

# City of Cincinnati Income Tax Rules & Regulations

Approved and In Effect April 10, 2017

**Authority:**

These Rules & Regulations are adopted under the authority of Cincinnati Municipal Code §311-103. They are intended to supplement Cincinnati Municipal Code Chapter 311, “City of Cincinnati Income Tax.” In the event of any conflict between the rules and regulations and Chapter 311, the language of Chapter 311 controls.

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## **Acronyms and Abbreviations Used in Rules & Regulations:**

City = City of Cincinnati, Ohio

CMC = Cincinnati Municipal Code

IRC = Internal Revenue Code

MTI = Municipal Taxable Income

NOL = Net Operating Loss

ORC = Ohio Revised Code

Tax Commissioner = Tax Commissioner of the City of Cincinnati

Income Tax Division = Income Tax Division of the City of Cincinnati

R4 = Regulation related to section of Chapter 311 with the same number, e.g. CMC § 311-4

## **Rules & Regulations:**

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### **R9-A2. - Assessment.**

- (a) Amended return is potential response to an assessment. The issuance of an assessment does not prevent a taxpayer from filing an amended return.
- (1) For example, a taxpayer is allowed to make a correction or modification to the original return based the information conveyed in an assessment.
  - (2) If that modification is not sufficient, or the amended return is insufficient for some other reason, the Tax Commissioner may issue a new assessment.
  - (3) At that point, the taxpayer could agree with the assessment and pay, provide any information required, appeal that Assessment to the Board of Review, or file an amended return.
  - (4) The only prohibited action with regard to an amended return after an assessment would be for a taxpayer to submit the same return as originally submitted, without actually making substantive changes based on the assessment, and simply label it as an amended return. The ability to make an amended return cannot be used as a delay tactic.
- (b) Refund request with return does not require assessment. Under CMC §§ 311-A2 and 311-71(c)(ii), when a taxpayer claims a refund request with his/her originally filed annual income tax return, the Tax Commissioner is not required to issue an assessment.
- (1) The taxpayer who receives a denial of a refund request may then request an assessment to enable the taxpayer to appeal the decision to the Board of Review.
  - (2) But, the Tax Commissioner's initial response to a refund request does not need to be an assessment and need not be sent via certified mail as required for assessments under CMC § 311-95.

(c) Refund request sent separately from original return. When a taxpayer submits a refund request separately from the taxpayer's originally filed annual income tax return, the Tax Commissioner must issue an assessment.

- (1) In that case, the initial denial of the refund request is an assessment under CMC §311-9-A2, and it must be labeled as such and sent by certified mail.
- (2) The taxpayer can immediately appeal the decision to the Board of Review, if the taxpayer so chooses.

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## **R9-11. - Income.**

(a) Income from partnerships. A partner's distributive share of any item or class of items of income, gain, loss, deduction, or credit of the partnership shall be determined by the partnership agreement.

- (1) If the partnership agreement does not provide for a proper allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner as defined in IRC §704, the partner's distributive share shall be determined in accordance with such partner's interest in the partnership.
- (2) Generally, a partner's interest in a partnership is determined by the profit sharing percentage reported on the Federal Schedule K-1. Taxpayer must include copies of the K-1 when filing the City's individual tax return.
- (3) The Tax Commissioner has authority to determine whether a partnership agreement sufficiently explains a partner's distributive share.
- (4) The Tax Commissioner also has discretion to determine that a partnership agreement does not fairly represent a partner's distributive share and to decide instead to use the partner's interest in the partnership to determine the partner's distributive share.
- (5) In addition to using the Federal Schedule K-1 as the default to determine a partner's interest in a partnership, the Tax Commissioner may refer to the alternatives for determining "distributive share" discussed in the IRC, 26 U.S.C. §704.

(b) Other compensation. Generally, all income received in the form of money, property or services are considered to be taxable income unless specifically excluded in 311-15.

- (1) All income earned through the taxpayer's business, as an independent contractor or from informal side jobs is self-employment income, which is fully taxable and reportable on Schedule C.
- (2) Independent contractors must report all income as taxable, even if it is less than \$600. Even if the taxpayer-contractor does not receive a Form 1099-MISC, the income, whatever the amount, is still reportable by the taxpayer.

