

## **NOTICE**

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This version may, occasionally, differ from the official version and should only be relied upon for general information purposes. Any errors or omissions should be reported to the Clerk of Council. In no event shall the City of Kettering be held liable for damages of any nature, direct or indirect, arising from the use of this service or reliance on this unofficial document.

# **TITLE ELEVEN – TAXATION**

## **CHAPTER 191 Income Tax Code**

**THIS CHAPTER 191 IS APPLICABLE FOR TAX YEARS 2015 AND EARLIER. PLEASE SEE CHAPTER 192 FOR TAX YEARS 2016 AND LATER.**

**TITLE ELEVEN – TAXATION****CHAPTER 191  
Income Tax Code**

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**CROSS REFERENCES**

Power to levy income tax – see Ohio Constitution, Article XVIII, § 3

Payroll deductions – see Ohio Revised Code 9.42

Municipal income taxes – see Ohio Revised Code, Chapter 718 for state statutory limitations on municipal income tax powers and procedures

Legislative history – see end of this chapter

**“SECTION 191.01 PURPOSE**

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities of the City of

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Kettering (the "City") there shall be, and is hereby levied, a tax on income, qualifying wages, gambling winnings, commissions and other compensation, and on net profits as hereinafter provided.

## **SECTION 191.02 DEFINITIONS**

As used in this Income Tax Code, the following words shall have the meaning ascribed to them in this section, regardless of whether or not they are capitalized, except as and if the context clearly indicates or requires a different meaning throughout this Income Tax Code ("Tax Code"), all Tax Codes and sections included in this Title Eleven of the Administrative Code of the City of Kettering.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

**ADJUSTED FEDERAL TAXABLE INCOME** - A "C" corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions under Ohio Revised Code Section 718.01. 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 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.

**ALIMONY** – Cash payment(s) made under a divorce decree or separation instrument that does not require continuation of payments, or provide for substituted payment, after the death of the payee. To qualify as alimony (i) the cash payment(s) must be received by or on behalf of a spouse (or former spouse) of the payer; (ii) the spouses must be legally separated under a decree of divorce or separate maintenance and are therefore not members of the same household when the payment(s) is made; (iii) the spouses (or former spouses) must not file joint returns with each other.

**ASSOCIATION** - A partnership, limited partnership, limited liability company, trust, estate, or any other form of unincorporated enterprise or pass-through entity, except an S-corporation.

**BOARD OF ADJUDICATION** - The Board created by and constituted as provided in Section 191.13 A of this Tax Code.

**BOARD OF TAX APPEALS** - The Board created by and constituted as provided in Section 191.13 B of this Tax Code.

**BUSINESS** - An enterprise, profession, undertaking or other activity of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity.

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**CALENDAR YEAR** - An accounting period of twelve (12) months or less ending on December 31.

**CITY** - The City of Kettering, Ohio.

**CORPORATION** - A corporation, including S-Corporations as defined in the Internal Revenue Code, 26 U.S.C. 1361, or joint stock association organized under the laws of the United States, the state of Ohio, or any other state, territory, or foreign country or dependency.

**DISABLED** – The inability to engage in any substantial gainful employment, career, business, or profession by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

**DOMICILE** - A principal residence, which is also the permanent legal residence, that an individual intends to use for an indefinite time and to which, whenever the individual is absent, the individual intends to return. An individual has only one domicile even though the individual may have more than one residence. A domicile once acquired is presumed to continue until it is shown by clear and convincing evidence to have been changed. Intention to change domicile will not effect such a change unless accompanied by actual removal.

**EMPLOYEE** - One who works for income, qualifying wages, commissions or other type of compensation in the service of and under the control of an employer.

**EMPLOYER** - An individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, that employs one (1) or more persons on an income, qualifying wage, commission, or other compensation basis.

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

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

**GAMBLING WINNINGS** – all income from gambling required to be reported on Internal Revenue Service Form W-2G, Form 5754, or any other Internal Revenue Service form that reports gambling income. Gambling includes, but is not limited to, bingo, keno, slot machines, casino games, horse racing, dog racing, jai alai, sweepstakes, wagering pools, lotteries, prizes, and any other wagering transaction or game of chance.

**GENERIC FORM** - An electronic or paper form designed for reporting municipal income taxes, and/or separate requests for refunds, that contain all the information required on the City's regular tax return, estimated payment, withholding, and refund request forms, and are in a similar format that will allow processing of the generic forms without altering the City's procedures for processing forms or cause additional work or expense for the City.

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**GROSS RECEIPTS** - The total revenue derived from sales, work done, or service rendered.

**INCOME** - All monies, subject to limitations imposed by Ohio Revised Code Chapter 718, derived from any source whatsoever, including but not limited to:

- A. All salaries, qualifying wages, commissions, gambling winnings, bonuses, separation (termination) pay, holiday, sick, and/or vacation pay, or other compensation or other income from whatever source earned, and/or accrued and/or received by residents of Kettering.
- B. All salaries, qualifying wages, bonuses, separation (termination) pay, commissions, holiday, sick, and/or vacation pay, or other compensation or other income from whatsoever source received, earned, and/or accrued by nonresidents for work done or services performed or rendered or activities conducted in Kettering.
- C. The portion attributable to the City of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in Kettering.

**INDIVIDUAL** – A natural person.

**INTANGIBLE INCOME** - 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 Ohio Revised Code Chapter 5701, 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 gambling winnings.

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

**JOINT ECONOMIC DEVELOPMENT DISTRICT** - A district created under Ohio Revised Code Sections 715.70-715.83, as amended from time to time.

**KETTERING** - The City of Kettering, Ohio.

**LIMITED LIABILITY COMPANY** – A limited liability company formed under Ohio Revised Code Chapter 1705 or under the laws of another state.

**NET OPERATING LOSS** - The net loss from the operation and/or the complete or partial sale or disposition of a business, profession, enterprise or other activity excluding capital gains and losses after provision for all ordinary and necessary expenses, paid or accrued in

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accordance with the accounting method (i.e., either cash or accrual) used by the taxpayer for federal income tax purposes, without deduction of taxes imposed by this Tax Code, federal, state or other taxes based on income; and in the case of an association, without deduction of compensation to partners and other owners; and otherwise adjusted to the requirements of this Tax Code and amendments thereto.

**NET PROFITS** - For taxable years prior to 2004, the net gain from the operation and/or the complete or partial sale or disposition of a business, profession, enterprise or other activity excluding capital gains and losses after provision for all ordinary and necessary expenses, paid or accrued in accordance with the accounting method (i.e., either cash or accrual) used by the taxpayer for federal income tax purposes, without deduction of taxes imposed by this Tax Code, federal, state or other taxes based on income; and in the case of an association, without deduction of compensation to partners and other owners; and otherwise adjusted to the requirements of this Tax Code and amendments thereto. (For taxable years 2004 and later, see "Adjusted Federal Taxable Income".)

**NON-RESIDENT** - Any individual who is not a resident as herein defined.

**NON-RESIDENT UNINCORPORATED BUSINESS ENTITY** - An unincorporated business entity not having a place of business within this City.

