Supreme Court of Ohio Clerk of Court - Filed September 18, 2015 - Case No. 2015-0575

IN THE SUPREME COURT OF OHIO

New York Frozen Foods, Inc. and Affiliates,	)	Case No. 15-0575
Appellants/Cross-Appellees,	)	On Appeal from the Ohio Board of Tax Appeals
v.	)	
Bedford Heights Income Tax Board of Review, et al,	)	Board of Tax Appeals Case No. 2012-55
Appellees/Cross-Appellants.	)	

MERIT BRIEF OF AMICUS CURIAE THE REGIONAL INCOME TAX AGENCY IN SUPPORT OF APPELLEES/CROSS-APPELLANTS, BEDFORD HEIGHTS INCOME TAX BOARD OF REVIEW AND CITY OF BEDFORD HEIGHTS INCOME TAX ADMINISTRATOR

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INTRODUCTION

The Regional Income Tax Agency ("RITA") submits this brief in support of the Appellees/Cross-Appellants ("Bedford Heights") to offer perspective on the relationship of RITA and the City of Bedford Heights as it relates to income tax administration and to offer its perspective on the various arguments raised by the Appellants, New York Frozen Foods, Inc. and Affiliates ("NYFF").

STATEMENT OF INTEREST OF RITA

The City of Bedford Heights is a participant in a regional council of governments formed under R.C. Chapter 167, which council of governments is named Regional Council of Governments. The council of governments was established in 1971 for the purpose of fostering cooperation between municipalities through the sharing of facilities for their common benefit. This purpose included the establishment of a central collection facility for the administration of the income tax laws of the municipalities participating in the council of governments, the collection of income taxes on behalf of each such member and the doing of all things allowed by law to accomplish such purpose. RITA is the central collection facility established by the council of governments to carry out this purpose for the participants. When formed in 1971, the council of governments and RITA had 31 municipal members. Today there are 246 cities and villages, including the City of Bedford Heights, which are members of the council of governments and RITA.

As provided in the council of governments agreement executed by each member, it is the responsibility of RITA, through its Board of Trustees, Administrator, and staff appointed by the Administrator, to administer and enforce the income tax ordinances of each of the municipalities

participating in the council of governments, with each municipality retaining the right to administer and enforce its own income tax laws coincidentally with RITA.

As part of its administrative duties RITA has established uniform rules and regulations which supplement the municipal income tax ordinances of the participating municipalities. The rules and regulations are an important tool for the uniform and orderly administration of the municipal income tax ordinances of the participants in the council of governments. The rules and regulations help taxpayers to understand RITA's administration of the income tax ordinances that it administers. They are instructive to taxpayers in areas such as the appropriate method for calculating refunds requested due to time worked outside of a municipality; the order in which funds are applied to past due and current liabilities; the manner and timeframe in which a taxpayer may request to use a method of apportioning income to a municipality that is an alternative to the prescribed method, and, the subject of this matter, the appropriate administration of amended returns.

The issues before this Court are extremely important to RITA and all 246 cities and villages that participate in the Regional Council of Governments. Of particular import to RITA and its members, are NYFF's Propositions of Law No. 1 and No. 2.

With regard to its arguments advanced under Proposition of Law No. 1, NYFF argues that Bedford Heights' refusal to accept NYFF's amended returns is contrary to the provisions of R.C. 718.06. However, R.C. 718.06 plainly and unambiguously contains no express restriction or limitation on Bedford Heights, or any municipality, that requires a municipality to accept an amended income tax return from a taxpayer that seeks to change its method of filing from a single filer to a consolidated filer. Should this Court accept NYFF's Proposition of Law No. 1, such an acceptance would amount to a departure by the Court from its rulings on the power of

municipalities to levy an income tax, subject only to **express** limitation on that power by the General Assembly. Only by an express act of restriction can the General Assembly demonstrate that it is exercising its authority to restrict or limit the taxing power of municipalities. A finding to the contrary by this Court would have devastating consequences for municipalities and municipal taxpayers, resulting in an entirely new examination of the General Assembly's actions with regard to municipal income tax; requiring municipalities, municipal taxpayers and the courts to examine and interpret the implications of the General Assembly's silence on a matter as opposed to examining and understanding the General Assembly's expressly stated restrictions or limitations. Such a requirement will lead to uncertainty in the administration, enforcement and collection of municipal income tax, for not only all of the municipalities served by RITA and the council of governments but all Ohio municipalities as well as all municipal income taxpayers.

With its Proposition of Law No 2, NYFF asks this Court to find that Bedford Heights' incorporation of future amendments to the RITA rules and regulations is an unconstitutional delegation of its legislative authority. As demonstrated in argument below, and in the Merit Brief of Bedford Heights, NYFF does not cite a single case from this Court that supports such a finding. On the contrary, the cases cited by NYFF support future incorporation when the legislative body expresses its intent to do so. RITA periodically updates its rules and regulations to address changes in administration, or changes in the law affecting administration, of the income tax ordinances. The 246 members of the council of governments do not re-adopt the RITA rules and regulations each time an update is made. This would be impractical, impede efficient and uniform administration and is wholly unnecessary when a municipality has properly incorporated future amendments at the time it adopts the RITA rules and regulations, as Bedford Heights has done here.

For all of the reasons stated herein, and as eloquently and competently argued by Bedford Heights in its Merit Brief, RITA urges this Court to reject each and every one of NYFF's Propositions of Law and to accept Bedford Heights' Proposition of Law on Cross-Appeal.

STATEMENT OF THE CASE AND FACTS

RITA agrees with the Statement of the Case and Facts as set forth in the Merit Brief of Bedford Heights.