- (3) Fees received for babysitting, housecleaning and lawn cutting are all examples of taxable income that are reportable on Schedule C.

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**R15. - Exception to the Tax; Exempt Income.**

- (a) Restricted stock awards. For purposes of CMC §311-15(s), restricted stock awards that vest over a period of time are not considered stock options and are taxable at their fair market value at the time they become vested and included in Medicare wages, as shown on the employee's IRS Form W-2.

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**R17. - Net Profit; Income Subject to Net Profit Tax; Alternative Apportionment.**

- (a) Approval of alternative apportionment. When a taxpayer requests an alternative apportionment method, the taxpayer may use the apportionment method unless the Tax Commissioner disapproves the alternative method.
- (b) Time limit for decision. The Tax Commissioner has a period of three years after the tax was due or after the return was filed (whichever is later) to decide to deny the requested alternative apportionment method.
- (1) This time period is that established in §311-99(a), which is the time limit for this action established in §311-17(b)(ii)(2).
  - (2) The Tax Commissioner is not required to affirmatively approve a requested alternative apportionment method.
  - (3) The Tax Commissioner's failure to affirmatively approve does not equate to approval, until after the period (at least three years) established in §311-99 have passed.
- (c) Ability to submit request directly to Commissioner. To avoid uncertainty, a taxpayer can request to use an alternative apportionment method by submitting the return requesting an alternative apportionment method or a change in the apportionment method directly to the Tax Commissioner.
- (1) Despite the clear right of a taxpayer under 311-17(b)(ii)(2) to request an alternative apportionment method by simply accompanying the request with the tax return, if the request is instead sent directly to the Tax Commissioner as a request for an assessment, the taxpayer can expect an answer within 60 days.
  - (2) When submitting such a request, the taxpayer should use registered mail.
- (d) Pre-2016 apportionment methods. For taxpayers who were approved to use an alternative apportionment arrangement prior to 2016, they may continue to use the same method.
- (1) The taxpayer or the Tax Commissioner may request a change in accordance with §311-17 of the new Chapter 311 that came into effect January 1, 2016.

- (2) However, every taxpayer already using an approved apportionment method is not required to seek re-approval of that alternative apportionment only because the new Chapter 311 has come into effect.
- (e) Rental of real estate. Real estate shall include commercial property, residential property, farm property, and any other types of real property.
- (1) Residents of Cincinnati are subject to taxation upon the net profits from rentals regardless of the location of the property.
  - (2) In accordance with CMC §311-47, residents may claim a credit for taxes paid to another municipality on rental income from property located in that other municipality.
  - (3) Nonresidents of the City are subject to such taxation only if the real property is situated within the City and the rental activity is deemed a business as defined in CMC §311-9-B2.
  - (4) Businesses owning or managing real estate are taxable only on that portion of the real estate property located in Cincinnati.
    - i. Taxpayer business must use separate accounting for the purpose of calculating net profit situated to the City for property located within the City.
    - ii. If a taxpayer wishes to assert that using separate accounting for real estate located in the City will be unduly burdensome, the taxpayer should submit a request to the Tax Commissioner to use another method. Other methods may include the normal three-step, average ratio apportionment method established in CMC §311-17(a).
- (f) Profit threshold. The net profit from rental activity is reportable provided the gross rents from all rental activities exceed \$500 per month.
- (1) During periods of vacancies the taxpayer must show that the properties could have been rented for more than \$500 per month.
  - (2) In the case of commercial property, when the gross rents are based on a percentage of gross sales or net sales, the \$500 requirement is disregarded and the owner is considered to be engaged in a business activity.
  - (3) In the case of farm rentals, when the owner shares in the crops or the gross rents are based on the receipts derived from the farm, the \$500 requirement is disregarded and the owner is considered to be engaged in a business activity.
  - (4) Rooming houses of five or more rooms are considered businesses activities whether or not the gross rents exceed \$500 per month.