**OTHER ACTIVITY** - Any undertaking, not otherwise specifically defined herein, which is normally entered into for profit, including, but not limited to, rental of real and personal property and a business conducted by a trust or guardianship estate.

**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.

**OWNER** - A partner of a partnership, a shareholder of an S-corporation, a member of a limited liability company, or any other person with an ownership interest in a pass-through entity.

**PASS-THROUGH ENTITY** - A partnership, S-corporation, limited liability company, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.

**PASS-THROUGH ENTITY INCOME** - partnership income of partners, distributive shares of shareholders of an S-corporation, membership interests of members of a limited liability company, or other distributive or proportionate ownership shares of other pass-through entities.

**PERSON** - Every natural person, partnership, fiduciary, association, corporation or other entity, including but not limited to, any pass-through entity. Whenever used in any article prescribing or imposing a penalty, the term "person" as applied to any unincorporated entity

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shall include the partners or members thereof and as applied to corporations, the officers thereof; and the term "person" as applied to an organization shall include any officer, agent or employee if such person acts with the kind of culpability required for the commission of the offense and any of the following apply:

- (a) In the name of the organization, or in its behalf, such person engages in conduct constituting the offense or causes another to engage in such conduct, or tolerates such conduct when it is of a type for which such person has direct responsibility;
- (b) The person has primary responsibility to discharge a duty imposed on the organization by this Tax Code, and such duty is not discharged. (Also see Section 191.12, Paragraph B, for an additional definition of "person".)

**PLACE OF BUSINESS** - Any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of the taxpayer's regular employees regularly in attendance.

**QUALIFYING WAGE** - Wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions under Ohio Revised Code Section 718.03. "Qualifying Wage" represents employees' income from which municipal tax shall be deducted by the employer, and any wages not considered a part of "qualifying wage" shall not be taxed by the municipality. This definition is effective January 1, 2004, for taxable years 2004 and later.

**RESIDENT** - An individual domiciled in this City; or any individual who maintains a place of abode within the City for a total of 183 days or more within any twelve (12) month period.

**RESIDENT UNINCORPORATED BUSINESS ENTITY** - An unincorporated business entity having a place of business within this City.

**RETIRED** - The voluntary termination of a person's own employment, career, business, or profession intended to last indefinitely.

**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.

**S-CORPORATION** - A corporation that has made an election under Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

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

TAX CODE – This City of Kettering Income Tax Code (Codified Ordinances Chapter 191).

TAX MANAGER - The City of Kettering employee currently designated or appointed as Tax Manager by the Kettering City Manager.

TAXABLE INCOME –Income minus the deductions and credits allowed by this tax code. (See “Income” definition.)

TAXABLE YEAR - The calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this Tax Code as may be amended 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. Unless otherwise approved by the Tax Manager, the taxable year of an employee shall be a calendar year.

TAXPAYER - Any person, as defined previously in this section, required hereunder to file a return or pay a tax.

### **SECTION 191.03 IMPOSITION OF TAX.**

- A. Subject to the provisions of Section 191.15, an income tax for the purposes specified in Section 191.01 is levied for a continuing period beginning January 1, 2007, at the rate of two and one-quarter percent (2.25%) per annum upon the following:
1. On all income, qualifying wages, commissions, and other compensation earned and/or received by residents of the City.
    - (a) If the taxpayer is considered a professional gambler for federal income tax purposes and such status is demonstrated by clear and convincing evidence, gambling related deductions as permitted by the internal Revenue Code shall be allowed against gambling winnings.
    - (b) If the taxpayer is not considered a professional gambler for federal income tax purposes, then no deductions on income from gambling winnings shall be allowed.
  2. On all income, qualifying wages, commissions and other compensation earned and/or received by non-residents for work done or services performed or rendered in the City. Income earned and/or received as holiday, sick, and/or vacation pay is taxable to the City. Separation pay, termination pay, reduction-in-force pay, and other compensation earned or received as a result

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of an employee leaving the service of an employer shall be allocable only to the City. However, the City shall not tax the compensation of an individual if all of the following apply:

- (a) The individual does not reside in the City.
- (b) The compensation is paid for personal services performed by the individual in the City on twelve or fewer days during the calendar year. A day is a full day or any fractional part of a day.
- (c) 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 and the individual pays tax on compensation described in subsection (b) hereof to the City, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual.
- (d) The individual is not a professional entertainer or professional athlete; the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the City.

Beginning with the thirteenth (13) day, whether consecutive or nonconsecutive, the individual shall pay taxes on income, qualifying wages, commissions, and other compensation earned in the City, including, but not limited to, income, qualifying wages, commissions, and other compensation earned during the first twelve (12) days, whether consecutive or nonconsecutive.

3. Net profits:

- (a) On the net profits earned of all unincorporated businesses, associations, professions, or other activities conducted by residents of the City.
- (b) On the net profits earned of all unincorporated businesses, associations, professions, or other activities conducted in the City by nonresidents.
- (c) For the purposes of paragraphs 3(a) and 3(b) above, an association shall be taxed at the entity level, on the net profits of the association derived from work done or services performed or rendered and business or other activities conducted in the City, whether or not such association has its principal or any place of business located in the

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City. Net operating losses may be carried forward as provided in Section 191.03(C) if an election is filed, on a form prescribed by and filed with the Tax Manager, stating that losses incurred by the association shall be maintained at the entity level. If the association does not file an election, losses incurred shall be maintained at the owner (individual) level. Change in the elected status shall become effective at the beginning of the tax year following receipt by the Tax Manager of the form containing notice of the change in status.

- (d) For the purposes of paragraph 3(a) above, a resident of the City who is a member of an association is taxed individually on that resident's entire share, whether distributed or not, of the annual net profits of the association which are not subject to entity filing under paragraph 3(c) above.
  - (e) Net operating losses from the operation of a business or profession are not deductible from employee earnings but may be carried forward as provided in Section 191.03 C.
- 4. On the portion attributable to this City of the net profits earned of all corporations, including, but not limited to, S-corporations, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City, whether or not such corporations have a place of business in this City. An S-corporation is taxable as a separate entity for municipal tax purposes and distributions to shareholders are considered non-taxable income to the shareholders. Net operating losses may be carried forward as provided in Section 191.03 C.
  - 5. On income, qualifying wages, commissions and other compensation attributable to the sale, rental and/or management of real property located within the boundaries of this City. Such activities shall be considered as having a taxable situs in the City. Accordingly, such compensation shall be taxable to this City. Ordinary and necessary business expenses incurred in the production of such income may be deducted in arriving at net income taxable to the City.

B. Allocation of Net Profits

- 1. Net profits from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for the purpose of income taxation in the same proportion as the average ratio of the factors in paragraphs (a), (b), and (c) of this subsection:
  - (a) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in

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the City during the taxable period to the average original cost of all the real property and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. As used in this paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight (8);

- (b) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.
  - (c) Qualifying wages, commissions, and other compensation paid or accrued during the taxable period to persons employed in the business or profession for services performed in the City to qualifying wages, commissions, and other compensation paid or accrued during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the City under Ohio Revised Code section 718.011. As used in this paragraph, persons employed shall not be construed to mean any subcontractor or independent contractor.
  - (d) A factor in paragraphs (a), (b), and (c) of this subsection is excluded only when it does not exist anywhere, that is, when the denominator is zero (0).
  - (e) In the event that the foregoing apportionment formula does not produce an equitable result, another basis (including the use of the books and records method) may, under uniform regulations, be substituted so as to produce such result.
2. As used in Paragraph B1 (b) of this section, "sales made in the City" means:
- (a) Any sale of tangible personal property which is delivered within this City regardless of where title passes if shipped or delivered from a stock of goods within the City.
  - (b) Any sale 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 its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.