ARGUMENT

I. RESPONSES TO NYFF'S PROPOSITIONS OF LAW NO. 1 AND NO. 2

NYFF PROPOSITION OF LAW NO. 1: The City of Bedford Heights' refusal to accept Appellants' amended consolidated Bedford Heights' net profits tax return is contrary to R.C. 718.06, which authorizes a taxpayer to file a municipal consolidated net profits tax return if the taxpayer filed a consolidated federal income tax return for the same tax period.

NYFF's Proposition of Law No. 1 should be rejected by this Court. R.C. 718.06 plainly and unambiguously contains no express statutory prohibition, restriction or limitation requiring a municipality to accept an amended income tax return from an affiliated group of corporations that changes its method of filing to a consolidated filing from a single filing.

As this Court is well aware, Ohio municipalities derive their power to tax from Section 3, Article XVIII, of the Ohio Constitution, which grants to municipalities the authority to exercise all powers of local self-government. "There can be no doubt that the grant of authority to exercise all power of local government includes the power of taxation." *State ex rel. Zielonka v. Carrell* 99 Ohio St. 220, 227, 126 N.E. 134 (1919). This power to tax is subject to restriction or limitation by the Ohio General Assembly under Section 6, Article XIII and Section 13, Article XVIII of the Ohio Constitution. However, with regard to the General Assembly's authority, this Court has stated,

> These provisions clearly delegate power to the General Assembly to limit exercise of the municipal taxing power. When these provisions are interpreted in relation to the purpose and scope of the Home Rule Amendment, it is evident that proper exercise of this limiting power requires an **express act of restriction by the General Assembly**. (Emphasis added)

Cincinnati Bell Tel. Co. v. Cincinnati, 81 Ohio St. 3d 599, 605, 693 N.E. 2d 212 (1998)

As R.C. 718.06 is silent with respect to amended income tax returns, it cannot be read as an express act of restriction on municipalities that requires a municipality to accept amended income tax returns from an affiliated group of corporations that changes the method of filing from single filer to consolidated filer.

Had the General Assembly intended to restrict or limit municipalities by requiring that municipalities accept amended returns, it would have stated as much. Telling in this regard is the General Assembly's recent passage of Substitute House Bill 5 (130th General Assembly) which completely overhauled the language in R.C. 718.06 with respect to consolidated income tax returns and still contains no express restriction or limitation that requires a municipality to accept an amended income tax return that changes the method of filing from single filing to a consolidated filing. In fact, the General Assembly's only venture into this subject in Substitute House Bill 5 is an express restriction, or requirement, that it seeks to impose not on municipalities, but on municipal income taxpayers.

> 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.

R.C. 718.41(A) (effective January 1, 2016)

For what purpose would a taxpayer be required by the General Assembly to notify a municipal tax administrator of its intent to file an amended income tax return from a separate return to a consolidated return if municipalities are required to accept such amendments? Only

time and future litigation will tell if the General Assembly's attempt to impose restrictions and limitations on municipal income taxpayers in the area of municipal taxation will survive constitutional scrutiny.

As R.C. 718.06 contains no express limitation or restriction on a municipality's power to tax by requiring the acceptance of amended income tax returns, NYFF's Proposition No. 1 must be rejected.

NYFF PROPOSITION OF LAW NO. 2: Bedford Heights Ordinance Section 173.56, which was last amended by the City Council of Bedford Heights on December 21, 2004, may only incorporate by reference those R.I.T.A. Rules that were in existence on December 21, 2004; to attempt to incorporate later amendments to the R.I.T.A. Rules amounts to an unconstitutional delegation of legislative authority.

NYFF's Proposition of Law No. 2 is without merit, is unsupported by the case law it cites in support and should be rejected. The City of Bedford Heights's express intent to incorporate future amendments to the RITA rules and regulations is a proper, constitutional exercise of its legislative authority. Furthermore, the RITA rules and regulations do not "enact tax laws" as suggested by NYFF.

Bedford Heights Ordinance Section 173.56 appropriately incorporated by reference future amendments to the RITA Rules and Regulations.

NYFF argues that "a law that adopts the provisions of another law or rule through incorporation by reference may only adopt the other law or rule as it existed at the time the incorporating law was enacted or last modified". NYFF Merit Brief, at p. 18. This statement is a mischaracterization of the case law cited by NYFF in support of this statement. In fact, this Court has found the opposite in both the *Gill* case and the *Timken* case cited by NYFF.

NYFF primarily relies upon *State v. Gill*, 63 Ohio St. 3d 53, 584 N.E. 2d 1200 (1992) to support its constitutional challenge to the City of Bedford Heights's adoption and incorporation of future amendments to the RITA rules and regulations. With *Gill*, NYFF tries to back into a

legal conclusion that supports its Proposition of Law No. 2, but fails. In *Gill*, this Court simply interpreted a particular section of the Revised Code that incorporated a federal statute, "as amended", to mean that the Revised Code section incorporated that federal statute as it existed on the date that the Revised Code section was enacted. This was an interpretation of one specific section of the Revised Code, not a holding by this Court that prohibits the incorporation of future amendments to cross-referenced statutes.

This Court in fact indicated support for such incorporation of future amendments to cross-referenced statutes:

> [H]ad the General Assembly intended to incorporate the federal law subsequent to the enactment of R.C. 2913.46(A), it certainly knew how to do so. For example, R.C. 2915.01(AA) provides that the "'Internal Revenue Code' means the 'Internal Revenue Code of 1986,' 100 Stat. 2085, 26 U.S.C. 1, as now or hereafter amended". ... In utilizing the language "as now or hereafter amended," the General Assembly obviously intended to incorporate amendments subsequent to the time R.C. 2915.01(AA) was enacted.

