

CHAPTER 1713
(AS AMENDED BY ORDINANCE 9347-2006, DECEMBER 19, 2006)
Payment of Tax

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CROSS REFERENCES

Determination of allocation of tax - see TAX. Ch. 1707
Sources of income not taxed - see TAX. Ch. 1709
Returns - see TAX. Ch. 1711
Interest and penalties - see TAX. Ch. 1715
Collection of unpaid taxes; refunds of overpayments - see TAX. Ch. 1717
Credit for tax paid to another municipality - see TAX. Ch. 1719

1713.01 PAYMENT OF TAX ON FILING OF RETURN.

(a) The taxpayer making a return shall, at the time of the filing thereof, pay to the Director of the Department of Taxation the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 1713.02 hereof, or where any portion of such tax shall have been paid by the taxpayer pursuant to the provisions of Section 1713.03 hereof, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Chapter 1719, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing such return.

(b) At the time of filing a taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of this Title shall have such overpayment initially applied against any existing liability, and/or against any subsequent liability hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded in accordance with the Rules and Regulations provided that no single amount of less than five dollars (\$5.00) shall be collected or refunded. Upon an account balance exceeding the five dollar (\$5.00) limitation, the total liability shall be collectible and the overpayment amount subject to refund, pursuant to statutory restrictions. No refunds are allowable when there is an existing liability and/or delinquency on any of the taxpayer's associated tax accounts, or the taxpayer has failed to file any required tax return, report, or other related document for a prior tax period on any of the taxpayer's associated accounts.

(c) If any employer which is liable for tax obligations imposed by this Title undergoes a fundamental change, then the employer and its manager shall be liable for taxes due up to the date of the fundamental change. Taxes and final tax returns shall be due immediately after the fundamental change. Any successor employer shall withhold from any purchase price that the successor owes to the predecessor an amount sufficient to pay all unpaid taxes, interest and penalty which the predecessor employer owes pursuant to this Title. The successor employer shall make such withholding until such time that the predecessor employer has paid such taxes, interest and penalties. If the successor fails to withhold such amount, then the successor and, in a personal manner, the successor's manager shall be jointly and severally liable for the payment of such taxes, interest and penalty.

1713.02 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Director of the Department of Taxation, each employer within or doing business within the City shall deduct at the time of the payment of salary, wage, commission or other compensation, the tax of two percent of the gross salaries, wages, commissions or other compensation earned and received, earned and accrued or earned and deferred due by the employer to employees and shall, on or before the fifteenth day of the month following the close of each month, make a return detailing the wages paid and the tax deducted, and pay to the Director the amount of taxes so deducted. Whenever the fifteenth day of the month falls on a weekend or federal holiday, the payment shall not be considered late if paid on the next business day following such weekend or holiday. Such returns shall be on a form or forms prescribed by or acceptable to the Director and shall be subject to rules and regulations prescribed therefor by the Director. 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. Nothing in this section prohibits an employer from withholding tax on a basis greater than qualifying wages. Nothing in this section prohibits an employer from paying on a basis more frequent than monthly.

(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) The Director of the Department of Taxation may authorize any employer to file returns and remit the tax withheld on a quarterly basis provided that such authorization does not jeopardize the interest of the City. Quarterly payments will normally be approved for employers whose annual city income tax return shows that taxes withheld for Brook Park averaged less than \$100 per month.

(d) Any employer who wishes to file and remit on a quarterly basis may request the authority for quarterly filing from the Director of the Department of Taxation. Such request must be in writing, stating the employer's name, the City of Brook Park account number, the address to which tax documents should be mailed, the estimated amount of tax to be withheld each quarter and the name, title, address and telephone number of the person responsible for complying with the withholding requirements of this chapter. The Director of the Department of Taxation is hereby authorized to provide for this request in conjunction with the annual reconciliation of wages as provided in Chapter 1713.02(h), below. If the request is approved, the taxpayer shall be authorized to make payment on or before the last day of the month following the end of the calendar quarters ending March 31, June 30, September 30 and December 31.

(e) An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.

(f) 1. An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by a municipal corporation or by the employer's exemption from the requirement to withhold the tax.

2. The failure of an employer to remit the tax withheld to the City of Brook Park, Department of Taxation, relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax.

(g) Every employer required to deduct and withhold any amount under this chapter shall make payment by electronic funds transfer pursuant to subsection (k) hereof *or by election to* pay through the Ohio Business Gateway (OBG). Nothing in this subsection shall be construed as relieving an employer from complying with subsections (k) and/or (l) hereof.

(h) On or before January 31 of each year beginning with the year 1975, each employer shall file a withholding return setting forth the names and addresses of all employees from whose compensation the tax was withheld during the preceding calendar year and the amount of the tax withheld from his employees and such other information as may be required by the Director. All payments not subject to withholding shall be reported on a form required by the Director.

(i) The Director, for good cause, may require immediate returns and payments to be submitted to his office.

- (j)
 - (1) Every manager is deemed to be a trustee of the City in collecting and holding the tax required under this Title to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every manager is liable directly to the City for payment of such trust, whether actually collected by such employer or not. Any tax deducted and withheld is to be considered paid to the City whether or not the employer actually remits the tax to the City, 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 Title.
 - (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.