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## **R21. - Net Operating Loss (NOL).**

- (a) Basic rule for pre-2017 NOL. A net operating loss (“NOL”) sustained in any taxable year that is apportioned to the City may be applied against the net profit of succeeding tax years that is apportioned to the City.
- (b) Basic rule for post-2016 NOL. A NOL sustained in any taxable year starting after January 1, 2016 is determined before apportionment of net profit and any deduction of NOL carry-forward from prior years and may be applied against the net profit of succeeding tax years before apportionment.
- (c) Additional rules for utilizing the NOL carry-forward:
  - (1) The NOL from any taxable year may continue to be used in subsequent years until exhausted, but in no event for more than the five taxable years immediately following the year in which the loss occurred.
  - (2) No portion of a NOL shall be carried back against net profits of any prior year, and no portion of a NOL may offset qualifying wages.
  - (3) A pre-2017 NOL sustained shall be apportioned to the City in the same manner as provided under §311-17 for apportioning net profits to the City.
  - (4) Taxpayers cannot start utilizing post-2016 NOL until they have first utilized all pre-2017 NOL.
- (d) 50% limitation for tax years 2018 to 2022. For tax years 2018 to 2022, the deduction is limited. Taxpayers are delayed from full utilization of net operating loss until taxable year 2023. This limitation is described in CMC §311-21(h) and required under ORC §718.01(E)(8)(c)(i).
  - (1) Taxpayers may not deduct more than 50% of the amount of the deduction “otherwise allowed” under the sub-section or subdivision that establishes the amount which taxpayers will be able to deduct after 2022. The amount otherwise allowed is described as the amount of NOL necessary to reduce MTI to zero.
  - (2) Therefore, the City’s interpretation is that the deduction is limited to the lesser amount of: 50% of the NOL carry-forward available for that tax year or 50% of the MTI computed after the Post 2016 NOL deduction.
  - (3) The 50% limitation is on the amount deductible in years 2018 to 2022, not on the amount of NOL that can be carried forward in those tax years.
  - (4) Pre-2017 NOL is not subject to the 50% limitation. NOL for tax years after 2016 will be calculated and applied on a pre-apportionment basis.

- (5) With regard to what taxpayers should declare on their returns for 2018 to 2022, taxpayers will declare 100% of their NOL on their returns. They are not expected to declare only 50% of their NOL.

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**R23. - Collection at Source; Withholding from Qualifying Wages.**

- (a) All employers within or doing business within the City are required to make the collections and deductions specified in CMC §311-23 for residents of the City whose services were performed outside the City.
- (b) Employers who do not maintain a permanent office or place of business in the City, but who are subject to tax on net profits attributable to the City under the business apportionment percentage formula, are considered to be employers within the City and subject to the requirements of withholding specified in CMC §311-23.
- (c) Wage continuation plans paid by the employer or third party agent on behalf of the employer for purpose of health, rest, recuperation, or other reward are deemed to have the same tax situs as the primary job assignment or job location of the employee.
- (d) Such payments are taxable at the same ratio as the normal earnings of such employee for his primary job assignment.
- (e) Severance pay is considered such a payment and is taxable.
- (1) To calculate apportionment of severance pay, the Income Tax Division will use the average of the last three years' allocation percentages to determine the percentage of severance pay to be allocated to the City.
- (2) This default method of calculating apportionment of severance pay may be inequitable or incorrect in the case of a given taxpayer, for example if the taxpayer spent twenty-seven years outside of the City and then worked in the City only for the last three years of the career.
- (3) Any taxpayer may therefore present to the Tax Commissioner an alternative method of calculating percentage of severance to be apportioned to the City, along with reasons using for that alternative percentage.

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**R25. - Qualifying Wages Withholding Return; List of Employees.**

- (a) Employers required to file electronic W-2's will submit the file utilizing the format posted on the City's website. The City will generally update the file format by January 15th of the year the W-3 filing is due.
- (b) Employers required to file electronic 1099's will submit the file utilizing the format posted on the City's website. The City will generally update the file format by January 15th of the year the W-3 filing is due.

- (c) The specifications for file format conform to the Social Security Administration Publication No. 42-007, *Specifications for Filing Forms W2 Electronically (EFW2)*, with some minor changes.