Gill, 63 Ohio St. 3d, at 55-56. NYFF's reliance on the *Timken* case is similarly misplaced as *Timken* supports the concept of the incorporation of future amendments to cross-referenced statutes:

> Where one statute adopts the particular provisions of another by a specific and descriptive reference to the statute or provisions adopted, such adoption takes the statute as it exists at the time of adoption and does not include subsequent additions or modifications of the statute so taken **unless** it does by express intent.

State ex rel. Timken Roller Bearing Co. v. Indus. Comm'n, 136 Ohio St. 148, 153, 24 N.E. 2d 448 (1939) (citing Sutherland on Statutory Construction (2 Ed.), 787 and 788, Section 405).

The City of Bedford Heights could not have been more clear or obvious in expressing its intention to adopt the RITA rules and regulations "in the most current edition or update thereof, including all additions, deletions, and amendments made subsequent hereto". (Bedford Heights

Ordinance ("BHO") Section 173.56) Such an adoption is an appropriate exercise of its legislative authority and is not an unconstitutional delegation of its legislative authority to RITA.

The RITA Rules and Regulations do not enact tax laws.

The inclusion or exclusion of items for taxation purposes is in the discretion and power of the City of Bedford Heights, under its powers of local self-government, subject to the express limitations or restrictions of the General Assembly. The RITA rules and regulations do not enact tax laws or impose tax. By adopting the RITA rules and regulations and any subsequent amendments, Bedford Heights has not delegated to RITA its legislative authority to enact tax law as argued by NYFF. This is clear from the language used by Bedford Heights when the RITA rules and regulations were adopted. "In any matter where a rule or regulation adopted and promulgated by the Tax Administrator conflicts with any of R.I.T.A.'s Rules and Regulations, the rule or regulation adopted and promulgated by the Tax Administrator shall prevail over and render null and void the R.I.T.A. rule or regulation with respect to the City of Bedford Heights." BHO 173.56(b). Similarly, the RITA rules and regulations clearly yield to a municipality's income tax ordinance where a conflict exists between the RITA rules and regulations and the ordinance[1]. Appearing at the outset of each Chapter of the RITA rules and regulations is the following statement:

> In the event of a conflict with this Chapter of the Rules & Regulations and any provision(s) of the Ordinance of this municipality, the Ordinance will supersede.[2]

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[1] For all of the reasons stated by Bedford Heights in its Merit Brief in response to NYFF's Proposition of Law No. 3, no conflict exists between the Bedford Heights Ordinances and the RITA rules and regulations as it relates to the administration of amended returns. The RITA rules and regulations do not permit or license that which the Bedford Heights Ordinances forbids, or vice versa. *Fondessy Enters., Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 492 N.E. 2d 797 (1986). The Bedford Heights Ordinances do not permit a taxpayer to amend a return to change its method of filing after the due date for filing the original return.

[2] As RITA rules and regulations supplement all of the income tax ordinances it administers, the reader of the RITA rules and regulations is advised that any place in the rules and regulations where the term this municipality appears, the name of any member municipality can be substituted.

RITA offers the following examples of how the RITA rules and regulations serve to supplement the BHO, and do not enact tax law.

BHO Section 173.05 is the tax law enacted by the City of Bedford Heights that provides that a substitute method of allocating net profits to Bedford Heights may be approved by the Administrator. Section 3:02(B) of the RITA rules and regulations supplements the tax law enacted by the City of Bedford Heights by prescribing the rules for requesting an alternate method. These rules prescribe the timing of the request, the content of the request and the manner in which the request is to be made. BHO are silent on these administrative matters. If RITA were to amend the rule to change the timing of the request or require additional content this would not amount to an enactment of a tax law or a conflict with municipal ordinance.

BHO Section 173.03(b) is the tax law enacted by the City of Bedford Heights that provides that the Bedford Heights income tax is imposed on the salaries, qualifying wages, commissions and other compensation of nonresidents for work done or services performed or rendered in the City of Bedford Heights. Section 9:02(E) of the RITA rules and regulations supplements the tax law enacted by the City of Bedford Heights by instructing nonresident employees how to calculate a refund of taxes when taxes have been withheld by the employee's employer and paid to Bedford Heights on wages the employee earned outside of Bedford Heights. These instructions include the formula to be used and prescribes how sick days, vacation days and holidays are to be factored into the calculation. BHO are silent on these administrative items. Should RITA amend the rule/formula to account differently for vacation days, this is not the enactment of a tax law or a conflict with municipal ordinance.

BHO Section 173.17 is the tax law enacted by the City of Bedford Heights that requires employers to withhold and remit to Bedford Heights the tax due to it on the salaries, qualifying

wags, commissions and other compensation earned by employees for work done or services performed or rendered in Bedford Heights. Section 6:03(C) of the RITA rules and regulations supplements the tax law enacted by the City of Bedford Heights by instructing employers as to how they are to remedy a situation in which the employer has withheld more tax than required from an employee's wages or not enough. This includes instruction to remedy improper withholding for current employees and former employees and instruction based upon when the employer discovers the improper withholding. BHO are silent on this administrative matter. Should RITA amend the rule regarding the timing of the employer's discovery of improper withholding this would not amount to enactment of a tax law or a conflict with municipal ordinance.

Because the City of Bedford Heights clearly and plainly expressed its intent to incorporate future amendments to the RITA rules and regulation at the time it last adopted the RITA rules and regulations in December 2004, which incorporation is appropriate under the *Gill* and *Timken* cases cited by NYFF; and because the future amendment to the RITA rules and regulations at issue in this case does not amount to RITA enacting a tax or imposing an additional tax burden on NYFF, NYFF's Proposition of Law No. 2 must be rejected.

