

Adopted under the Authority of Chapter 161
Section 161.08, of the Codified Ordinances of the City.

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ARTICLE I

PURPOSE

Section 161.01 defines the purpose of the income tax. The purpose of these Rules and Regulations is to provide a clear and concise set of rules for the collection and enforcement of this chapter.

ARTICLE II

DEFINITIONS

As used in these Rules and Regulations, the following words shall have the meaning ascribed to them in this Article, except as and if the context clearly indicates or requires a different meaning. In all definitions and these regulations, the singular shall include the plural, and the masculine shall include the feminine and the neuter.

“Association” means a partnership, cooperative, limited partnership, Chapter S Corporation as defined in the Federal Tax Code, or any form of unincorporated enterprise or pass through entity.

“Board of Review” means the board created by and constituted as provided in Section 161.13.

“Business” means an enterprise, cooperative activity, profession, public utility or public service, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation, or any other entity. The ordinary administration of a decedent's estate by the executor or administrator, and the mere custody, supervision, and management of trust property under a passive trust, whether intervivos or testamentary, unaccompanied by the actual operation of a business as herein defined shall not be construed as the operation of a business.

“City” means the City of Cuyahoga Falls, Ohio.

“Corporation” means a corporation 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, but not including Chapter S Corporations (see “Association”).

“Employee” means one who works for wages, salary, commission or other type of compensation in the service of an employer. Any person upon whom an employer is required to withhold for either Federal

income or social security tax, or on whose account payments are made under the Ohio Workers' Compensation law, shall prima facie be an employee.

“Employer” means an individual, partnership, association, corporation, governmental agency, board, body, bureau, department, sub-division, or unit, or any other entity, whether or not organized for profit, that provides one or more persons a salary, wage, commission, or other compensation basis whether or not such employer is engaged in business, or that provides any source of taxable income as outlined in Section 161.03. It does not include a person who employs only domestic help for such person's private residence.

“Fiscal Year” means an accounting period of twelve (12) months, or less, ending on any day other than December 31st. Only fiscal years accepted by the Internal Revenue Service for Federal income tax purposes may be used for City tax purposes.

“Gross Receipts” means the total income of a taxpayer from any source whatsoever.

“Net Profits” means the net gain or loss from the operation of a business, profession, enterprise, or other activity excluding capital gains and losses, after provision for all necessary and ordinary expenses paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, adjusted to the requirements of this chapter and the Rules and Regulations, but excluding the following: Federal and other taxes based on income and the tax imposed by the chapter; excluding dividends; and, excluding income received from affiliated or subsidiary companies which own no property and do no business within the United States.

“Non-Resident” means an individual who is not a resident as herein defined.

“Non-Resident Unincorporated Business Entity” means a business not having an office or place of business within the City.

“Other Payer” means any person that pays an individual any item included in the taxable income of the individual, other than the individual’s employer or that employer’s agent.

“Person” means every natural person, partnership, fiduciary, association, corporation, or other entity. Whenever used in any clause prescribing and imposing a penalty, the term “person”, as applied to any unincorporated entity or association, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

“Place of Business” means any bona fide office (other than a mere statutory office), factory, warehouse or other space which is regularly occupied and used by the taxpayer in carrying on any business activity whether in person or through one or more of the taxpayer's employees regularly in attendance.

“Resident” means an individual domiciled in the City. Any person who maintains a residence within the City for a total of 183 days or more within any 12-month period shall be deemed a resident.

“Resident Unincorporated Business Entity” means an unincorporated business entity having an office or place of business within the City.

“Tax Administrator” means the Administrator of the Division of Taxation in the Department of Finance of the City or the person executing the duties of the said Administrator.

“Taxable Year” means the calendar year or the fiscal year used as the basis on which net profits are to be computed under the chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

“Taxpayer” means a person, whether an individual, partnership, association, corporation or other entity, required by the chapter to file a return and/or pay a tax.

ARTICLE III

IMPOSITION OF TAX

A. Bases.

1. *Resident Employee:*

- a. In the case of residents of the City an annual tax of two (2.0) percent is imposed on all salaries, income, wages, commissions, and other compensation earned (including earnings deposited by the employee into deferred compensation or medical coverage plans) during the effective period of the chapter. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 161.03 (a)(1), of the chapter, the source of the earnings and the place or places in or at which the services were rendered are immaterial. All such earnings wherever earned or paid are taxable, except that tax shall not be levied on expenses reported in accordance with guidelines for Federal Form 2106, subject to audit and approval by the Division of Taxation.
- b. The following are items that are subject to the tax imposed by Section 161.03 (a)(1):
 - (1) Salaries, wages, bonuses and incentive payments earned by an individual, whether directly or through an agent, and whether in cash or in property for services rendered during the tax period as:
 - (a) An officer, director or employee of a corporation (including charitable and other non-profit organizations) or association;
 - (b) An employee (as distinguished from a partner or member) of a partnership, limited partnership, or any form of unincorporated business enterprise owned by two or more persons;

