is altered, modified, relocated, replaced, or changed in any manner whatsoever;

(B) The nonconforming small cell facility and/or wireless support structure is damaged or deteriorated and requires any process of reconstruction, repair, maintenance, or restoration, and the cost of said reconstruction, repair, maintenance, or restoration exceeds 50% of the small cell facility and/or wireless support structure's replacement cost; or

(C) The nonconforming small cell facility and/or wireless support structure is abandoned.

(Ord. 3636, passed 7-10-18)

§ 99.11 REVOCATION.

The following are grounds for revocation or denial of approval:

(A) The intentional provision of materially misleading information by the applicant (the provision of information is considered "intentional" where the applicant was aware of the inaccuracies or could have discovered the inaccuracies with reasonable diligence);

(B) The failure to comply with any condition of approval, order, or other applicable law, rule, or regulation which may jeopardize the public health, safety, and welfare and for which a reasonable time period has been provided for the permittee to remedy noncompliance;

(C) The site, structure or operation is otherwise not in compliance with any other provision(s) of applicable law;

(D) The subject site or use is otherwise not in compliance due to incomplete work or projects, or is not in compliance due to unperformed or slow to perform work as part of an open permit.

(Ord. 3636, passed 7-10-18)

§ 99.12 APPEALS.

(A) The Board of Zoning Appeals shall hear and decide upon appeals where it is alleged that there is any written decision made by the City Manager in the administration or enforcement of this chapter.

(B) A complete written appeal shall be filed by the appellant within 30 days of the date of the written decision of the City Manager, or the appeal shall become void. The

appeal shall be filed with the Board of Zoning Appeals. The written appeal shall:

(1) Cite specific provisions of this chapter that are alleged to have been interpreted in error or the specific action being

appealed and the grounds on which the appeal is being made;

(2) Include an application fee for the appeal in an amount set specified in Chapter 37: General Fee Schedule.

(3) Include such other information as may be reasonably required to render a decision;

(4) A statement as to why the appellant has standing as an aggrieved party to pursue the appeal by a statement of the way in which the written decision adversely affects the appellant.

(C) Upon receipt of an appropriately completed appeal application, the City Manager shall transmit to the Board of Zoning Appeals all documentation constituting the record upon which the written decision(s) being appealed were based.

(D) Upon receipt of an appropriately completed appeal application, the Board of Zoning Appeals shall set a time and place for a hearing on the appeal. The hearing shall be commenced after an appeal has been filed. Written notice of the hearing shall be sent to the aggrieved party at least ten days prior to the hearing. The failure of delivery of such notice, however, shall not invalidate any subsequent proceedings. The aggrieved party or its representative may appear and be heard at the hearing, and present any evidence the party desires in support of its position.

(E) The Board of Zoning Appeals may affirm, reverse, or modify, in whole or in part, the decision appealed from, and to that end, the Board of Zoning Appeals shall have all the powers of the City Manager with respect to such decision. The concurring vote of a majority of the members of the Board of Zoning Appeals shall be necessary to reverse or modify any decision of the City Manager under this chapter. The Board of Zoning Appeals shall render a written decision on the appeal without unreasonable delay after the close of the hearing, and in all cases within 30 days after the close of the hearing.

(F) The filing of an appeal shall stay any further administrative action in regards to the written decision being appealed until a decision on the appeal is rendered by the Board of Appeals.

(G) The City Manager shall maintain a complete record of all actions of the Board of Zoning Appeals with respect to appeals.

(H) The Board of Zoning Appeals shall not be required to hear any case that has been the subject of an appeal during the previous 12 months, unless substantial new evidence, critical to the case, becomes available.

(I) Appeals from the Board of Appeals in their decision on appeals applications shall be to the county court of common pleas, as provided by state statutes.

(Ord. 3636, passed 7-10-18)

§ 99.13 SEVERABILITY.

The provisions of this chapter are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances is held invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.

(Ord. 3636, passed 7-10-18)

§ 99.99 PENALTY.

(A) Any person in violation of any of the terms of this chapter, or who, being the owner or agent of the owner of any lot, tract, or parcel of land, shall suffer or permit another to erect, construct, reconstruct, alter, repair, convert, attach, or maintain any such facility, shall be deemed to have violated the provisions hereof and commits a misdemeanor of the first degree each day during the period such violation continues.

(B) If any utility installation is erected, constructed, reconstructed, altered, repaired, converted, attached, or maintained in violation of this chapter or of any regulations made pursuant hereto, the City Manager, in addition to other remedies, may institute in the name of the city any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, attachment, or use, to restrain, correct, or abate such violation, to prevent the use of such utility installation, and/or to prevent any illegal act, conduct, business, or use in or about such utility installation.

(C) The City Manager is authorized to make requests and to issue orders regarding utility installations in the right-of-way for the purpose of public safety and compliance with this chapter. The City Manager is also authorized to conduct visual and external inspections of utility installations in the right-of-way at any time and shall make efforts to coordinate with the provider responsible for a utility installation for any internal inspection of the relevant equipment.

(Ord. 3636, passed 7-10-18)