CONCLUSION

On behalf of the 246 Ohio cities and villages that are members of RITA and the Regional Council of Governments, RITA urges this Court to reject each of the Propositions of Law advanced by NYFF; accept the Proposition of Law advanced by Bedford Heights on its Cross-Appeal; and enter its judgment accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Merit Brief of Amicus Curiae The Regional Income Tax Agency In Support of Appellees/Cross-Appellants, Bedford Heights Income Tax Board of Review and City of Bedford Heights Income Tax Administrator was filed with the Ohio Supreme Court and served electronically upon the below named parties and/or counsel on September 18, 2015.

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APPENDIX

§ 718.06. [Operative Until 1/1/2016] Consolidated income tax return.

Ohio Statutes

Title 7. MUNICIPAL CORPORATIONS

Chapter 718. MUNICIPAL INCOME TAXES

Current with legislation signed by the Governor as of 7/16/2015

§ 718.06. *[Operative Until 1/1/2016]* Consolidated income tax return

On and after January 1, 2003, any municipal corporation that imposes a tax on the income or net profits of corporations shall accept for filing a consolidated income tax return from any affiliated group of corporations subject to the municipal corporation's tax if that affiliated group filed for the same tax reporting period a consolidated return for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

Cite as R.C. § 718.06

History. Repealed by 130th General Assembly File No. TBD, HB 5, §2, eff. 3/23/2015, applicable to municipal taxable years beginning on or after 1/1/2016.

Effective Date: 07-26-2000

§ 718.06. [Operative 1/1/2016] Consolidated municipal income tax return.

Ohio Statutes

Title 7. MUNICIPAL CORPORATIONS

Chapter 718. MUNICIPAL INCOME TAXES

Current with legislation signed by the Governor as of 7/16/2015

§ 718.06. *[Operative 1/1/2016]* Consolidated municipal 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. 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 municipal income tax returns under division (B)(2) of this section or 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 718.01 of the Revised Code, 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 (E) of section 718.01 of the Revised Code 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 718.02 of the Revised Code, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused 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 718.02 of the Revised Code, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused 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 718.02 of the Revised Code, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused 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 718.02 of the Revised Code 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.

Cite as R.C. § 718.06

History. Added by 130th General Assembly File No. TBD, HB 5, §1, eff. 3/23/2015, applicable to municipal taxable years beginning on or after 1/1/2016.

§ 718.41. [Operative 1/1/2016] Amended returns.

Ohio Statutes

Title 7. MUNICIPAL CORPORATIONS

Chapter 718. MUNICIPAL INCOME TAXES

Current with legislation signed by the Governor as of 7/16/2015

§ 718.41. *[Operative 1/1/2016]* Amended returns

(A) 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 municipal corporation in accordance with this chapter 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 this chapter. 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 718.12 of the Revised Code 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 (E) of section 718.12 of the Revised Code 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 municipal corporation 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 718.19 of the Revised Code. 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.

Cite as R.C. § 718.41

History. Added by 130th General Assembly File No. TBD, HB 5, §1, eff. 3/23/2015, applicable to municipal taxable years beginning on or after 1/1/2016.

§ 3. Powers.

Ohio Constitution

Article XVIII. Municipal Corporations

Current through the November 4, 2014 election

§ 3. Powers

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

§ 6. Organization of cities, etc.

Ohio Constitution

Article XIII. Corporations

Current through the November 4, 2014 election

§ 6. Organization of cities, etc

The General Assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

§ 13. Taxation, debts, reports, and accounts.

Ohio Constitution

Article XVIII. Municipal Corporations

Current through the November 4, 2014 election

§ 13. Taxation, debts, reports, and accounts

Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

173.56 ADOPTION OF R.I.T.A.'S RULES AND REGULATIONS.

(a) Effective January 1, 1996, there is hereby adopted for the purpose of establishing rules and regulations for the collection of municipal income taxes and the administration and enforcement of this chapter the Rules and Regulations of the Regional Income Tax Agency (R.I.T.A.), in the most current edition or update thereof, including all additions, deletions, and amendments made subsequent hereto, and the same are hereby incorporated herein as if fully set out at length save and except such portions as may be hereinafter added, modified, or deleted therein.

(b) R.I.T.A.'s Rules and Regulations shall be in addition to any rules and regulations adopted and promulgated by the Tax Administration pursuant to authority granted under Section 173.04 herein. In any matter where a rule or regulation adopted and promulgated by the Tax Administrator conflicts with any of R.I.T.A.'s Rules and Regulations, the rule or regulation adopted and promulgated by the Tax Administrator shall prevail over and render null and void the R.I.T.A. rule or regulation with respect to the City of Bedford Heights.
(Ord. 2004-218. Passed 12-21-04.)

173.57 LOCAL JOB CREATION INCOME TAX CREDITS.

(a) Council may grant, by ordinance, local job creation income tax credits against the City's income tax under Ohio R.C. 718.15 to taxpayers who also receive a tax credit from the State of Ohio under Ohio R.C. 122.17 for a project that will create jobs in the City.

(b) The local job credit income tax credit shall be measured as a percentage of the new income tax revenue the City derives from new employees of the taxpayer and shall be for a term not exceeding ten years.

(c) The local job credit income tax credit shall be based upon a finding by Council that the project:

(1) Will create jobs in the state and the City;
(2) Is economically sound and will benefit the people of the state and the City by increasing opportunities for employment and strengthening the economy of the State and the City; and
(3) Receiving the tax credit is a critical factor in the decision of the taxpayer to go forward with the project.