- (c) An employee (as distinguished from a proprietor) of a business, trade, or profession conducted by an individual owner;
 - (d) An officer or employee (whether elected, appointed, or commissioned) of the United States Government or any of its agencies or of the State of Ohio or any of its political sub-divisions or agencies thereof; or any foreign country or dependency except as provided in Section 161.03 of the chapter;
 - (e) An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates; and whether paid by an individual, partnership, association, corporation (including charitable and non-profit corporations), governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity.
- (2) Commissions earned by a taxpayer, whether directly or through an agent, and whether in cash or in property or services rendered during the effective period of the chapter, regardless of how computed or by whom or wheresoever paid.
- (a) If amounts received as a drawing account exceed the commissions earned and the excess is not subject to the demand of the employer for repayment, the tax is payable on the amounts received as a drawing account.
 - (b) Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expenses or advances as such from the taxpayer's gross income for the purpose of determining the taxpayer's net profits taxable under Federal law, and the employee is not required to include such receipts as income on the taxpayer's Federal income tax return.
 - (c) If commissions are included in the net earnings of the trade, business, profession, enterprise or activity carried on by an unincorporated entity or association of which the individual receiving such commission is owner or part owner and therefore subject to the tax under Section 161.03 (a)(3) or (a)(4) of the chapter, they shall not be taxed under Section 161.03 (a)(1).
- (3) Fees, unless such fees are properly includible as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity or association owned or partly owned by said individual and such net profits are subject to the tax under Section 161.03 (a)(3) of the chapter.
- (4) Other compensation and income, as reported on Federal Tax Forms W-2 or 1099 including but not limited to tips, bonuses, profit sharing, stock options that are not considered capital gains, lottery winnings, sports winnings, or gifts of any type in connection with services rendered, and including compensation paid to domestic servants, casual employees and other types of employees.
- (5) Payments made to an employee by an employer as sick leave, vacation pay, or any

other types of payments made under a wage or salary continuation plan, including “sub” pay, during periods of absence from work are taxable when paid.

- (6) Payments made to an employee by an employer as separation payoffs and reportable as earned incomes (including but not limited to sick pay and vacation pay) are taxable when paid. On-going retirement benefits, such as pension payments, are exempt from the City income tax. Payoffs representing deferred amounts are taxed at the time of deferment.
 - (7) Moving expenses, to the extent that employers reimburse them, are not taxable if deducted on Federal return(s).
 - (8) The employer's cost of group-term life insurance in excess of \$50,000 coverage is taxable to the employee as compensation.
- c. When compensation is paid or received in property, its fair market value at the time of receipt shall be subject to the tax and withholding. Board, lodging and similar items received by an employee in lieu of additional cash compensation shall be included in earnings at fair market value.
- (1) In the case of domestics and other employees whose duties require them to live at their place of employment or assignment, board and lodging shall not be considered as wages or compensation earned.

2. *Non-Resident Employee:*

- a. In the case of individuals who are not residents of the City, there is imposed under Section 161.03(a)(2) of the chapter, a tax of two percent (2.0%) on all salaries, income, wages, commissions and other compensation earned (including earnings deposited by the employee into deferred compensation or medical coverage plans) during the effective period of the chapter for work done or services performed or rendered within the City, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial. Tax shall not be levied on expenses reported in accordance with guidelines for Federal Form 2106, subject to audit and approval by the Division of Taxation.
- b. (1) To the extent required by Ohio general law, income tax shall not be levied upon an individual if all of the following apply:
 - (a) The individual does not reside in the City of Cuyahoga Falls.
 - (b) The compensation is paid for personal services performed by the individual in the City of Cuyahoga Falls on twelve or fewer days in the calendar year.
 - (c) In the case of an individual who is an employee, the principle place of business of the individual's employer is located outside the City of Cuyahoga Falls and the individual pays tax on compensation described in paragraph 9b) above to the municipal corporation, 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.
- (2) A non-resident who works more than twelve(12) days in the City of Cuyahoga Falls shall pay income tax on all service performed with the City of Cuyahoga Falls including the first (12) days of such service and such tax shall be withheld and remitted to the City of Cuyahoga Falls by the employer of said non-resident individual, or if the individual is self-employed, in accordance with Article III (2)(a).
- (3) If not currently required to withhold City income tax, then a non-resident employer, agent of such employer, or other payer not situated in the City shall not further be required to withhold City income tax from remuneration paid to employees of the employer until the collective tax liability of the employees initially exceeds \$150.00
- (4) Independent contractors of a non-resident employer shall be deemed employees for work performed in the City on behalf of the employer, and are subject to the collective tax liability provision as if the were employees, and are not excluded from taxation by Section 718.011.

When the collective tax liability exceeds \$150.00, the employer is required to begin withholding the appropriate income tax for the City on behalf of all the employees performing work in the City. The withheld income tax shall be remitted in accordance with Article III (A)(2)(a). After exceeding the \$150.00 de minimus amount, the employer shall continue to have no responsibility for remitting any portion of the initial \$150.00 liability that was not withheld.

Once the collective tax liability has exceeded \$150.00, the employer must withhold income tax for the City (i.e., for work performed in Cuyahoga Falls) for the remainder of that calendar year and for subsequent years, even if the liability in subsequent years does not exceed \$150.00. However, if the tax liability for each of the three consecutive years subsequent to that year in which the employer became liable for withholding the income tax) does not exceed \$150.00, the employer will be considered as not having performed work in the City in regard to further tax liability, and will again be subject to Article III (A)(2)(b)(1).

- c. Sales commissions shall be deemed as earned at the location of the company's sales office and production facility, unless the employer operates another production facility at the point of sale. This is in keeping with the regulations of real estate sales people.

All wages, salaries or other compensation paid for days in which an employee is away from the local place of business shall be deemed as earned within the corporate limits, unless the employer has another production facility at that location or the employee can demonstrate that a wage tax has been paid to another Municipality.

All wages, salaries or other compensation paid for days in which an employee is in attendance at sales meetings, conferences, training seminars, etc. regardless of the location, shall be deemed as earned within the corporate limits of the City unless the employee can demonstrate that a wage tax has been paid to another municipality.