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- (c) Any sale of tangible personal property which is shipped from a place within the City to purchasers outside this 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.
  - (d) Any sale of real estate which is located within the boundaries of this City.
3. The allocation of net profits as provided in this section (191.03 B) does not apply to public utility companies when the public utility is subject to tax under Ohio Revised Code Sections 5727.24 or 5727.30. However the income of an electric company or a combined company, and the income of a telephone company, is taxable, subject to limitations of Ohio Revised Code Chapter 5745.

#### C. NET OPERATING LOSS

1. The portion of a net operating loss sustained in any taxable year commencing after December 31, 1987 and before January 1, 2001, allocable to the City, may be applied against the portion of the net profit of succeeding tax years, allocable to the City, until exhausted, but in no event for more than the five taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

The portion of a net operating loss sustained in any taxable year commencing after December 31, 2000, allocable to the City, may be applied against the portion of the net profit of succeeding tax years, allocable to the City, until exhausted, but in no event for more than the three (3) taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

2. Beginning with net operating losses incurred for the tax years commencing after December 31, 1987, the portion of a net operating loss sustained shall be allocated to the City in the same manner as provided herein for allocating net profits to the City.
3. The net operating loss of a taxpayer that loses its identity, by any means such as merger or consolidation, shall not be allowed as a carry-forward loss deduction to the surviving or new taxpayer.
4. If an individual is engaged in two (2) or more taxable business activities to be included in the same return, the net loss of one (1) unincorporated business activity may be used to offset the profits of another (except any portion of a loss

or profit separately reportable for municipal tax purposes to another taxing entity) for purposes of arriving at overall net profits or net operating loss. Net operating losses from the operation of a business or profession are not deductible from employee earnings, but may be carried forward as set forth herein.

D. CONSOLIDATED RETURNS

1. A consolidated return may be filed by a group of corporations who are affiliated through stock ownership if that affiliated group filed for the same tax period a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code. A consolidated return must include all companies that are so affiliated.
2. Once a consolidated return has been filed for any taxable year, consolidated returns shall continue to be filed in subsequent years unless the applicable requirements of the Rules and Regulations for discontinuing the filing of consolidated returns have been met.

E. EXEMPTION FROM TAX

The tax provided for herein shall not be levied upon:

1. Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the national guard.
2. The income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.
3. Proceeds from welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the IRS.
4. Proceeds from permanent disability benefits, workers' compensation, and compensation for non-punitive damages for physical personal injuries.
5. Receipts by bona fide charitable, religious, and educational organizations and associations, when those receipts are from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious, or educational organizations and associations.
6. Personal earnings of all individuals under eighteen (18) years of age.

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7. Gains from involuntary conversion, interest on federal obligations, items of income already taxed by the State of Ohio from which the City is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business).
  8. Income, qualifying wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United State Constitution or any act of Congress limiting the power of the states or their political sub-divisions to impose net income taxes on income derived from interstate commerce.
  9. Income, qualifying wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.
  10. Mentally retarded and developmentally disabled employees earning less than the minimum hourly wage while employed at government-sponsored sheltered workshops shall be exempt from the levy of the tax provided herein.
  11. 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 annually. Such compensation in excess of one thousand dollars shall be subject to taxation. The payer of such compensation is not required to withhold City tax from that compensation.
  12. Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Ohio Revised Code Chapter 306 for operating a transit bus or other motor vehicle for the authority or commission in or through the City, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the City, or the headquarters of the authority or commission is located within the City.
  13. The 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, except starting January 1, 2002, the income of an electric company or combined company, and starting January 1, 2004, the income of an electric company, as defined in section 5727.01 of the Ohio Revised Code, shall be taxed subject to Tax Code 5745 of the Ohio Revised Code.
  14. Items excluded from federal gross income pursuant to Internal Revenue Code Section 107.

15. Alimony received. Payment of alimony shall not be allowed as a deduction.
- F. A person who receives income, qualifying wages, commissions, or other compensation and who pays business expenses without reimbursement from the person's employer or association, shall be entitled to a deduction to the same extent that such expenses are properly includable in the computations to determine deductions on Federal Form 2106 for federal income tax purposes, but only to the extent incurred in earning the specific income, qualifying wages, commissions, or other compensation subject to the tax imposed by this ordinance from which the deduction is made.

#### **SECTION 191.04 EFFECTIVE PERIOD**

Said tax shall be levied, collected and paid with respect to the income, qualifying wages, commissions and other compensation earned and/or received, and shall be levied with respect to the net profits of the businesses, professional or other activities earned from and after the effective date of this Tax Code.

#### **SECTION 191.05 RETURN AND PAYMENT OF TAX**

- A. Each person who engages in business or other activity or whose income, qualifying wage, commissions or other compensation is subject to the tax imposed by this Tax Code, shall, whether or not a tax be due thereon, make and file a return on or before April 15 of the year following the effective date of this Tax Code, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within one hundred five (105) days from the end of such fiscal year or period. The return of an employer or employers, showing the amount of Kettering tax deducted by said employer or employers from the income, qualifying wages, commissions or other compensation of a nonresident employee, and paid by the employer or employers to the Tax Manager may be accepted as the return required of any nonresident employee whose sole income, subject to tax under this Tax Code, is such income, qualifying wages, commissions or other compensation. Individuals who are permanently retired or permanently disabled and who do not have any Kettering taxable income may complete a one-time exemption form declaring their exemption from filing a Kettering income tax return. Such an exemption will remain in force until such time as that individual once again becomes employed or earns income. At that point, this exemption will end and a Kettering income tax return shall be filed.
- B. A husband and wife may file either separate returns or a joint return for City purposes, even though one of the spouses has neither taxable income nor deductions included on the City return regardless of whether their federal and state returns were filed separately or jointly. If a joint City return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.

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- C. The return shall be filed with the Tax Manager on a form or forms furnished by or obtainable upon request from the Tax Manager; or on a generic form as defined in this Tax Code.
- D. The return shall set forth:
1. The aggregate amounts of income, qualifying wages, commissions and other compensation earned and/or paid, and gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to said tax; and
  2. The amount of the tax imposed by this Tax Code on such income, qualifying wages, commissions and other compensation earned and/or paid, and gross income from any business, profession or other activity; and
  3. Such other pertinent statements, information returns, copies of federal or state tax returns and/or schedules, or other information as the Tax Manager may require, including a statement that the figures used in the return are the figures used for federal income tax adjusted to set forth only such income as is taxable under the provisions of this Tax Code. Information the Tax Manager may require shall include, but not be limited to, copies of all W-2 Forms, 1099 Miscellaneous Income Forms, page one of Form 1040, page one and two of Form 1120, 1120s (Including (K-1), 2106, 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, Schedule F and any other applicable federal schedules.
- E. 1. Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a City of Kettering Income Tax Return by filing a copy of the taxpayer's federal extension request with the Kettering Tax Division. Any taxpayer not required to file a federal income tax return may request an extension for filing a City of Kettering Income Tax Return in writing. The request for extension must be filed on or before the original due date for the annual return. If the request is granted, the due date for filing a return is extended for six (6) months from the original due date of such return. For taxable years subsequent to 2005 the extended due date for individuals, and for businesses not filing the extension through the Ohio Business Gateway, shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. For businesses filing the extension through the Ohio Business Gateway, the extended due date shall be the last day of the month to which the due date of the federal income tax return has been extended.