(d) The City and the taxpayer shall enter into an agreement specifying all the conditions of the credit prior to passing an ordinance granting the local job creation income tax credit.
(Ord. 2004-218. Passed 12-21-04.)

173.99 PENALTY.

(a) Whoever violates any of the provisions of this chapter for which no penalty is otherwise provided, shall be guilty of a misdemeanor of the first degree for each offense.

(b) Whoever violates Section 173.46 shall be punished as provided in subsection (a) hereof and shall, in addition, be subject to immediate dismissal from service to the City. Each disclosure shall constitute a separate offense.
(Ord. 2004-218. Passed 12-21-04.)

(h) On the portion of the distributive share of the net profits earned and received of a resident shareholder of S Corporation income (but for tax years after 2004 only on such income 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 Revenued Code), whether or not such S Corporation business entity has an office or place of business in the City of Bedford Heights.
The portion of the net profits attributable to the City of a taxpayer conducting a business, profession or other activity both within and without the boundaries of the City of Bedford Heights shall be determined as provided in Sections 718.01 and 718.02 of the Ohio Revised Code in accordance with the Rules and Regulation adopted pursuant to this chapter.
(Ord. 2004-218. Passed 12-21-04.)

173.04 EFFECTIVE PERIOD.

The tax shall be levied, collected and paid with respect to the salaries, qualifying wages, commissions and other compensation, and with respect to the net profits of businesses, professions or other activities earned and received or accrued on and after July 1, 1981.
(Ord. 2004-218. Passed 12-21-04.)

173.05 METHOD OF DETERMINATION.

The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City of Bedford Heights, in the absence of actual records thereof, shall be determined as follows:

Multiply the entire net profits by a business allocation percentage to be determined by a three factor formula of property, payroll and sales, each of which shall be given equal weight, as follows:

(a) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City of Bedford Heights during the taxable period to the average net book value of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. As used in the preceding paragraph, real property and tangible personal 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.

(b) 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 Bedford Heights to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed.

(c) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City of Bedford Heights to gross receipts of the business or profession during the same period from sales and services, wherever made or performed. In the event that the foregoing allocation formula does not produce an equitable result, another basis may, by approval of the Administrator and under uniform regulations, be substituted so as to produce such result.

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

(1) The net profits allocable to the City of Bedford Heights from business, professional or other activities conducted in the City by corporations or unincorporated entities (whether resident of non-resident) maybe determined from the records of the taxpayer only if the taxpayer has bonafide records which disclose with reasonable accuracy what portion of its net profits is attributable to the part of its activities conducted within the City of Bedford Heights.

(2) If the books and records of the taxpayer are used for the basis for apportioning net profits, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Administrator to determine whether the net profits attributable to the City of Bedford Heights are apportioned with reasonable accuracy.

(3) In determining the income allocable to the City of Bedford Heights from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the City of Bedford Heights.

(Ord. 2004-218. Passed 12-21-04.)

173.06 SALES MADE IN THE CITY.

As used in Section 173.05(c), "sales made in the City" means:

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

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

(c) All sales of tangible personal property which is shipped from a place within the City of Bedford Heights to purchasers outside the City regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(Ord. 2004-218. Passed 12-21-04.)

173.07 TOTAL ALLOCATION.

Add together the percentages determined in accordance with Section 173.05(a), (b) and (c) or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving such total in order to obtain the business allocation percentage referred to in Section 173.05.

A factor is applicable even though it may be allocable entirely in or outside the City of Bedford Heights. (Ord. 2004-218. Passed 12-21-04.)

(x) "Taxable income" means qualifying wages, salaries and other compensation paid by an employer or employers before any deduction of any kind and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this chapter. "Other compensation" includes, but is not limited to, bonuses; commissions; incentive payments; directors' and other fees; property in lieu of cash; tips; dismissal or severance pay; supplemental income benefits for early retirement regardless of their label; contest prizes and awards; tax shelter plans (including contributions to retirement plans, annuities or Independent Retirement Accounts (IRAs) and all other deferred compensation plans); vacation and sick pay regardless of label (such as sick leave including third-party sick pay, disability, vacation pay, etc.); wage continuation plans; supplemental employment benefits (subpay); depreciation recapture; gifts and gratuities in connection with employment; fellowships, grants and stipends (including those representing payment for teaching, research or other services); group term life insurance protection over fifty thousand dollars ($50,000) (taxed on the cost of such insurance in excess of fifty thousand dollars ($50,000)); benefits resulting from an employer's assumption of a tax; stock options given as compensation; income from gambling, gaming, wagering, lotteries (including the Ohio State Lottery) and schemes of chance; and all other compensation earned, received or accrued and not excluded in Section 173.10 herein.

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

(z) "Tax Administrator" or "Administrator" means the Administrator of the Department of Taxation of the City of Bedford Heights or the person executing the duties of such Administrator.

(aa) "Taxpayer" means a person, whether an individual, partnership, limited partnership, association, corporation or other entity, required hereunder to file a return or pay a tax.

(bb) "Qualifying wages" means wages as defined in Section 1321 (a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments - from required additions and deductions. "Qualifying wage" represents employees' income including non-qualified deferred compensation and stock options from which municipal tax shall be deducted by the employer, and any wages not considered as part of "Qualifying wage" shall not be taxed by the Municipality. This definition is effective January 1, 2004, for taxable years 2004 and later. (Ord. 2004-218. Passed 12-21-04.)