- d. When a resident or non-resident receives compensation for services for sales of goods, real estate, insurance, or other intangible item from an employer whose situs is the City, that total compensation is taxable at the City's tax rate and is payable to the City. The site of the sale or the residence of the purchaser has no bearing on the taxing of the compensation.

4. *Resident Unincorporated Businesses:*

- a. In the case of resident unincorporated businesses, professions, enterprises, undertakings or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of two percent (2.0%) on the net profits earned, accrued or received during the effective period of the chapter attributable to the City under the formula or separate accounting method provided in Section 161.03(a)(3) derived from work done or services performed or rendered and business or other activities conducted in the City.
- b. The tax imposed on resident associations or other unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof, but the tax imposed on an unincorporated resident entity owned by one person is upon the individual owner. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III, (A)(4)(e) and (f) of these regulations.
- c. The tax imposed by Section 161.03(a) is imposed on all resident unincorporated entities or associations having net profits attributable to the City under the method of allocation provided for in the chapter, regardless of where the owner or owners of such resident unincorporated business entities or associations reside.
- d. Resident unincorporated entities or associations owned by two or more persons all of whom are residents of the City shall disregard the method of allocation provided for in the chapter and pay the tax on their entire net profits thereof. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits; however, a return shall be required from any such owner or member having taxable income other than the distributive share of the net profits from the entity.
- e. A resident individual who is the sole owner of a resident unincorporated entity or association shall disregard the business allocation formula and pay the tax on the entire net profits of the taxpayer's resident unincorporated business entity or association.
- f. In the case of a resident individual partner or part owner of a resident unincorporated entity or association, there is imposed an annual tax of two percent (2.0%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the chapter not attributable to the City under the method of allocation provided for in Section 161.03 and not taxed against the entity.

5. *Non-resident Unincorporated Businesses or Associations:*

- a. In the case of non-resident unincorporated businesses, associations, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of two percent (2.0%) on the net profits earned, accrued or received during the effective period of the chapter attributable to the City under the formula or separate accounting method provided for in Section 161.03.

- b. The tax imposed on non-resident unincorporated entities or associations owned by two or more persons is upon the entities rather than the individual members or owners thereof. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III, (A)(5)(d) and (e) of these regulations.
- c. Non-resident unincorporated entities or associations owned by two or more persons all of whom are residents of the City, may elect to disregard the method of allocation provided for in the chapter and pay the tax on the entire net profits. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of the net profits; however, a return shall be required from such owner or member having taxable income other than the distributive share of the net profit from the entity.
- d. A resident individual who is the sole owner of a non-resident unincorporated business entity or association shall disregard the business allocation formula and pay the tax on the entire net profits of the taxpayer's unincorporated entity or association.
- e. In the case of a resident individual partner or part owner of a non-resident unincorporated entity or association, there is imposed an annual tax of two percent (2.0%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the chapter not attributable to the City under the method of allocation provided for in Section 161.03 and not taxed against the entity.

6. *Imposition of Tax on Net Profits of Corporations:*

- a. In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the City, there is imposed an annual tax of two percent (2.0%) on the net profits earned, received or accrued during the effective period of the chapter attributable to the City under the formula or separate accounting method provided for in Section 161.03.
- b. In determining whether a corporation is conducting a business or other activity in the City, the provisions of Article III, (C) of these regulations shall be applicable.

B. Amplification.

In amplification of the definition contained in Article II of these regulations, but not in limitation thereof, the following additional information respecting net business profits is furnished.

1. *Net Profits:*

- a. Net Profits as used in the chapter and these regulations means net profits derived from any business, profession or other activity or undertaking carried on for profit or normally carried on for profit.
- b. Net Profits as disclosed on any return filed pursuant to the provisions of the chapter shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service, providing such method does not conflict with any provisions of the chapter or these regulations.

2. *Gross Receipts:*

- a. Gross Receipts shall include, but not be limited to, income in the form of commissions, fees, rentals from real and tangible personal property and other compensation for work done or services performed or rendered as well as income from sales of stock in trade.
- b. From gross receipts there shall be deducted allowable expenses to arrive at the net profit subject to tax.

3. *Expenses:*

- a. All ordinary and necessary expenses of doing business including reasonable compensation paid employees shall be allowed but no deduction may be claimed for salary or withdrawal of a proprietor or of the partners, members, or other owners of an unincorporated business, enterprise or association. Effective January 01 2001, charitable contributions are deductible up to 10% of net income and contributions in excess of 10% of net profits are required to be added back into income.
 - (1) If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated for by insurance or otherwise, of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the Federal income tax. Provided, however, that loss on the sale, exchange or other disposition of depreciable property or real estate used in the taxpayer's business shall not be allowed as a deductible expense.
 - (2) Current amortization of emergency facilities under the provisions of the Internal Revenue Code, if recognized as such for Federal income tax purposes, may be included as an expense deduction hereunder.
 - (3) Where depreciable property is voluntarily destroyed only the cost of such demolition and the undepreciated balance thereof will be allowed as an expense in the year of such demolition, to the extent allowable for Federal income tax purposes.
 - (4) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off; as determined by the Tax Administrator if the reserve method is used, a reasonable addition to the reserve may be claimed; in no event shall the amount exceed the amount allowable for Federal income tax purposes.
 - (5) Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax, then taxes on and other expenses of said property are not deductible. In any event, the following taxes are not deductible from income; (1) Municipal income tax; (2) Federal or other taxes based upon income; (3) Gift, estate or inheritance taxes; and (4) taxes for local benefits or improvements to property which tend to appreciate the value thereof.
 - (6) The "Federal investment credit" is not deductible. However, if the investment

credit requires the basis of the property to be lowered, depreciation may be computed on the original basis.