- (k) Except as otherwise provided in this paragraph, the payment of taxes by electronic funds transfer or through the Ohio Business Gateway (OBG), does not affect an employer's obligation to file the returns as required under this section. The Director of Taxation may adopt rules governing the format for filing the returns under this section by employers who remit undeposited taxes by electronic funds transfer or through the OBG. The rules may permit the filing of returns at less frequent intervals than required by subsection (a) hereof if the Director of Taxation determines that remittance by electronic funds transfer or through the OBG warrants less frequent filing of returns.

(l) The Director of Taxation shall adopt rules governing the remittance of taxes by electronic funds transfer as required under this chapter. The rules shall govern the modes of electronic funds transfer and under what circumstances each mode is acceptable, the content and format of electronic funds transfers, the coordination of payment by electronic funds transfer and the filing of associated tax reports and returns, and any other matter that in the opinion of the Director of Taxation facilitates payment by electronic funds transfer. The Director of Taxation may grant an exemption to an employer from the duty to make payment by electronic funds transfer, upon application, for such exemption by the employer and the employer's demonstration to the Director of Taxation that the requirement to make payment by electronic fund transfer will impose a substantial hardship upon the employer. The Director of Taxation may implement means of acknowledging, upon the request of a taxpayer; receipt of tax remittances made by electronic funds transfer, and may adopt rules governing acknowledgments. The cost of acknowledging receipt of electronic remittances shall be paid by the person requesting acknowledgement.

Employers using the Ohio Business Gateway for remittance of taxes must notify the Director of their intended use of the OBG, in writing by certified mail, at least thirty (30) days prior to terminating electronic funds transfer. However nothing in this paragraph shall be construed as voiding the timelines required in subsections (a), (c) or (d) above.

- (m) Every contract on behalf of the City for works or improvements of the City shall contain the following provisions:

The contractor further agrees that all city income taxes due and payable under Chapter 1705 of the City of Brook Park Codified Ordinances shall be withheld by the contractor pursuant to Section 1713.02 (a through l) and further agrees that any of its subcontractors shall be required to withhold income taxes as set forth in Chapter 1705.

- (n) An individual, association, corporation or other entity licensed by the State of Ohio or the City of Brook Park and registered to engage in the business of construction, remodeling or repair work in the City of Brook Park shall obtain a Contractor Tax Registration Certificate issued by the Department of Taxation prior to beginning any work. An individual, association, corporation or other entity engaged in the business of construction, remodeling or repair work in the City of Brook Park on any commercial or industrial project, or any residential project in excess of \$7,500.00 and who will perform construction, remodeling or repair work in the City of Brook Park shall obtain a Contractor Tax Registration Certificate, issued by the Department of Taxation, prior to beginning construction work.

The Department of Taxation will issue a Contractor Tax Registration Certificate, which the contractor shall file with the

Building Department. Failure to possess a valid Certificate shall be cause for suspension of work by the Department of Taxation prior to the construction work commencing and/or during the performance of the construction work. Proof of possession of a valid Certificate shall be necessary to commence or resume suspended construction work. The Contractor Tax Registration Certificate may be revoked by the Department of Taxation for failure by the contractor to remain current in the filing of required tax documents, for failure to remain current in the required payment of taxes, and for failure to comply with Chapter 1705 and subsections 1713.02 (a through l) of this Title, and with the provisions of Chapter 1711 and Section 1713.01.

(Ord 9347-2006, passed 12-19-06)

1713.03 DECLARATIONS OF INCOME NOT COLLECTED AT SOURCE.

Every person who anticipates any taxable income which is not subject to Section 1713.02, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 1705.01 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; provided, however, if a person's income is wholly from wages from which the tax shall be withheld and remitted to the City in accordance with Section 1713.02 such person need not file a declaration.

1713.04 FILING OF DECLARATION.

(a) Such declarations shall be filed on or before the date specified in chapter 1711.01 of each year during the effective period set forth in Section 1705.02, or within three and one-half months of the date the taxpayer becomes subject to tax for the first time.

(b) Those taxpayers reporting on a fiscal year basis shall file a declaration within the time specified in Chapter 1711.01 after the beginning of each fiscal year or period.

(c) Declarations filed using the Ohio Business Gateway must be filed on or before the date specified in Chapter 1711.01.

(Ord. 9347-2006, passed 12-19-06)

1713.05 FORM OF DECLARATION.

(a) Such declaration shall be filed upon a form furnished by, or obtainable from, the Director of the Department of Taxation, provided, however, credit shall be taken for City income tax to the withheld from any portion of such income. In accordance with the provisions of Chapter 1719, credit may be taken for tax to be paid or to be withheld and remitted to another taxing municipality.

(b) The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment date as provided for herein. (A declaration of estimated tax that is less than ninety percent (90%) of the tax as shown due on the final return shall not be considered filed in good faith)

1713.06 PAYMENT TO ACCOMPANY DECLARATION.

Such declaration of estimated tax to be paid to the City shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the taxpayers estimated liability for the current year and at least a similar amount shall be paid on the last day of the seventh, tenth and thirteenth month after the beginning of the taxable year. Total payments in an amount equal to one hundred percent (100%) of the taxpayer's tax liability for the preceeding year will be accepted provided that the prior return reflected a twelve-month period.

1713.07 ANNUAL RETURN.

On or before the date specified in Chapter 1711.01 of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed as required by 1711.01 and any balance which may be due the City shall be paid therewith in accord with 1713.01.

(Ord. 9051-2003, passed 12-16-03)