173.03 RATE AND INCOME TAXABLE.

An annual tax for the purpose specified in Section 173.01 shall be imposed on and after July 1, 1981, at the rate of two percent (2%) per year upon the following:

(a) On all salaries, qualifying wages, commissions and other compensation earned and received or earned and accrued on and after July 1, 1981 by residents of the City of Bedford Heights. "Other compensation" shall include, but is not limited to, income from gambling, gaming, wagering, lotteries (including the Ohio State Lottery) and schemes of chance (to which no regard is given to losses or to the location where such gambling, gaming, wagering lotteries and schemes of chance were received) as well as all other compensation listed as "Other Compensation" in Section 173.02(w) herein.

(b) On all salaries, qualifying wages, commissions and other compensation earned and received or earned and accrued on and after July 1, 1981 by nonresidents of the City of Bedford Heights for work done or services performed or rendered OF attributed to work done or services performed or rendered within the City of Bedford Heights.

A non-resident who works in the City of Bedford Heights twelve (12) or fewer days per year shall be considered an occasional entrant, and shall not be subject to the City municipal income tax for those days. For purposes of the 12-day calculation, any portion of a day worked in the City of Bedford Heights shall be counted as one day worked in the City. Beginning with the thirteenth day, the employer of said individual shall begin withholding the City income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the City of Bedford Heights in accordance with the requirements of this Chapter. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in the City of Bedford Heights by the individual for the first twelve days. If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the City of Bedford Heights. The 12-day occasional entry rules does not apply to entertainers, or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events.

(c) On the portion attributable to the City of the net profits earned and received or earned and accrued after July 1, 1981 of all resident unincorporated business entities or professions or other activities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City of Bedford Heights.

(d) On the portion of the distributive share of the net profits earned and received or earned and accrued on and after July 1, 1981, of a resident partner or owner of a resident - unincorporated business entity not attributable to the City of Bedford Heights and not levied against such unincorporated business entity.

(e) On the portion attributable to the City of the net profits earned and received or earned and accrued on or after July 1, 1981, of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered and business and other activities conducted in the City of Bedford Heights, whether or not such unincorporated business entity has an office or place of business in the City of Bedford Heights.

(f) On the portion of the distributive share of the net profits earned and received or earned and accrued on or after July 1, 1981, of a resident partner or owner of a nonresident unincorporated business entity not attributable to the City of Bedford Heights and not levied against such unincorporated business entity.

(g) On the portion attributable to the City of the net profits earned and received or earned and accrued on and after July 1, 1981, of all corporations derived from sales made, work done, services performed or rendered and business or activities conducted in the City of Bedford Heights whether or not such corporations have an office or place of business in the City of Bedford Heights.

173.17 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Tax Administrator, each employer within or doing business within the City of Bedford Heights shall deduct at the time of the payment of such salary, qualifying wage, commission or other compensation, the tax imposed by Section 173.03 on the gross salaries, qualifying wages, commissions or other compensation due by the employee and shall, on or before the last day of the month following the close of each calendar quarter make a return and pay to the Tax Administrator the amount of taxes so deducted, subject to the provisions of subsections (c), (d) and (e) hereof. Such returns shall be on a form or forms prescribed by or acceptable to the Tax Administrator and shall be subject to the rules and regulations prescribed therefor by the Tax Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

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

(c) Such employer who deducts the tax in an amount of two hundred fifty dollars ($250.00) or more in the first or second month of a calendar quarter shall, on or before the twentieth day of the following month, pay to the Tax Administrator the amount of taxes so deducted.

(d) Such employer who makes such payments on a monthly basis for the first two months of a calendar quarter shall pay such tax deducted for the third month of a calendar quarter at the regular time for filing the employer's quarterly return of income tax withheld.

(e) Such payments shall be on a form or forms furnished by or obtainable upon request from the Tax Administrator, setting forth the amount of tax deducted for the month.

(f) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him exclusively in or about such person's residence, even though such residence is in the City of Bedford Heights, but such employee shall be subject to all of the requirements of this chapter.
(Ord. 2004-218. Passed 12-21-04.)

173.18 DECLARATIONS OF INCOME NOT COLLECTED AT SOURCE.

(a) Every person who anticipates any taxable income which is not subject to Section 173.17 or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 173.03 shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any. However, if a person's income is wholly from wages from which the full tax will be withheld and remitted to the City, or to another income taxing city, in accordance with Section 173.17, such person need not file a declaration.

(b) No penalties or interest shall be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period, or if 90% of the actual liability has been received. (Ord. 2004-218. Passed 12-21-04.)

CHAPTER 9:00

COLLECTION OF UNPAID TAXES & REFUNDS OF OVERPAYMENTS

Section 9:01	Unpaid Taxes
Section 9:02	Refunds

CHAPTER 10:00

DISBURSEMENT OF RECEIPTS OF TAX COLLECTION

Section 10:01	General

CHAPTER 11:00

DUTIES AND AUTHORITY OF THE ADMINISTRATOR

Section 11:01	Collection of Tax and Records
Section 11:02	Duty to Enforce Collection
Section 11:03	Authority to Make and Enforce Regulations
Section 11:04	Authority to Arrange Installment Payments
Section 11:05	Authority to Determine Amount of Tax Due
Section 11:06	Authority to Make Investigations
Section 11:07	Authority to Compel Production of Records
Section 11:08	Refusal to Produce Records
Section 11:09	Confidential Nature of Information Obtained
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CHAPTER 12:00

BOARD OF REVIEW ESTABLISHED

Section 12:01	Composition
Section 12:02	Duty to Approve Regulations and to Hear Appeals
Section 12:03	Right of Appeal
Section 12:04	Not Public Records

GENERAL INFORMATION

The Administrator, as referred to in these Rules & Regulations, means the Administrator or the Executive Director of the Regional Income Tax Agency (RITA), except as referred to in Section 8:04, in which case Administrator means the Administrator of this municipality.