4. *Other Income or Losses:*

- a. Capital gains and losses from sale, exchange or other disposition of property used in the trade or business shall not be taken into consideration in arriving at net profits earned. However, any amount received on a sale or other disposition of tangible personal property or real property used in business, in excess of book value, shall be treated as taxable income under the chapter to the extent of depreciation allowable after January 1, 1967. The balance shall be treated as a capital gain.
 - (1) Definition of Property Used in the Trade or Business. For purposes of this Article, the term "property used in the trade or business" means property used in the trade or business of a character which is subject to the allowance for depreciation and real property used in the trade or business, held for more than 6 months, which is not:
 - (a) Property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year;
 - (b) Property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business; or
 - (c) A copyright, a literary, musical or artistic composition, or similar property held by the taxpayer.
- b. In general, non-taxable income and expense incurred in connection therewith are not to be considered in determining net profits. Income from intangibles, by way of dividends, interest and the like, shall not be included if such income is subject to taxation under the intangible personal property laws of the State of Ohio or is specifically exempt from taxation under said laws.
- c. Income derived from the operation of oil and/or gas wells shall be taxable, and expenses incurred in connection therewith shall be considered in determining net profits.
- d. The Tax Administrator, upon submission by the taxpayer of satisfactory evidence showing the amount of expenses attributable to non-taxable income, shall permit the taxpayer to include in the taxpayer's return expenses attributable to non-taxable income in an amount agreed to by the taxpayer and the Tax Administrator. In lieu of such evidence, five percent (5%) of non-taxable income shall be considered to be attributable expenses.
- e. Rentals from real property received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by taxpayer individually or through agents or other representative) constitutes a business activity of the taxpayer in whole or in part.
 - (1) Where the gross monthly rental of any real properties, regardless of number and

value, aggregates in excess of \$100.00 per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to tax;

- (a) Provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$100.00 per month.
 - (b) Provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds \$100.00 per month.
 - (c) Provided further that the person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds \$100.00 per month.
- (2) In determining the amount of gross monthly rental of any real property, periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.
 - (3) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
 - (4) Real property, as the term is used in this Article, shall include commercial property, residential property, farm property and any and all other types of real estate.
 - (5) In determining the taxable income from rentals, the deductible expenses therefrom shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for Federal income tax purposes.
 - (6) Residents of the City are subject to taxation upon the net income from rentals (to the extent above specified); regardless of the location of the real property owned.
 - (7) Non-residents of the City are subject to such taxation only if the real property is situated within the City. Non-residents, in determining whether gross monthly rentals exceed \$100.00, shall take into consideration only real estate situated within the City.
 - (8) To be considered non-taxable as ground rents, the property must be under perpetual leasehold by the term of which the lessor performs no services of any type, including the payment of taxes on the property.
 - (9) Corporations owning or managing real estate are taxable only on that portion of income derived from property located in the City.
- f. Income from patents or copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to the State of Ohio intangible tax. Conversely, such a state intangible tax is not deductible in determining the City's tax.
 - g. Net operating losses shall not reduce the amount of taxable W-2 income.

- h. Net operating losses may be carried forward for five (5) years. No portion of a net operating loss shall be carried back against net profits of a prior year.

C. Allocation of Business Profits.

If the books and records of a taxpayer conducting a business or profession both within and outside the City disclose with reasonable accuracy what portion of its net profits is attributable to business conducted within the City, the separate accounting method shall be used. In the absence of such records, the business allocation percentage method may be used.

1. *Separate Accounting Method:*

- a. The net profits allocable to the City from business, professional or other activities conducted in the City by corporations or unincorporated entities (whether resident or non-resident) may be determined from the records of the taxpayer if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of the taxpayer's net profits is attributable to that part of the taxpayer's activities conducted within the City.
- b. If the books and records of the taxpayer are used as the basis for apportioning net profits, rather than the business allocation formula, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Tax Administrator to determine whether the net profits attributable to the City are apportioned with reasonable accuracy.
- c. In determining the income allocable to the City from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or outside the City.

2. *Business Allocation Percentage Method:*

- a. **STEP 1:** Ascertain the percentage which the average net book value of real and tangible personal property, including lease-hold improvements, owned or used in the business and situated within the City is of the average net book value of all real and tangible personal property, including lease-hold improvements, owned or used in the business wherever situated during the period covered by the return.
 - (1) The percentage of taxpayer's real and tangible personal property within the City is determined by dividing the average net book value of such property within the City (without deduction of any encumbrances) by the average net book value of all such property within and outside the City. In determining such percentage, property rented to the taxpayer as well as real and tangible personal property owned by the taxpayer must be considered.
 - (a) The net book value of real and tangible personal property rented by the taxpayer shall be determined by multiplying gross annual rents payable by eight (8).
 - (b) Gross rent means the actual sum of money or other consideration payable,

directly or indirectly, by the taxpayer for the use or possession of property and includes:

- i) Any amount payable for the use or possession of real and tangible personal property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;
- ii) Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs or other amounts required to be paid by the terms of a lease or other arrangement.

b. **STEP 2:** Ascertain the percentage of the gross receipts of the taxpayer derived from sales made, work done, and services rendered in the City is of the total gross receipts, wherever derived, during the period covered by the return.

(1) The following sales shall be considered City sales:

- (a) All sales made through retail stores located within the City to purchasers within or outside the City except such as said sales to purchasers outside the City that are directly attributable to regular solicitations made outside the City personally by the taxpayer or the taxpayer's employees.
- (b) All sales of tangible personal property delivered to purchasers within the City if shipped or delivered from an office, store, warehouse factory or place of storage located within the City.
- (c) All sales of tangible personal property delivered to purchasers within the City 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 sale is directly or indirectly the result of such solicitation.
- (d) All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within the City to purchasers outside the City if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place of delivery.
- (e) Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.