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2. The Tax Manager may deny a taxpayer's request for extension if the taxpayer:
    - (a) fails to timely file the request; or
    - (b) fails to file a copy of the federal extension request, (if applicable); or
    - (c) owes the City any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of income tax; or
    - (d) has failed to file any required income tax return, report, or other related document for a prior tax period.
  3. The granting of an extension for filing a City of Kettering Income Tax Return does not extend the due date as provided in this section for payment of the tax; hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by Section 191.10. No penalty shall be assessed in those cases in which the Return is filed and the final tax paid within the extension period provided all other filing and payment requirements of the Tax Code have been met. Any extension by the Tax Manager shall be granted upon the condition that declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that declaration filing and payment requirements have not been fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.
- F. 1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Tax Manager the amount of taxes shown as due. However, credit shall be allowed for:
- (a) Any portion of the tax so due which shall have been deducted at the source pursuant to the provisions of Section 191.06; and
  - (b) Any portion of said tax which shall have been paid by the taxpayer pursuant to the provisions of Section 191.07; and
  - (c) Credit to the extent allowed by Section 191.14 for tax paid to another municipality.
2. Subject to the limitations contained in 191.11 of this Tax Code, any taxpayer who has overpaid the amount of tax to which the City of Kettering is entitled under the provisions of this Tax Code may have such 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, provided that no additional taxes or refunds of less than Five Dollars (\$5.00) shall be collected or refunded.

**G. AMENDED RETURNS**

1. Where necessary, an amended return shall be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 191.11. The tax manager shall provide by regulation the format in which such amended return shall be filed. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the due date for filing the original return.
2. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the City tax based upon such final determination of federal tax liability and pay any additional tax shown due thereon or make claim for refund or any overpayment.

H. Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be a violation of this Tax Code. Provided, however, that the taxpayer shall have ten (10) days after notification by the Tax Manager, or the Tax Manager's authorized representative, to file the items required by this paragraph.

I. Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this ordinance.

J. The officers, members, managers, employees, and trustees of such employer having control or supervision or charged with the responsibility of filing the return and making the payment shall be personally liable for failure to file the return or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization of any such employer does not discharge the liability of officers, members, managers, employees, and trustees for a prior failure of such employer to file the return or pay taxes, penalties, or interest due.

**SECTION 191.06 COLLECTION OF TAX AT SOURCE**

- A. 1. Each employer within or doing business within the City shall deduct at the time any income, qualifying wage, commission, or other compensation is paid, allocated, or set aside, the tax of one and three-quarters percent (1  $\frac{3}{4}$ %) and, effective January 1, 2007, shall deduct the tax of two and one-quarter percent (2.25%) of the income, qualifying wage, commission, or other compensation due by the said employer to said employee who is subject to

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the provisions of this Tax Code. Each employer shall, on or before the fifteenth (15<sup>th</sup>) day of each month, make a return and pay to the Tax Manager the tax withheld during the preceding calendar month. However, the Tax Manager shall have the authority to approve the filing of returns and payment of the tax withheld on a quarterly basis. In such case, the employer shall, on or before the last day of each month following the calendar quarters ending March 31, June 30, September 30, and December 31, make a return and pay to the Tax Manager the tax withheld during the preceding calendar quarter. Such approval for quarterly filings and payments may be withdrawn by the Tax Manager when it is in the best interest of the City to do so. The Tax Manager shall provide by regulation the manner in which such approval is to be granted or withdrawn.

2. The employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax has in fact been withheld.
  3. Every employer subject to Subsection 191.06 (A)(1) who was required to withhold more than One Hundred Seventy Five Dollars (\$175.00) in tax during the previous calendar year shall make the required payment(s) by electronic funds transfer. During the period of time prior to the first date upon which it is mandatory for every employer subject to Subsection 191.06(A)(1) to make payments by electronic funds transfer, the Finance Director and the Tax Manager may mutually establish a program in which employers subject to Subsection 191.06(A)(1) may elect to voluntarily make payment(s) by electronic funds transfer. Nothing in this subsection shall be construed as relieving an employer from complying with Subsection 191.06(A)(1). Notwithstanding the foregoing, the Tax Manager, subject to approval by the Board of Adjudication, may grant a temporary exemption to an employer from the requirement to make payment by electronic funds transfer, where, upon written application by an employer for such a temporary exemption, the Tax Manager finds that making payment by electronic funds transfer will impose a substantial hardship upon the employer. Pursuant to Subsection 191.08(B), the Tax Manager shall prepare regulations specifying the criteria to be used when determining if a substantial hardship exists. All temporary exemptions shall expire on June 30; if a temporary exemption was initially granted in January, February, March, April, May, or June, then the temporary exemption shall expire on June 30 of the year following the year in which the temporary exemption was initially granted. No temporary exemption shall last longer than eighteen (18) consecutive months.
- B. The employer in collecting the 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 the employer's employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer.

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- C. No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed by the person exclusively in or about such person's residence, even though such residence is in this City, but such employee shall be subject to all of the requirements of the Tax Code.
- D. On or before February 28 of each year, each employer or other payer shall file a withholding tax reconciliation (Form KW-3) showing the total City tax withheld from all employees and the total City tax remitted to the City for the previous calendar year, along with a breakdown of the withholding tax remitted to the City by period. For each employee from whom City tax was withheld, the reconciliation shall also include the employee's name, address, social security number, the total amount of salaries, wages, commissions, and other compensation paid, allocated, or set aside during the previous calendar year, and the total amount of City tax withheld. If the total tax withheld from any employee included tax withheld and remitted to another municipality, the amount of same and the name of the municipality to which the tax was remitted shall be separately shown for each employee on the reconciliation. Employers filing 250 or more Internal Revenue Service Form W-2's with the Social Security Administration for any calendar year shall file that same year's City withholding tax reconciliation electronically.
- E. Any person who is required to withhold tax from income, qualifying wages, commissions, and other compensation shall pay all such tax to the City in accordance with the provisions of this section. In the event taxes withheld from the income, qualifying wages, commissions, and other compensation of employees are not paid to the City in accordance with the provisions of this section, all officers, members, managers, employees, and trustees having control or supervision of or charged with the responsibility of withholding the tax and making payment are jointly and severally personally liable for the tax not returned or paid to the City as well as any related interest and penalties, and are also criminally liable under the provisions of Section 191.12. The dissolution, termination, or bankruptcy of a corporation, limited liability company, or business trust does not discharge an officer's, member's, manager's, employee's, or trustee's liability for a failure of the corporation, limited liability company, or business trust to file returns or pay said taxes.
- F. In addition to the wage reporting requirements of this section, any person required by the Internal Revenue Service to report on Form 1099-Misc. payments to individuals not treated as employees for services performed shall also report such payments to the City when the services were performed in Kettering. The information may be submitted on a listing, and shall include the name, address and social security number (or federal identification number), and the amount of the payments made. Federal form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before February 28.