Any place in these Rules & Regulations where the term this municipality appears, the name of any member municipality can be substituted.

In the event of a conflict with these Rules & Regulations and any provision(s) of the Ordinance of this municipality, the Ordinance will supersede.

REGIONAL INCOME TAX AGENCY

CHAPTER 1:00

DEFINITIONS

In the event of a conflict with this Chapter of the Rules & Regulations and any provision(s) of the Ordinance of this municipality, the Ordinance will supersede.

1:01 For purposes of these Rules and Regulations, the singular shall include the plural and the masculine shall include the feminine and the neuter with regard to the terms, phrases, words and the derivatives used herein. As used in these Rules and Regulations, the following words defined herein shall have the meaning ascribed to them in this Chapter except where the context clearly indicates or requires a different meaning.

ADJUSTED FEDERAL TAXABLE INCOME means a "C" corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "Adjusted Federal Taxable Income" as if the pass-through entity was a "C" corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

ADMINISTRATOR means the individual designated by the Ordinance to administer and enforce the provisions of the Income Tax Ordinance of this municipality and includes the Administrator of the Regional Income Tax Agency.

ASSOCIATION means a partnership, cooperative, limited partnership, limited liability company, joint venture, or any other form of unincorporated enterprise.

BOARD OF REVIEW means the Board created by and constituted as provided for in the Ordinance of this municipality.

BUSINESS means an enterprise, cooperative activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit whether by an individual, partnership, association, corporation or any other entity, excluding,

a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitations of customers outside of this municipality by mail or telephone from an office or place of business within this municipality shall not be considered a solicitation of sales outside this municipality.

4. Step 4 - Add the percentages determined in accordance with Steps 1, 2 and 3, or such of the aforesaid percentages as may be applicable to the particular taxpayer's business, and divide the total so obtained by the number of percentages used in ascertaining said total. The result so obtained is the business allocation percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely outside this municipality. A factor is excluded only when it does not exist anywhere.

5. Step 5 - The business allocation percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits allocable to this municipality.

3:02 Substitute Method

A. In the event a just and equitable result cannot be obtained under the formula, the Administrator, upon his own initiative or upon application of the taxpayer, may substitute other factors in the formula or prescribe other methods of allocating net income calculated to effect a fair and proper allocation.

B. Application by the taxpayer to the Administrator to substitute other factors in the formula or to use a different method to allocate net profits must be made, in writing, not less than sixty (60) days before the due date of the annual return without regard to extension and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. No specific form need be followed in making such application. If, pursuant to a taxpayer's request, a substitute method of allocation is authorized by the Administrator, a statement should be attached to the annual return for the year of change describing such substitute method of allocation and setting forth the date such substitute method was authorized by the Administrator.

C. If the Administrator approves the use of books and records as a substitute method, the following shall apply:

1. The net profits allocable to this municipality from business, professional or other activities conducted in this municipality by corporations or unincorporated entities (whether resident or non-resident) may be determined from the records of the taxpayer only if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within this municipality.

2. If the books and records of the taxpayer are used as the basis for apportioning net profits, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Administrator to determine whether the net profits attributable to this municipality are apportioned with reasonable accuracy.

3. In determining the income allocable to this municipality from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without this municipality.

3:03 Change of Method

A. A change in a method of allocation should be described in a statement attached to the return for the year of change (also see Section 3:03 hereof).

3:04 Rentals From Real Property

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

B. Where the gross monthly rental of any real properties, regardless of number and value, aggregate in excess of the rental rate of this municipality, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer and the net income of such rental properties shall be subject to tax; provided that in the case of commercial property, the owners shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds the rental rate of this municipality; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds the rental rate of this municipality; and provided further that the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds the rental rate of this municipality.

C. In determining the amount of gross monthly rental of any real property, periods during which rents are not received shall not be taken into consideration by the taxpayer.

Example: Property located in Municipality A rents for $275.00 per month (Municipality A has a $250.00 gross rental test). In 1995, the property was rented for ten months, hence, the average monthly rental would be $229.16.

The relevant test is the amount of the gross monthly rent while the property is being rented, which, in this case, is $275.00.

be paid as a penalty by the person who tendered such check, upon notice and demand by the Administrator, in the same manner as tax, an amount equal to such processing fee.

CHAPTER 9:00

COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

In the event of a conflict with this Chapter of the Rules & Regulations and any provision(s) of the Ordinance of this municipality, the Ordinance will supersede.

9:01 Unpaid Taxes

A. All taxes imposed by the Ordinance and not paid when due become, together with interest and penalties thereon, a debt due this municipality from the taxpayer and are recoverable as are other debts by suit. Employers who are required under Section 6:02 of these Regulations to withhold and remit the taxes required to be withheld at the source and who fail to withhold and/or remit become liable to this municipality in a suit to enforce the payment of the debt created by such failure.

B. Prosecution to recover municipal income taxes shall be brought within three (3) years after the tax was due or the return was filed, whichever is later. However, in the case of fraud, failure to file a return or omission of 25% or more of income required to be reported, prosecution may be commenced within six (6) years after the commission of the offense.

9:02 Refunds

A. Taxes erroneously paid shall not be refunded unless a claim for refund is made in writing within three (3) years from the date on which such payment was made or the return was due whichever is later. However, the following shall apply regarding refunds of tax withheld from non-qualified deferred compensation plans (NDCP):

1. A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.

2. A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.

3. Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified compensation.