(1) In the application of the foregoing sub-paragraphs, a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale; and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside the City by mail or phone from an office or place of business within the City shall not be considered a solicitation of sales outside the City.

c. **STEP 3:** Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within the City is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and outside the City during the

period covered by the return.

- (1) Salaries and reasonable compensation paid owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purpose of this computation.
- (2) Wages, salaries and other compensation shall be computed on the cash or accrual basis in accordance within the method of accounting used for income tax purposes.
- (3) In the case of an employee who performs services both within and outside the City the amount treated as compensation for services performed within the City shall be deemed to be:
 - (a) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to the taxpayer's efforts within the City;
 - (b) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of the taxpayer's services within the City bears to the value of all the taxpayer's services; and
 - (c) In the case of an employee compensated on a time basis, the proportion of the total amount received by him that the taxpayer's working time within the City is of the taxpayer's total working time.

- d. **STEP 4:** Add the percentage determined in accordance with Steps 1, 2 and 3, or such of the aforesaid percentages as may be applicable to the particular taxpayer's business and divide the total so obtained by the number of percentages used in ascertaining said total. The result so obtained is the business allocation percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely outside the City. A factor is excluded only when it does not exist anywhere.
- e. **STEP 5:** The business allocation percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits allocable to the City.

3. *Substitute Method:*

- a. In the event a just and equitable result cannot be obtained under the formula, the Tax Administrator, upon application of the taxpayer, may substitute other factors in the formula or prescribe other methods of allocating net income calculated to effect a fair and proper allocation.
- b. Application to the Tax Administrator to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing before the end of the taxable year. The application shall state the specific grounds on which the substitution of factors or use of different method is requested and the relief sought to be obtained. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the Tax Administrator.

4. A request to change methods of allocation must be made in writing to the Tax Administrator before the close of the taxable year.

D. Consolidated Returns.

1. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership provided such group files consolidated returns for Federal income tax purposes. For a subsidiary corporation to be included in a consolidated return 80% of its stock must be owned by the other members of the affiliated group. A consolidated return must include all companies that are so affiliated.
2. Once a consolidated return has been filed for any taxable year the consolidated group must continue to file consolidated returns in subsequent years unless:
 - a. Permission in writing is granted by the Tax Administrator to file separate returns.
 - b. A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year.
 - c. A Corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.
3. If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income from the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group, but separate returns must be filed for the period after it ceases to be a member. If a corporation has been a member of the affiliated group for less than one month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one month.

If a subsidiary is a member of a consolidated group for only part of a taxable year, the income considered to be earned in such fractional part of the year shall be that portion of the net income for the entire year which the number of days it was a member of the group bears to the total number of days in the taxable year.

4. In determining the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property factor (Step 1 of the formula) shall be determined on the basis of the average net book value of the property during the period such corporation was a member of the group. The rental portion of the factor, however, shall be computed at 8 times the annual rent. The gross receipts and wage factors shall be based on the actual figures.
5. All subsidiary corporations must agree in writing to the filing of the consolidated return, as they will be liable for the tax as well as the Parent Corporation.

6. In consolidating the net income, the taxable income of each corporation shall be computed in accordance with the provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of the affiliated group.
7. In determining expenses that are not allowable because they are allocable to non-taxable income, such calculations shall be based on the consolidated net income. As an example, intercompany dividends that are eliminated in the consolidation will not be taken into consideration in determining non-taxable income.

D. Exemptions.

The following shall not be considered taxable:

1. Welfare payments, unemployment insurance benefits, supplemental unemployment benefits, old age pensions or similar payments.
2. Proceeds of insurance, annuities, Workers' compensation insurance, social security benefits, pensions, compensation for damages for personal injuries and like reimbursement not including damages for loss of profits.
3. Compensation for damage to property by way of insurance or otherwise.
4. Interest and dividends from intangible property.
5. Military pay and allowances received as a member of the armed forces of the United States. In the case of members of the National Guard, Air National Guard, Organized Reserves and Air Reserves, this exception shall apply only to their drill and flight pay.
6. Any charitable, educational, fraternal or other type of non-profit association or organization enumerated in Section 718.01 of the Revised Code of Ohio which is exempt from payment of real estate taxes is exempt from payment of the tax imposed by the chapter.
 - a. Any association or organization falling in the category listed in the preceding paragraph not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the tax levied under the chapter on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.
 - b. Where such non-profit association or organization conducts income-producing business both within and outside the City, it shall calculate its profits allocable to the City under the method or methods provided above.
7. Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from interstate commerce.
8. Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.

9. Dividends and other income of domestic corporations received from their affiliates or subsidiaries, if such affiliates or subsidiaries do not own any property and do no business within the United States.
10. All persons under 18 years of age. Each person, however, shall be taxed as of his or her eighteenth birthday.
11. Alimony received.
12. City income of residents age sixty-five or over to the amount of the first three thousand dollars (\$3,000) of that income.

ARTICLE IV

EFFECTIVE PERIOD

- A. The tax imposed by Section 161.03 (a)(1) and (a)(2) of the chapter shall be levied, collected and paid with respect to salaries, income, wages, bonuses, incentive payments, commissions, fees and other compensation earned during the effective period of the chapter.
 - B. The tax imposed by Section 161.03 (a)(3) through (a)(5) of the chapter with respect to net profits of trades, businesses, professions, enterprises, undertakings and other activities is on the net profits earned during the effective period of the chapter.
1. Where the fiscal year of the taxpayer differs from the calendar year, the tax shall be applied to that part of the annual net profits for the fiscal year as shall be received on and after January 1, 1967, to the close of the taxpayer's fiscal year.