### **R31. – Withholding From Casino, Lottery and Sports Gaming Winnings.**

For purposes of the withholding requirements set forth in Section 311-31, as required by Ohio Revised Code 718.031 and section 6041 of the Internal Revenue Code, as amended, if a person’s winnings at a casino facility or sports gaming facility are \$600.00 or more and if the proceeds are at least 300 times as large as the amount wagered, a casino operator, sports gaming proprietor or video lottery terminal sales agent conducting lottery sports gaming offered in a video lottery terminal facility shall deduct, withhold and remit municipal tax from the person’s winnings at the tax rate set forth in Section 311-3 and Article VIII Section 6c of the City Charter. The payer, at its option, may reduce the amount of the winnings by the amount of the wager.

Effective August 23, 2023

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### **R47. - Credit for Tax Paid to Another Municipality/Joint Economic Development District.**

- (a) A taxpayer who claims a credit against tax paid to another municipality is required under CMC §311-47(c) to claim the credit in a timely manner in a form acceptable to the Tax Commissioner.
- (b) The form required may be:
  - (1) A copy of the return which the taxpayer submits to the other municipality, proof that the return was submitted to that municipality such as a certified mail receipt or a certification of electronic filing, and a copy of the method of payment; or
  - (2) A record of the tax withheld by the municipality during the relevant calendar year.

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### **R51. - Returns Must Be Filed; Time of Filing; Payment with Return.**

- (a) Normal filing deadline. The filing deadline is generally the 15th day of April each year, or the 15th day of the fourth month after the end of the taxable year or period, if not the calendar year. This is the default deadline, absent an extension, under ORC §5747.08(G), CMC §§ 311-41, 311-51, and 311-63.
- (b) When April 15th is on a holiday or a weekend. There are some years in which the federal filing deadline is not April 15th, because April 15th falls on a weekend or holiday. For taxpayers who file on a calendar year basis, CMC §311-41(a) states that the deadline is the federal filing deadline, rather than specifying April 15th. For all taxpayers for whom the filing deadline is in April, the Income Tax Division may choose to allow filing on the same

date as the federal filing deadline, in those years in which April 15th falls on a weekend or holiday.

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**R53. - Exception to Filing Requirement; Affidavit.**

- (a) §311-53(c) requires taxpayers to submit an affidavit if they no longer live or work in the City and do not need to file a tax return or pay municipal taxes to the City.
- (b) The taxpayer should also submit his or her last tax return filed with the City, to make clear to the Income Tax Division what is the final return from the taxpayer and the final year in which the taxpayer had any tax liability to the City.
- (c) In lieu of filing an affidavit, a taxpayer may indicate on the annual return that the return is a “Final Return” and state the reason that filing obligation will no longer exist. The Income Tax Division will provide appropriate fields on its official return.

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**R55. - Extension of Time for Filing.**

- (a) The request for an extension does not extend the time to pay the tax due; the request only extends the time to file the final return. A legally filed extension request will result in no late filing penalty being assessed if the final return is filed before the extended due date. All delinquent tax payments are subject to the interest and penalty charges based on the original due date of the return as described in CMC §§ 311-73 and 311-75, regardless of the status of an extension request.
- (b) However, if any requirements are not fulfilled within the extension time period, then the taxpayer will have to pay late fees in addition to interest and penalties.
- (c) Interest will accrue from the original payment due date, not from the end of the extension deadline.

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**R59. - Consolidated Return.**

- (a) Taxpayers filing consolidated returns under the pre-2016 method, using separate schedules X and Y, may continue to use that method without requesting permission from the Tax Commissioner to use an alternative method for filing consolidated returns.
- (b) For tax years starting with 2016, once a taxpayer elects to file a consolidated return utilizing the method identified in CMC §311-59(b)(ii), they will continue filing using the same method for at least five years.
  - (1) In order to request a change, the taxpayer must submit the request in writing to the Tax Commissioner before the due date of the return.

- (2) The change from a consolidated return is not approved until the taxpayer receives permission in writing from the Tax Commissioner
- (c) Upon review of the facts and circumstances, the Tax Commissioner may require the taxpayer to change their method of filing a consolidated return in accordance with CMC 311-59(d)(ii) or disallow any consolidated return method.