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- G. 1. The payment of withheld taxes by electronic funds transfer does not affect an employer's obligation to file returns as required under this Section 191.06. The format and information required for all returns shall be prescribed by the Tax Manager.
2. The Tax Manager shall adopt regulations governing the payment of withheld taxes by electronic funds transfer. The regulations shall govern acceptable modes of electronic funds transfer, the content and format of electronic funds transfer, the coordination of payment by electronic funds transfer and the filing of associated tax reports and returns, and any other matter that facilitates payment by electronic funds transfer. Upon the written request of a taxpayer, the Tax Manager shall implement means of acknowledging receipt of payments made by electronic funds transfer and the Tax Manager may adopt regulations governing acknowledgments.
3. Bank costs or fees charged or assessed to or incurred by the City due to an employer having insufficient funds shall be collected from the employer, plus an administrative fee in the amount of ten percent (10%) of the bank costs or fees.
- H. 1. Any person who shall employ or contract for the services of any professional entertainer(s) or professional athlete(s), including all associated persons, to be performed in the City or any person who, acting as a promoter, booking agent or employer, engages the services of or arranges the appearance of any professional entertainer(s) or professional athlete(s), including all associated persons, in the City and who makes payment arising from said appearance in the City shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report, and remit as required under this Section 191.06 income tax at the applicable rate on one-half of the gross amount paid to the professional entertainer(s) or professional athlete(s), including all associated persons, for services performed in the City.
2. Any person who rents facilities located in the City that are made available to any professional entertainer(s) or professional athlete(s), including all associated persons, for use in performing services in the City and who makes any payment arising from said use of facilities shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report, and remit as required under this Section 191.06 income tax at the applicable rate on one-half of the gross amount paid to the professional entertainer(s) or professional athlete(s), including all associated persons, for services performed in the City.
3. It is hereby found and determined that the amount required to be withheld under this section will be substantially similar to that amount which would have been

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paid as a tax under this Tax Code had returns been filed on net profits from the activity and on compensation for services performed in the City. However, nothing shall prohibit a professional entertainer or professional athlete, including all associated persons, from whom tax was withheld under this section from filing an annual return showing actual income and expenses and a withholding return reporting actual compensation for services performed in the City.

#### **SECTION 191.07 DECLARATION OF ESTIMATED TAX**

- A. Every person who anticipates the receipt of any income, qualifying wages, commissions, or other compensation which is not subject in whole or in part to Section 191.06, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 191.03, shall file a declaration setting forth such person's estimated taxable income together with any estimated tax due thereon, if any. However, if a person's income is wholly from income, qualifying wages, commissions, or other compensation from which the tax will be withheld and remitted to the City in accordance with Section 191.06, such person need not file a declaration.
- B. 1. The declaration shall be filed on or before April 15 of each year during the life of this Tax Code, or within one hundred five (105) days after the date the taxpayer becomes subject to the provisions of this Tax Code, as amended.
2. Those taxpayers reporting on a fiscal year basis shall file a declaration within one hundred five (105) days after the beginning of each fiscal year or period.
- C. 1. The declaration shall be filed upon a form obtainable from or acceptable to the Tax Manager, or on a generic form as defined in this tax code. However, credit shall be taken for the City tax to be withheld from any portion of such income to determine the estimated tax due. In accordance with the provisions of Section 191.14, credit may be taken for tax to be paid or to be withheld and remitted to another taxing municipality.
2. The original declaration (or any subsequent amendment thereof) may be amended at any time on or before the due date of the 4<sup>th</sup> quarterly estimated tax payment.
3. If it appears that the original declaration (or a subsequent amendment thereof) made for a taxable year underestimated the taxpayer's taxable income by ten percent (10%) or more, an amended declaration must be filed on or before the due date of the 4<sup>th</sup> quarterly estimated tax payment. At such time a payment shall be made which, together with prior payments, ensures the taxpayer has met the requirement to pay at least ninety percent (90%) of the current year liability. The difference between ninety percent (90%) of the taxpayer's liability as shown on the annual return and the amount of estimated tax actually paid on or

before the due date of the 4<sup>th</sup> quarterly estimated tax payment shall be subject to interest and penalties provided for in section 191.10 of this Tax Code. No interest and penalties will be assessed in either of the following circumstances:

- (a) The taxpayer is an individual who resides in the City but was not domiciled in the City on the first day of January of the current calendar year.
  - (b) The taxpayer has remitted, pursuant to 191.07 B and 191.07 D of this Tax Code, an amount equal to at least one hundred percent (100%) of the taxpayer's tax liability for the preceding year as shown on the return filed by the taxpayer for the preceding year, provided that the return for the preceding year reflected a twelve-month period.
- D.
1. For taxpayers who are individuals, the declaration of net estimated tax to be paid the City shall be accompanied by a payment of at least one-fourth (1/4) of the net estimated annual tax, and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year. However, in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.
  2. For taxpayers that are not individuals, the declaration of net estimated tax to be paid the City shall be accompanied by a payment of at least one-fourth (1/4) of the net estimated annual tax, and at least a similar amount shall be paid on or before the fifteenth (15<sup>th</sup>) day of the sixth, ninth and twelfth months after the beginning of the taxable year. However, in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.
  3. The mere submission of a declaration estimating a tax liability shall not constitute filing unless accompanied by the required payment.
  4. The last quarterly payment of estimated tax need not be made if the taxpayer files the taxpayer's final return and pays the balance of the tax due thereon within forty-five (45) days following the end of the taxpayer's taxable year.
- E. On or before the fifteenth (15<sup>th</sup>) day of the fourth month of the calendar or fiscal year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City of Kettering shall be paid therewith in accordance with the provisions of Section 191.05.

#### **SECTION 191.08 DUTIES AND POWERS OF THE TAX MANAGER**

- A.
1. It shall be the duty of the Tax Manager to receive the tax imposed by this Tax Code in the manner prescribed herein from the taxpayers; to keep an accurate

record thereof; and to report daily to the Director of Finance all monies so received.

2. It shall be the duty of the Tax Manager to enforce payment of all taxes owing to the City, to keep accurate records for a minimum of six (6) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.
- B. The Tax Manager is hereby charged with the enforcement of the provisions of this Tax Code, and is hereby empowered (subject to the approval of a majority of the Board of Adjudication, as provided in Section 191.13) to issue and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of the Tax Code, including provisions for the re-examination and correction of returns and payments. Taxpayers shall comply with the requirements of this tax code and any rules and regulations.
- C. Subject to the consent of a majority of the Board of Adjudication, the Tax Manager shall have the power to compromise any liability imposed by this Tax Code.
- D. In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Manager may determine the amount of tax appearing to be due the City from the taxpayer and may send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.
- E. When an application for deferred payment of tax due is filed by a taxpayer, the Tax Manager may authorize partial payments of unpaid taxes when, in the Tax Manager's judgment, the taxpayer is unable, due to hardship conditions, to pay the full amount of the tax when due, and when, in the Tax Manager's judgment, such deferred payments are the best means of accomplishing the intent of this Tax Code. Provided, however, that the Tax Manager shall not authorize an extension of time for the payment of said taxes due for more than thirty-six (36) months beyond the date of the filing of the application. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become immediately due and payable and the provisions of sections 191.11 and 191.12 shall apply.