ARTICLE V

RETURN AND PAYMENT OF THE TAX

- A. **Date and Requirement of Filing.**
 1. On or before April 30th of the year following the effective date of the chapter and each year thereafter, every person subject to the provisions of Section 161.03 shall, except as hereinafter provided, make and file with the Tax Administrator a return on a form prescribed by and obtainable, upon request, from the Tax Administrator, whether or not a tax be due. The fact that a taxpayer is not required to file a Federal tax return does not relieve him from filing a City tax return.

a) On and after January 1, 2001, the City shall accept generic forms for estimated payments and for the City's annual tax returns. However, to be acceptable the generic forms must contain all the information required on forms supplied by the City, and must be similar format that will allow processing of the generic forms without changing the City's existing procedures for processing forms. Determination as to whether a generic form meets the above criteria shall be the responsibility of the City Tax Administrator.

2. If the return is made for a fiscal year or any period less than a year, said return shall be made within four (4) months from the end of the fiscal year or other period.
3. Any taxpayer that received taxable income not subject to withholding under the chapter must file a return.
4. Any taxpayer having income, wages or other compensation for which a return must be filed and also having net profits from a business covering the same or a different period, is required to file only one return.
5. Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof.
6. Except as provided for herein, the tax is on the partnership or association as an entity, whether resident or non-resident and a return is required disclosing the net profits allocable to the City and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity or association is required to make a return and pay the tax in accordance with Article III (A)(4)(f) of these regulations.
7. A husband and wife may file a joint return.

B. Information Required and Reconciliation with Federal Returns.

1. a. Every person subject to the provisions of Section 161.03 shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, wages, commissions and other personal service compensation, net profits from business or other activities, including the rental from real and personal property, and other income taxable under the chapter, received for the period covered by the return and such other pertinent facts and information in detail as the Tax Administrator may require.
b. Where figures of total income, total deductions, and net profits are included, as shown by a Federal return, any items of income which are not subject to the City tax and unallowable expenses shall be eliminated in determining net income subject to the City tax.
2. In returns filed hereunder there shall be set forth the amount of tax imposed by the chapter on all taxable income. Any credits due, as described in Article V(D)(1) of these regulations may then be deducted and the balance of tax due, or overpayments, if any, set forth.
3. Where space on the return is inadequate to clearly indicate how taxable income was determined, additional schedules should be attached. The Tax Administrator may require additional information at any time he deems necessary to verify the accuracy of any return.

C. Extensions.

1. Upon written request of the taxpayer made on or before the date for filing the return, and for good

cause shown, the Tax Administrator may extend the time for filing such return for a period not to exceed six (6) months, or to one (1) month beyond any extension requested or granted by the Federal Internal Revenue Service. Copies of the Federal Extension Form shall be accepted as a written request made by the taxpayer.

- a. The Tax Administrator shall require a tentative return accompanied by payment of the tentative tax on or before the regular filing date when granting an extension.
- b. When the return is filed within the extended filing period and a balance of tax due is indicated after all payments and credits provided in Sections 161.05, 161.07 and 161.15 have been applied, the balance of tax due together with interest on that balance shall be paid. The interest shall be computed from the date the return was originally due even though an extension has been granted.
- c. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended, provided all other filing and payment requirements of the chapter have been met.

2. Information returns, schedules and statements needed to support tax returns are to be filed within the time limits set forth for filing tax returns.
3. No extension will be granted for taxpayers who fail to timely file the request, fails to file a copy of the request for federal extension, owes the City any delinquent income tax or any penalty, interest, assessment, or other change for the late payment or nonpayment of income tax, or has failed to file any required income tax return, report, or other related document for a prior tax period.

D. Payment with Return.

1. The taxpayer making a return shall at the time of the filing thereof, pay to the Tax Administrator 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 161.06, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 161.07, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 161.15, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.
2. A taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of the chapter may have such over-payment applied against any subsequent liability, or at the taxpayer's election indicated on the return, such over-payment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

E. Amended Returns.

1. Where necessary an amended return must 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 Sections 161.11 and 161.12. Such amended return shall be on a form obtainable, upon request, from the Tax Administrator. A taxpayer may not change the method of accounting 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 tax based upon such final determination of Federal tax liability, and pay any additional tax shown thereon or make claim for refund of any over-payment. See Article XI(B)(1) of these regulations.

ARTICLE VI

COLLECTION OF TAX AT THE SOURCE

A. Duty of Withholding.

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within the City, who employs one or more persons whether as an employee, officer, director or otherwise, to deduct each time any compensation is paid the tax of two (2.0) percent from:
 - a. The gross amount of all salaries, income, wages, bonuses, incentive payments, fees, commissions or other forms of compensation paid to residents of the City, regardless of the place where the services are rendered; and
 - b. All compensation paid non-residents for services rendered, work performed or other activities engaged in within the City.
2. All employers within or doing business within the City are required to make the collections and deductions specified in this Article, regardless of the fact that the services on account of which any particular deduction is required, as to residents of the City, were performed outside the City.
3. 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 method of allocation provided for in the chapter, are considered to be employers within the City and subject to the requirements of withholding.
4. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation paid. If the employer has withheld the tax and failed to pay the tax withheld to the Tax Administrator, the employee is not liable for the tax so withheld.
5. Commissions and fees paid to independent contractors are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and return and pay the tax pursuant to the provisions of the chapter and Articles V and VII of these regulations. It is the responsibility of the payer to provide to the City copies of Federal Form 1099, or such other form used to report commissions and fees paid to non-employees.
6. Where a non-resident receives compensation for personal services rendered or performed partly outside the City, the employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within the City in accordance with the following rules of apportionment:
 - a. If the non-resident is a salesman, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of

business transacted or chiefly effected by the employee within the City bears to the total volume of business transacted by him, except as clarified in Article III (A)(3) of these regulations.