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**R61. - Determination of Timely Filing and Payment.**

- (a) When any municipal income tax payment remitted electronically, such a payment was previously considered to have been made on the date the payment is credited to an account designated by the tax administrator to receive such payments.
- (b) Instead, CMC §311-61 now provides that such a payment is considered to have been made on the date of the timestamp assigned by the first electronic system receiving the payment, also in accordance with ORC 718.05(I)(2).

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**R63. - Forms for Filing; Documents Required.**

- (a) Net profit tax returns – individuals. To ensure that their returns are considered a complete return, individuals must submit the following documents or copies thereof:
  - (1) The first page of the applicable federal return, e.g. IRS Form 1040 or 1040A. The fact that any taxpayer is not required to file a federal income tax return does not relieve him or her from filing a municipal return.
  - (2) A complete copy of Form W-2 or other acceptable wage statement issued by the individual's employer(s) that shows the amount of qualifying wages earned or received by the taxpayer during the tax year.
  - (3) Copies of IRS Forms 1099 and federal schedules C, E, F, and K-1 to support other income.
  - (4) Other schedules such as Form 2106, Schedule A and detailed listings are required to support expense items deducted on the federal return.
- (b) Net profit tax returns – businesses. To ensure that their returns are considered a complete return, businesses must include the following documents or copies thereof:
  - (1) Complete copies of federal income tax returns or information returns.
  - (2) All pertinent schedules, forms and statements required to be submitted to the IRS.
  - (3) A reconciliation of municipal taxable income with the federal income tax return (Schedule X).

- (4) A business apportionment formula (Schedule Y) including a reconciliation of the wages apportioned on the municipal income tax return as earned in Cincinnati with the municipal annual wage reconciliation Form W-3.

(c) All taxpayers must submit statements to certify both of the following:

- (1) That the figures used in the municipal income tax return are the figures used in the return for federal income tax, adjusted to set forth only such income as is taxable under the provisions of this chapter.
- (2) That the taxpayer has examined the return, including accompanying schedules and statements, and that to the best of the taxpayer's knowledge and belief, it is true, correct, and complete.

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**R69. - Amended Returns; Effect of Federal or State Tax Determination.**

- (a) Under CMC §311-69(a)(iii), if a taxpayer wishes to file an amended consolidated tax return, or if the taxpayer intends to file a consolidated return after utilizing a change in method used in the prior tax year, the taxpayer must notify the Tax Commissioner in writing and mail the notice to the Tax Commissioner at the address provided on the City Website.

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**R71. - Overpayments; Refunds.**

- (a) Necessary documentation. A taxpayer claiming an overpayment and requesting a refund must file a complete return providing all documentation to substantiate the claim for a refund.
  - (1) Such documentation includes schedules, other municipal income tax returns, and any other supporting documentation necessary to verify credits, income, or losses.
  - (2) If there is documentation to support any other pertinent factors on the return, it must be included as well.
  - (3) The return requesting refund must be accompanied by appropriate documentation whether it is filed electronically or in paper format.
- (b) Interest. Under CMC §311-71(d), interest is due any time the City pays a taxpayer back for the overpayment later than 90 days after the date the taxpayer filed a complete return. If the City repays the taxpayer the overpaid amount within 90 days of receiving the complete return, no interest is due.

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**R75. - Interest, Fees, Charges and Civil Penalties for Tax Years Beginning on or After January 1, 2016.**

(a) Unpaid income tax interest rate and penalty. Under CMC §311-75(c)(i), the annual interest rate for any unpaid income tax, estimate income tax, or withholding tax is the federal short-term rate (rounded to nearest whole number) plus 5%, to be imposed and assessed each month.

(1) That short-term rate is established by the federal government in July of each year; the rate established in July of one year will be used for the interest rate for unpaid municipal income tax for the following calendar year (plus 5%).

(2) §311-75 (c)(ii) creates a penalty of 15% of the amount unpaid for income tax and estimated income tax.

(3) For withholding tax, the penalty is 50% of the amount unpaid.

(4) §311-75(c)(v) establishes a penalty of \$25 per month for each failure to timely file a return, with a maximum penalty of \$150.

(5) ORC 718.27(C)(3) does not allow that penalty to be applied to failure to file estimated income tax returns.