**SECTION 191.09 INVESTIGATIVE POWERS OF THE TAX MANAGER –  
PENALTY FOR DIVULGING CONFIDENTIAL  
INFORMATION**

- A. The Tax Manager, or any authorized employee, is hereby authorized to examine the books, papers, records and copies of federal, state, and local income tax returns of any employer or of any taxpayer or person subject to, or whom the Tax Manager believes is

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- subject to the provisions of this Tax Code, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this Tax Code. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish within ten (10) days following a written request by the Tax Manager, or the Tax Manager's duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.
- B. The Tax Manager is hereby authorized to order any person presumed to have knowledge of the facts to appear before the Tax Manager and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and copies of federal, state, and local income tax returns and the attendance of all persons before the Tax Manager, whether as parties or witnesses, whenever the Tax Manager believes such persons have knowledge of such income or information pertinent to such inquiry.
- C. The refusal to produce books, papers, records and copies of federal, state, and local income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Tax Manager authorized by the Tax Code shall be deemed a violation, punishable as provided in Section 191.12.
- D. 1. Any information gained as the result of any returns, investigations, hearings or verifications, required or authorized by the Tax Code shall be confidential, and no disclosure shall be made except to municipal, state or federal taxing agencies, except when ordered by a court of competent jurisdiction or except in connection with the performance of that person's official duties or the official business of the City as authorized by Ohio Revised Code Chapter 718 or the City Charter or City ordinance. The Tax Manager may furnish copies of returns filed under this tax code to the internal revenue service, to the state tax commissioner, and to other municipal tax managers and tax administrators.
2. Notwithstanding anything to the contrary, the Tax Manager may release to the Finance Department, in order that the comprehensive annual financial report may be prepared, statistics in a form that does not disclose information with respect to particular taxpayers. For purposes of this section, statistics shall mean (i) the ranking, in order of the total amount withheld (without revealing the actual amount withheld) and remitted to the city, of the top ten (10) income tax withholders by year; and (ii) aggregate income tax paid or withheld by tax payer type.

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- E. Any person divulging such information in violation of this Tax Code, shall, upon conviction thereof, be deemed guilty of a first degree misdemeanor, which is punishable by a maximum fine of one thousand dollars (\$1,000) and/or a maximum jail term of one hundred eighty (180) days. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the City who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.
- F. Every taxpayer shall retain all records necessary to compute the taxpayer's tax liability for a period of SIX (6) years from the date the taxpayer's return is filed, or the withholding taxes are paid.

#### **SECTION 191.10 INTEREST AND PENALTIES**

- A. 1. All taxes imposed, including estimated taxes, and all monies withheld or required to be withheld by employers under the provisions of this Tax Code and remaining unpaid five (5) days after they become due shall bear interest at the same rate which Section 718.12 of the Revised Code of Ohio requires be paid by municipalities on their income tax refunds, i.e., the federal short-term rate as defined in Section 5703.47 of that Revised Code, plus three percent (3%) per year. That interest rate shall be effective through December 31, 2015.
2. Effective January 1, 2016, all taxes imposed, including estimated taxes, and all monies withheld or required to be withheld by employers under the provisions of this Tax Code and remaining unpaid after they become due shall bear interest at the federal short-term rate as defined in Ohio Revised Code Section 718.27, plus five percent (5%) per year.
- B. In addition to interest as provided in Paragraph A hereof, penalties are hereby imposed as follows based on the tax remaining unpaid five (5) days after it becomes due:
1. For failure to pay taxes due, other than taxes withheld, one and one-half percent (1½%) per month or fraction of a month thereof, or ten percent (10%), whichever is greater.
2. For failure to remit taxes withheld from employees; three percent (3%) per month or fraction of a month thereof, or ten percent (10%), whichever is greater.
3. Where the taxpayer has failed to file a declaration on which the taxpayer has estimated and paid a tax equal to or greater than the tax paid for the previous year, or has failed to file a declaration on which the taxpayer has estimated and paid tax equal to or greater than ninety percent (90%) of the actual tax for the year, or if the taxpayer's total quarterly estimate payments do not equal the taxpayer's tax liability for the preceding year, or if the taxpayer has failed to file

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a final return and pay the total tax on or before the end of the month following the end of the taxpayer's taxable year, the penalty shall be ten percent (10%) of the difference between ninety percent (90%) of the actual tax for the year and the amount paid through withholding or declaration. An exception will be made if the taxpayer is an individual who resides in the City but was not domiciled in the City on the first day of January of the taxable year.

4. Except in the case of fraud, the penalty shall not exceed fifty percent (50%) of the unpaid tax.
  5. For failure to file a complete tax return by the date due, including due dates extended as set forth in Section 191.05(E), there shall be due a penalty of twenty-five (\$25.00) in addition to all other penalties and interest, even if no tax is due.
- C. **EXCEPTIONS.** A penalty shall not be assessed on an additional tax assessment made by the Tax Manager when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Manager. Further, 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 (3) months after final determination of the federal tax liability.
- D. Upon recommendation of the Tax Manager, the Board of Adjudication may abate penalty or interest, or both.
- E. In no case shall penalty and interest charges be levied when the total of such penalty and interest amounts to less than FIVE Dollars (\$5.00).
- F. Any person required to withhold the tax who knowingly fails to withhold such tax, or pay over such tax or knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not withheld, or not paid over. No other penalty under this Section shall be applied to any offense to which this penalty is applied.
- G. A penalty in the amount of ten percent (10%) or fifty dollars (\$50), whichever is greater, of the sum required to be remitted by electronic funds transfer shall be assessed against any person or employer who fails to comply with Subsection 191.06(A)(3) or the regulations adopted pursuant to Subsection 191.06(G)(2). This penalty shall also be assessed for failure to adhere to the approved addenda format (or file layout) for electronic transfers.
- H. Any person or employer failing to file any annual withholding tax reconciliation, including employee W-2 information, not submitted on or before February 28 of each

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year shall be subject to a penalty of fifty dollars (\$50.00). Any person or employer failing to file electronically, pursuant to Subsection 191.06(D), any annual withholding tax reconciliation, including, but not limited to, employee W-2 information, shall be subject to a penalty of fifty dollars (\$50.00).