- b. The deducting and withholding of personal service compensation of other non-resident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee which the total number of the taxpayer's working hours within the City is of the total number of working hours.
 - c. The fact that non-resident employees are subject to call at any time does not permit the allocation of pay for time worked within the City on a seven-day per week basis. The percentage of time worked in the City will be computed on the basis of a forty-hour week unless the employer notifies the Tax Administrator that a greater or lesser number of hours per week is worked.
 - d. The entry into the City of a non-resident employee who performs duties for which he is employed primarily outside the City, who earns less than \$100.00 in wages per year, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the City.
 - e. Wage continuation plans paid by 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 and are taxable on the same ratio as the normal earnings of such employee for the taxpayer's primary job assignment.
7. An employer shall withhold the tax on the full amount of any advances made to any employee on account of commissions.
8. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of the taxpayer's services, provided such expenses are incurred in earning compensation, including commissions, and is not deducted as a business expense by the employee under Article III of these regulations.
9. An employer whose records show that an employee is a non-resident of the City and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside the City by such employee. Provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Tax Administrator notifies such employer in writing that such employee is a resident of the City. All employees are required to notify the employer of any change of residence and the date thereof.
10. A City employer, required to withhold the tax from a resident of the City for work done or services performed in another municipality, and who does so withhold and remit to such other municipality, shall be relieved from the requirements of withholding the City tax from such resident of the City except where the rate of tax for such other municipality is less than the rate of tax imposed by the City income tax ordinance. In such case, the employer shall withhold and remit the difference to the City.

C. Return and Payment of Tax Withheld and Status of Employers.

1. The deductions from salaries, wages and other compensation required to be made by employers are to begin with the compensation earned on and after the effective date of the chapter. The employer (in addition to any return required to be filed with respect to the taxpayer's own earnings or net profits) shall, on or before the twentieth day of each month, make a return and pay to the Tax Administrator the tax withheld during the preceding month. Provided, however, the Tax Administrator shall have the authority to approve the filing of returns and payment of tax withheld on a quarterly basis.
 - a. The Tax Administrator 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.
 - b. Any employer who wishes to file and remit on a quarterly basis may request the authority for quarterly filing from the Tax Administrator. Such request must be in writing, stating the name and City Withholding Account Number of the employer; the address to which withholding forms should be mailed; the estimated amount of tax to be withheld each quarter and the name and title of the person responsible for complying with the withholding requirements of the chapter.
 - c. In considering such a request, the Tax Administrator will base the taxpayer's decision on the facts so that the best interests of the City are served. He shall refuse such authority if he has reason to believe that the employer is a below average credit risk, engaging in seasonal or transitory business in fact or as to location, or for any other reason known to him which might place a burden upon the City or where such request is contrary to the policy of the City. The Tax Administrator will notify the employer, in writing, of the decision made upon the taxpayer's request.
 - d. If the request is granted the notice will specify the effective date of the authorization. In such case the employer shall, on or before the last day of each month following the calendar quarters ending April 30, July 31, October 31, and January 31, make a return and pay to the Tax Administrator the tax withheld during the preceding calendar quarter. Once this approval is granted, the employer may continue on such basis unless notified in writing by the Tax Administrator that approval to file quarterly is withdrawn.
 - e. The Tax Administrator may withdraw the authorization from quarterly filing and payments whenever he has reason to believe that the conditions for granting such authorization have changed, were judged incorrectly, were not met, or when it is to the best interest of the City to do so. Notice of the withdrawal shall be made in writing and may be served in person or mailed to the address where the returns are mailed. Proof of mailing, furnished by the U.S. Post Office, shall be presumptive proof of receipt by the addressee. In such case, the employer must begin to file monthly.
2. If more than the amount of tax required to be deducted by the chapter is withheld from any employee's pay; the employer or the Tax Administrator may refund such excess. In those cases in which too much has been withheld by the employer from an employee and remitted to the Tax Administrator and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain a refund by application to the Tax Administrator, except that refunds will not be made unless claimed within three (3) years after the year for which the tax was withheld as provided in Section 161.11 and Article XI of these regulations. If less than the amount of tax required to be deducted is deducted and withheld by the employer in any pay period or pay periods, the

deficiency shall be deducted in subsequent pay periods.

3. Every employer is deemed to be a trustee for the City in collecting and withholding the tax required under the chapter to be withheld and the funds so collected by such withholding are deemed to be trust funds.
4. Every such employer required to deduct and withhold the tax at the source is liable directly to the City for payment of such tax whether the tax was actually collected from such employee or not.
5. On or before the 31st day of January, following any calendar year in which such deductions have been made by any employer, such employer shall file with the Tax Administrator in the form prescribed by the Tax Administrator an information return for each employee from whom City income tax has been withheld, clearly showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of City income tax withheld from such employee.
6. For the convenience of employers, the information return referred to in paragraph 5 above may be made in one of three ways at the election of each employer, as follows:
 - a. Those employers using Form W-2 furnished commercially may submit a copy of such commercial Form W-2 provided the copy furnished to the City clearly shows the information required in paragraph 5 above.
 - b. Those employers not using Form W-2 furnished commercially may obtain from the Tax Administrator, upon request, Form W-2 in such quantities as needed.
 - c. Where the furnishing of this information as indicated above will create a distinct hardship, the employer, upon written request to the Tax Administrator, may be permitted to furnish a list of all employees subject to the tax, which list shall show the information required in paragraph 5 above. Such list may be compiled on any mechanical equipment used by the employer, provided the listing is legible. The employer's name must be indicated on each sheet, each sheet must be numbered, and the total number of sheets comprising the complete report indicated on the first page.
 - d. The gross compensation to be reported for each employee shall be for the full twelve (12) calendar months of the year or such portion thereof as the employee was employed.
7. In addition to the withholding statements, and at the time they are filed, each employer shall file with the Tax Administrator a Reconciliation of Returns, comparing the Returns of Income Tax Withheld to the total amount of taxes withheld as disclosed by the Withholding Statements.