(b) Estimated tax interest rate and penalty. For the purposes of determining the interest and penalty assessed for late payment of *estimated tax due*, all overpayments from prior years will have the receive date of the date the return claiming the overpayment was due unless the return is received after the extended due date. In those cases, the overpayment will have the same receive date as the date the return claiming the overpayment was received. Withholding taxes will be considered to be paid evenly throughout the year. Estimated Tax Payments will be applied to the estimated tax due for the quarter in which they were received. Any unused payment will be applied to the oldest quarterly tax due to reduce the amount of interest assessed. The late payment penalty will be assessed for each quarter the estimated tax due was not paid in full by the quarterly due date.

Example on next page 13.

Example: 2016 Estimated Tax Due = \$400 per quarter for a total of \$1,600. There is a 2015 overpayment of \$500 and a \$1,100 estimated payment made October 15, 2016.

	Est. Tax Due	Est. Tax Paid	Date Due	Date Paid	Interest & Penalty
Q-1	400	400 (OP)	4/15	4/15/2016	0
Q-2	400	100 (OP)	6/15	4/15/2016	Penalty = \$300*.15 Int. = \$300*Monthly rate*4 mos. late
Q-3	400	0	9/15		Penalty = \$400*.15 Int. = \$400*Monthly rate*1 mo. late
Q-4	400	1100	12/15	10/15/2016	0

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**R79. - Audit.**

- (a) In order to conduct an audit, the Tax Commissioner, or any person acting in his capacity, is authorized to examine any person under oath concerning any taxable income or concerning any transaction tending to affect such income.
- (b) The Commissioner is also specifically authorized to order the appearance of the local manager or representative of any taxpayer.
- (c) The Tax Commissioner’s powers under CMC §311-79 constitute a subpoena power.
  - (1) The Commissioner may subpoena the production of books, papers, and records.
  - (2) The Commissioner may subpoena the attendance of all persons before him when he believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.
  - (3) Reference CMC §311-999(a)(5) and (a)(6), which penalize refusal to permit the Tax Commissioner to examine books, records, etc., and refusal to appear before the Tax Commissioner if requested to produce records in response to a subpoena.

### **R83. - Compromise of Claim and Payment Over Time.**

- (a) Payment plan procedures. Installment agreements are offered to taxpayers who have an outstanding balance of taxes, interest, or penalties and have expressed their inability to pay the balance in full. This agreement can only be provided to taxpayers that are current with all filings, including the current year's Declaration of Estimated Tax.
- (b) Generally, taxpayers must appear in the offices of the Income Tax Division during regular business hours, review the case with an examiner, sign the plan, and make an initial payment of 10% of the tax due. A taxpayer is normally provided ten months to complete the installment plan and pay off the tax due.
- (c) A husband or wife cannot sign for a spouse's liability. If a husband and wife are both on the account, and both had income that resulted in the liability, then both must sign the agreement.
- (d) The taxpayer also must agree to remain in compliance with the filing requirements set forth in the Cincinnati Municipal Code for the length of the installment plan agreement. The failure of the taxpayer to timely file all required returns and/or to make required payments by the due dates may result in the entire remaining balance of the installment plan becoming due.

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### **R97. - Local Board of Review; Appeal.**

- (a) Two members appointed by City Council. Regarding the two members of the Board of Review who are appointed by City Council, CMC §311-97(a)(ii) states that they "may not be employees, elected officials, or contractors with the City at any time during their term or in the five (5) years immediately preceding the date of appointment."
  - (1) The City interprets the phrase "or contractors" to prohibit any member of an accounting or law firm from serving on the Board of Review, if his or her firm has had any contract with the City in the preceding five years.
  - (2) Although strict in the context of, for example, a firm with 200 or more attorneys, this interpretation is the safest one, in light of the language of §311-97 and the Ohio law which it mirrors.
- (b) Member appointed by City Manager. The one member of the Board of Review who is appointed by the City Manager may have been a contractor with the City in the previous five years, or currently, or may be a City employee.
  - (1) The only explicit prohibition is that the member may not be Finance Director, Tax Commissioner, or directly involved in the City's tax work, or a subordinate of one of those employees.
  - (2) An attorney or accountant from a firm with a contract related directly to tax also would be prohibited based on general conflict of interest principles, but the members of a firm with an unrelated City contract could potentially be appointed to the Board of Review.