#### **SECTION 191.11 COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS**

- A. All taxes, penalties, and interest imposed by this Tax Code may be collected by civil suit or other proceeding as other debts of like amount are recoverable, together with any court costs, collection expenses, and reasonable attorney's fees incurred in collection. Such collection shall not preclude any criminal prosecution. Except in the case of fraud, omission of twenty-five percent (25%) of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three (3) years from the time the tax was due or the return was filed, whichever is later. However, in the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. In those cases in which the U.S. Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitation, the period within which an additional assessment may be made by the Tax Manager shall be one (1) year from the time of final determination of the federal tax liability.
- B. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years after such payment was made, or the return was filed, or within three (3) months after final determination of the federal tax liability, whichever is later. However, refunds of tax withheld from nonqualified deferred compensation plans (ndcp) will only be made in accordance with Ohio Revised Code Section 718.021. For nonresident individuals with Kettering tax withheld, the date the return was filed shall be the date that the Employer's Annual Withholding Reconciliation was filed in accordance with Section 191.06(D) of this Chapter.
- C. Income tax paid to the City of Kettering which should have been paid to another municipality, may be refunded subject to the three-year limitation on refunds. Income tax that should have been paid to the City of Kettering, but was paid to another municipality, shall be subject to recovery by the City of Kettering. The City of Kettering will allow a non-refundable credit for any amount owed the City of Kettering 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 the City of Kettering tax rate. If the City of Kettering tax rate is higher, the tax representing the net difference of the rates shall be paid to the City of Kettering and is also subject to collection by the City of Kettering.

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- D. Additional amounts of less than five Dollars (\$5.00) shall not be refunded or assessed unless such assessment results from income which the taxpayer has failed to report.
- E. Any valid claim for a refund of overpaid taxes shall, except as hereinafter provided, earn interest at the rate fixed by Ohio Revised Code Section 5703.47. Such interest shall be computed 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 complete return is filed, whichever is later, no interest shall be allowed on the refunded overpayment. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return.
- F. Every taxpayer shall retain all records necessary to compute the taxpayer's tax liability for a period of six (6) years from the date the taxpayer's return is filed or the withholding taxes are paid.
- G. The determination of tax liability of non-residents working in and out of the corporate limits is to be computed by the formula of the total number of days worked in the city divided by the total number of days worked (excluding vacation, holiday and sick days) during the year and the resulting percentage applied to the total annual income from wages. The tax manager may require employer certification of the basis for refund of taxes.
- H. Payments on delinquent amounts shall be applied in the following manner:
1. To unpaid penalty and interest assessments in the order in which such assessments became due.
  2. To the taxes owed for any previous year in the order in which such taxes became due.
  3. To the taxpayer's current estimated tax liability.

**SECTION 191.12 VIOLATIONS, CRIMINAL PENALTIES, TIME LIMITS FOR PROSECUTIONS**

- A. Every person shall be guilty of a first degree misdemeanor for each of the following acts which such person may do:
1. Fail, neglect or refuse to make any return or declaration required by this Tax Code as amended; or

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2. Knowingly make an incorrect return; or
  3. Willfully fail or willfully refuse to pay the tax, penalties or interest imposed by this Tax Code as amended; or
  4. Fail or refuse to withhold the tax from employees and remit such withholding to the Tax Manager; or
  5. Refuse to permit the Tax Manager or any duly authorized agent or employee to examine books, records, papers and copies of federal, state, or local income tax returns relating to the income or net profits of a taxpayer; or
  6. Fail to appear before the Tax Manager and to produce books, records, papers or copies of federal, state, and local income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Manager; or
  7. Refuse to disclose to the Tax Manager any information with respect to the income or net profits of a taxpayer; or
  8. Fail to comply with the provisions of this Tax Code or any order or subpoena of the Tax Manager, except that any such failure to pay the tax, penalties or interest (as referred to in paragraph 3 above) must be willful; or
  9. Willfully fail or willfully refuse to make any payment on the estimated tax for any year or part of any tax year as required by Section 191.07; or
  10. Fail to cause the tax withheld from the wages of the employees pursuant to this Tax Code to be paid to the City in accordance with the provisions of Section 191.06; or
  11. Willfully or fraudulently attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Tax Code.
- B. Any person who has filed a return under the provisions of Section 191.01 through Section 191.17 inclusive indicating the amount of tax but has willfully or fraudulently failed to pay said tax, penalties or interest that may have accrued thereon, shall not be deemed to have committed an offense for having willfully or fraudulently failed to pay the tax, penalties or interest due as provided by Paragraph A-3 above, until the date of the filing of such return.
- C. The term "person" as used in this section shall, in addition to the meaning prescribed in Section 191.02, include in the case of an association or corporation not having any

- partner, member or officer within this City, any employee or agent of that association or corporation who can be found within the corporate limits of the City.
- D. All prosecutions under this section shall be commenced within three (3) years after the commission of the offense, except that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported prosecutions may be commenced within six (6) years after the commission of the offense.
- E. The failure of any employer or taxpayer or person to receive or procure a return, declaration or other required form shall not excuse any employer or taxpayer or person from making any information return, return or declaration, from filing such forms, or from paying the tax.
- F. The Law Director or the Law Director's designee shall have the power to compromise any criminal or civil matter arising under this Tax Code.

**SECTION 191.13 BOARD OF ADJUDICATION AND BOARD OF TAX APPEALS**

- A. Board of Adjudication
1. A Board of Adjudication, consisting of the City Manager or a person designated by the City Manager, the Director of Finance or a person designated by the Director of Finance, and the City Law Director or a person designated by the City Law Director, is hereby created. A majority of the members of the board shall constitute a quorum.
  2. The board shall adopt its own procedural rules and shall keep a record of its proceedings. All hearings of the board shall be conducted privately and the provisions of Section 191.09 with reference to the confidential character of information required to be disclosed by this Tax Code shall apply to such matters as may be presented to the Board of Adjudication.
  3. The board shall have the authority, upon request of the Tax Manager, to modify in whole or in part, any assessment of tax, penalty and/or interest, required to be made by this Tax Code. In addition, the board may authorize the Tax Manager to accept partial payments for a period in excess of the time authorized in Section 191.08.
  4. All tax regulations which are issued by the Tax Manager under Section 191.08 are subject to approval by a majority of the Board of Adjudication before they become effective. After such approval, such regulations shall be filed with the Clerk of Council and shall be open to public inspection.
- B. Board of Tax Appeals

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1. A Board of Tax Appeals, consisting of three (3) representative citizens of this City, not otherwise employed by the City of Kettering, to be appointed by the City Council for a term of one (1) year and without compensation, is hereby created.
  2. The Board of Tax Appeals shall elect one of its members as Chairman. A majority of the members of the board shall constitute a quorum. The board shall adopt its own procedural rules and keep a record of its proceedings. All hearings by the board shall be conducted privately and the provisions of Section 191.09 with reference to the confidential character of information required to be disclosed by this Tax Code shall apply to such matters as may be heard on appeal before the board.
  3. Whenever the Tax Manager issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the City of Kettering, the Tax Manager shall notify the taxpayer at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

Any decision of the Tax Manager shall be deemed to be properly served if a copy thereof is:

- (a) Delivered personally; or
  - (b) Successfully transmitted via facsimile transmission to the last known fax number of the person to be served; or
  - (c) Left at the usual place of business of the person to be served upon and with someone who is 18 years of age or older; or
  - (d) Sent by regular, pre-posted, first-class U.S. mail to the last known address of the person to be served.
4. Any person who is aggrieved by a decision by the Tax Manager and who has filed with the City of Kettering the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Tax Appeals by filing a request with the Board. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Tax Manager has issued the decision.
  5. The imposition of penalty and interest as prescribed in this Tax Code is not a basis for an appeal.