B. Overpayments will either be refunded or credited to the taxpayer's current year's liability at his option, except that where taxes are owed for any previous years, overpayments shall be applied in the order in which such taxes became due before any refund is made. Where no election has been made by the taxpayer, overpayments of any year's taxes shall be applied as follows:

1. To taxes, penalty or interest owed for any previous years.

2. To his current estimated tax liability (and any excess refunded).

C. Prosecutions to recover refunds of municipal income taxes and penalties and interest on municipal income taxes shall be brought within three (3) years after the tax was due or the return was filed, whichever is later and must be brought after the taxpayer requests a refund in accordance with Division A.

D. Income tax that has been deposited with this municipality, but should have been deposited with another municipality, is allowable by this municipality as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with this municipality, but was deposited with another municipality, shall be subject to recovery by this municipality. This municipality will allow a non-refundable credit for any amount owed this municipality that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than this municipality's tax rate. If this municipality's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by this municipality.

E. Refunds for days worked out of this municipality are available only to non-residents, and refunds shall be computed by dividing total wages by total days worked in order to determine an average daily wage. The work year shall be considered two hundred sixty (260) days. Saturdays and Sundays shall not normally be considered workdays. Wage continuation plans of any type (including, but not limited to, vacation days, holidays, personnel days, and sick days) are deemed to be days spent in this municipality for purposes of refund calculations. Additions, deletions, or other changes to the method for calculating refunds shall be at the discretion of the Administrator.

CHAPTER 10:00

DISBURSEMENT OF RECEIPTS OF TAX COLLECTION

10:01 Refer to Ordinance

CHAPTER 11:00

DUTIES AND AUTHORITY OF THE ADMINISTRATOR

6:03 Collection at Source - Return and Payment of Tax Withheld and Status of Employers

A. Manager's Obligation:

1. Every manager is deemed to be a trustee of this municipality in collecting and holding the tax required under Ordinance to be withheld, and the funds so collected by such withholding are deemed to be trust funds.

   Every manager is liable directly to this municipality for payment of such trust, whether actually collected by such employer or not. Any tax deducted and withheld is to be considered paid to this municipality, whether or not the employer actually remits the tax to this municipality for purposes of determining employee payments or credits.

2. All managers shall be personally liable to the extent of the tax, interest and penalty, jointly and severally, for failure to file the employer's return or to pay the employer's tax, interest and penalty as required under this Ordinance.

3. No change in structure by an employer, including a fundamental change, discharges its managers from liability for the employees' or manager's failure to remit funds held in trust, to file a tax return or to pay taxes.

B. Dates and Requirements - Any tax deductions from salaries, wages and other compensation required to be made by employers are to begin with compensation earned on and after the effective date of the Income Tax Ordinance of this municipality.

1. Such payment shall be made on an Employer's Municipal Tax Withholding Statement furnished by or obtainable upon request from the Administrator, or on a generic form as defined, setting forth the amount of tax deducted for the month. A copy of the Employer's Municipal Tax Withholding Statement will be retained by the employer for his records. If validation of the taxpayer's copy is deemed necessary by the employer, the employer must enclose a stamped, self-addressed envelope with his remittance, and the original and his copy of the Employer's Municipal Tax Withholding Statement.

2. The employer (in addition to any return required to be filed with respect to its own earnings or net profits) shall, on or before the last day of each month file a return (Employers Municipal Tax Withholding Statement, Form 11) and pay to the Administrator the amount of taxes so deducted or withheld with respect to compensation paid to all of its employees subject to the tax under the Ordinance of this municipality during the previous month. If the amount of tax so deducted by an employer for this municipality is averaging less than $100.00 per month, the employer may defer the filing of a return and payment of the amount deducted until the last day of the month following the end of the calendar quarter in which such month occurred. The employer may continue to file and pay

quarterly unless the Administrator, during a review of monthly average deposits, determines that the employer shall begin filing and paying monthly. The Administrator may withdraw the authorization from quarterly filing and payments whenever he has reason to believe that it is in the best interest of this municipality to do so (for example, if the taxpayer is delinquent in payment of taxes withheld).

3. All tax so withheld and so required to be reported must be paid to the Administrator in full at the time of filing of such form.

C. Overwithholding - If more than the amount of tax required to be deducted by the Ordinance is withheld from an employee's pay, such excess may be refunded by the employer or the Administrator, depending upon the circumstances and the time when the overwithholding is determined as follows:

1. Current Employees:

a. If the overwithholding is discovered in the same month, the employer shall make the necessary adjustment directly with the employee and the amount to be reported on the Employer's Municipal Tax Withholding Statement (Form 11) as withheld shall be the corrected amount.

b. If the overwithholding is discovered in a subsequent month of the same calendar year, the employer may make proper adjustment with the employee. In such case, the Employer's Municipal Tax Withholding Statement for the month in which the adjustment is made shall reflect the total amount actually withheld for the month and the amount of the adjustment deducted therefrom. Also, an amended Form 11 must be filed for the month in which the error occurred reflecting the adjustment.

c. If the overwithholding is discovered in a subsequent month of the following calendar year, the employee must make and file a request for a refund. This request is to be filed on a form prescribed by and obtainable from the Administrator.

2. Former Employees:

a. In the cases where an amount in excess of the tax has been withheld from an employee who is no longer employed by the employer, the Administrator shall refund the amount of such excess withholding to the employer.

b. If the error is discovered by the employee, such employee shall file a claim with the Administrator and upon verification thereof by the employer, the Administrator shall refund the amount of such excess withholding to the employee.

D. Insufficient Withholding - If less than the amount of tax required to be deducted is withheld from the employee and is discovered in the same year, such deficiency shall be withheld from subsequent wages. If the