6. The Board of Tax Appeals shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative. The procedure and conduct of Board of Tax Appeals proceedings shall adhere to the then current edition of Robert's Rules of Order, unless otherwise provided for by written and Board adopted rules of procedure.
7. The Board may affirm, reverse, or modify the Tax Manager's decision or any part of that decision. In deciding to affirm, reverse, or modify, the Board shall determine the facts and shall apply the income tax law as set forth in this Tax Code but shall not have authority to vary or waive or refuse to apply any provision of the Tax Code. 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's last known address within fifteen (15) days after issuing the decision. All decisions of the Board shall be final. Any decision of the Board of Tax Appeals may be appealed under Ohio Revised Code Chapter or 2506 Ohio Revised Code Section 5717.011.
8. The Board may issue a subpoena to any person in the state compelling the attendance of witnesses and the production of relevant papers, books, accounts, and records. The Board will issue subpoenas upon the written request of a party. Upon motion and for good cause shown, the Board may quash any subpoena issued by the Board at any time prior to the hearing. Requests for subpoenas must be received by the Board not later than ten days before the date of the hearing. The Board will serve subpoenas by certified mail, return receipt requested. However the party requesting the subpoena may arrange for personal service of the subpoena, at the requesting party's cost, in accordance with the Ohio Rules of Civil Procedure.

#### **SECTION 191.14 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY**

- A. Where a resident of this City is subject to a municipal income tax in another municipality, the resident shall not pay a total municipal income tax on the same income greater than the tax imposed at the highest rate to which the resident is subject.
- B. For every individual taxpayer who resides in the City who receives net profits, pass-through entity income, qualifying wages, commissions, or other compensation for work done or services performed or rendered outside of the City, if credible evidence demonstrates that a municipal income tax has been paid on the same income taxable under this Tax Code to another municipality, a credit shall be allowed against the tax

- imposed by this Tax Code of the amount paid by the taxpayer or on the taxpayer's behalf to such other municipality. The credit shall not exceed the tax assessed by this Tax Code on such income earned in such other municipality where such tax is paid. No credit shall be given for county or school district taxes paid, but only for other municipal taxes paid.
- C. Every individual who resides in the City of Kettering and pays an income tax to a Joint Economic Development District shall be granted a credit to the same extent that the municipal corporation grants a credit to its residents for taxes paid to another municipal corporation as provided for in paragraph B of this section.
- D. A claim for refund or credit under this section shall be made in such manner as the Tax Manager may by regulation provide, subject to the time limitations in Section 191.11.
- E. A credit shall be granted to resident taxpayers for taxes paid to another municipality by a pass-through entity (other than an S-corporation) of which the resident taxpayer is an owner and that does not conduct business in the City of Kettering. The amount of the credit shall equal the lesser of the following amounts:
1. The amount, if any, of tax paid by the pass-through entity to another municipality in Ohio, apportioned ratably according to the ownership interest of the taxpayer in proportion to the ownership interest of all owners of the entity;
  2. The amount of tax that would be imposed on the pass-through entity by the municipality in which the taxpayer is domiciled if the pass-through entity conducted business in the municipality, apportioned ratably according to the ownership interest of the taxpayer in proportion to the ownership interest of all owners of the entity.
- F. If the total amount of credits granted under this Tax Code, including the credit(s) granted under this Subsection E, exceed the total amount of tax owing to the City of Kettering before application of all such credits, then no refund shall be due or payable to the resident taxpayer.

#### **SECTION 191.15 SAVINGS CLAUSE**

This Tax Code shall not apply to any person, firm, corporation, or income, as to whom or which it is beyond the power of the City Council to impose the tax herein provided for. If any sentence, paragraph, clause, section or part of this Tax Code, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal, invalid or otherwise unenforceable, such unconstitutionality, illegality, invalidity or unenforceability shall affect only such paragraph, clause, sentence, section or part and shall not affect or impair any of

the remaining provisions, sentences, paragraphs, clauses, sections or other parts of this Tax Code.

It is hereby declared to be the intention of the Council of the City of Kettering that the remaining portions of this Tax Code, including any amendments hereto, would have been adopted even if such unconstitutional, illegal, or invalid sentence, clause, paragraph, section or part not been included herein.

#### **SECTION 191.16 COMPROMISE AGREEMENTS**

In cases where the Tax Manager determines, in the Tax Manager's sole discretion, that calculation of the amount of income tax due or required to be withheld using the methods prescribed in this Tax Code would be unduly burdensome to the taxpayer or cannot be determined with certainty, the Tax Manager is hereby authorized to employ any other reasonable means of measuring the amount of tax due or required to be withheld which, in the Tax Manager's determination, protects the interests of the City and is further authorized to enter into a compromise agreement with the taxpayer, transient contractor or transient taxpayer, such that the final determination of tax due or required to be withheld is consistent with the intent of this Tax Code and the intent of the City to treat all taxpayers, transient contractors and transient taxpayers in an equitable manner.

#### **SECTION 191.17 COLLECTION OF TAX AFTER TERMINATION OF TAX CODE**

- A. This Tax Code shall continue effective insofar as the levy of taxes is concerned until repealed. Insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this Tax Code are concerned, it shall continue effective until all of said taxes are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this Tax Code shall have been fully terminated, subject to the limitations contained in Sections 191.11 and 191.12.
- B. Annual returns due for all or part of the last effective year of this Tax Code shall be due on the date provided in 191.05 and 191.06 of this Tax Code as though the same were continuing.

#### **LEGISLATIVE HISTORY:**

An income tax became effective in the City on January 1, 1968 through Ordinance 1717-67. The rate of tax was amended, effective April 1, 1981, by Ordinance 2945-81. Chapter 191 was

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repealed and rewritten by Ord. 3358-88 on December 13, 1988. Chapter 191 was amended by the addition of Chapter 192 by Ord. 4260-15 on December 8, 2015.

Regulations proposed by the Tax Manager for administration and enforcement of the Income Tax Code were approved by City Council on January 9, 1968 by Ordinance 1733-68.

Miscellaneous amendments have been affected by the following Ordinances: Ord. 1733-68; passed 1/9/68. Ord. 2382-72; passed 3/28/72. Ord. 3063-83; passed 5/24/83. Ord. 3117-84; passed 6/26/84. Ord. 3520-91; passed 10/22/91. Ord. 3548-92; passed 4/28/92. Ord. 3595-93; passed 3/2/93. Ord. 3624-93; passed 12/14/93. Ord. 3686-95; passed 8/8/95. Ord. 3732-96; passed 11/19/96. Ord. 3857-00; passed 12/19/00. Ord. 3893; passed 11/27/01. Ord. 3933-02; passed 12/10/02. Ord. 3976-04; passed 8/24/04. Ord. 3979-04; passed 9/28/04. Ord. 3989-04; passed 12/14/04. Ord. 4012-05; passed 6/14/05. Ord. 4059-06; passed 9/26/06. Ord. 4110-08; passed 10/28/08. Ord. 4163-10; passed 10/26/10. Ord. 4196-12; passed 4/10/12. Ord. 4258-15; passed 11/24/15. Ord. 4260-15; passed 12/8/15; Ord. 4331-19; passed 11/26/19.