C. Fractional Parts of Cent.

In deducting and withholding the tax at the source and in payment of any tax due under the chapter, a fractional part of a cent shall be disregarded unless it amounts to one-half (1/2) cent or more in which case it shall be increased to one (1) cent. No person shall be entitled to a refund merely because such rounding off of the tax results in an apparent overpayment based on the taxpayer's total earnings.

D. Domestic Servants.

No person shall be required to withhold the tax on the wages or other compensation paid domestic

servants employed exclusively in or about such person's residence, but such employee shall be subject to all of the requirements of the chapter.

E. Entertainers.

1. Any person who shall employ or contract for the services of an entertainer, entertainment act, sports event, promotional booth, special event, band, orchestra, rock group, theatrical performance, lecturers, speakers; or
2. Any person who, acting as a promoter, booking agent or employer, engages the services of, or arranges the appearance of such individuals, groups, or events and who makes any payments arising from said appearance shall be deemed to be an employer and shall, for the purposes of the collection of the income tax, be required to withhold, report and pay to the Tax Administrator the tax at the applicable rate, on the gross amount paid on the completion of the engagement, said reports to be on the forms provided by the Tax Administrator.
3. Any person, who rents facilities to any entertainer, entertainment act, sports event, promotional booth, food or beverage concession, special event, band, orchestra, rock group, theatrical performance for use in the taxing community and who makes any payment arising from said use of facilities shall be deemed to be an employer and shall, for the purpose of the collection of the income tax, be required to withhold report and pay over to the Tax Administrator the applicable tax based on the gross amount so paid on completion of the engagement, said reports to be on forms provided by the Tax Administrator.
4. The income for non-resident entertainers or concessionaires is the entire amount received for the performance, engagement, or event less any normally allowed business expenses.

F. Reporting Tenant Occupancy.

1. The Tax Administrator may require all owners of rented or leased commercial or residential property to file with the Tax Administrator a report showing the name and address of each tenant who occupies the premises in the City. The report shall be made on a form furnished by the Tax Administrator, and filed by the 30th day of January and the 31st of July each year.
2. As used in this section, "tenant" means:
 - (a) If there is a written lease or rental agreement, the person who signs the written agreement with the owner; or
 - (b) If there is an oral lease or rental agreement, the person with whom the owner enters into oral agreement.

ARTICLE VII

DECLARATIONS

A. Requirements of Filing.

1. A declaration of estimated tax shall be filed by every taxpayer who reasonably be expected to have taxable income, the tax on which is not or will not be withheld in full by an employer or employers. The declaration must be filed only if the estimate of tax that will not be withheld exceeds one hundred dollars (\$100.00). Where required such declaration shall be filed within four (4) months after the beginning of the taxable year.
2. A taxpayer's final return for the preceding year may be used as the basis for computing the taxpayer's declaration of estimated tax for the current year, after taking into consideration known factors which might alter anticipated income. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith.

B. Date of Filing.

1. A person or other entity conducting a business not previously subject to the tax or whose employer does not withhold the tax shall file a declaration within four (4) months after the date he becomes subject to the tax.
2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration within four (4) months after the start of each fiscal year or period.

C. Form for Filing.

1. Such declaration shall be filed upon a form or forms furnished by or obtainable upon request from the Tax Administrator. Credit shall be taken for City tax to be withheld from any portion of such income. In accordance with the provisions of Section 161.15, credit may be taken for tax to be paid or to be withheld and remitted to another taxing municipality.
2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration at any time. Such amendment may be made on the regular declaration form or on a form furnished by and obtainable from the Tax Administrator. An amendment must be filed on or before each quarterly filing date if there is a change of more than 30% to the original estimate. Interest and penalty amounts may be assessed against estimates that result in being less than 70% of income taxable to the City.

D. Dates of Payments.

1. The estimated tax may be paid in full with the declaration or in equal installments on or before the last day of the fourth, seventh, tenth and thirteenth month after the beginning of the taxable year.
2. The declaration must be accompanied by at least one installment of the estimated tax shown due thereon.
3. In the event an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

E. Final Returns Required.

1. The filing of a declaration does not relieve the taxpayer of the necessity of filing a final return even though there is no change in the declared tax liability. A final return must be filed to obtain refund of any overpayment of over one-dollar (\$1.00).

ARTICLE VIII

DUTIES AND POWERS OF THE TAX ADMINISTRATOR

A. Collection of Tax and Retention of Records.

1. It shall be the duty of the Director of Finance to receive the tax imposed by the chapter in the manner prescribed therein from the taxpayers; to keep an accurate record thereof; and to report daily all monies so received.
2. It shall be the duty of the Tax Administrator to enforce payment of all taxes owing the City, to keep accurate records for a minimum of five (5) 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.
3. In addition, make any and all grammatical correction to the Rules & Regulations document as so needed.

B. Enforcement Provisions.

1. The Tax Administrator is charged with the administration and enforcement of the provisions of the chapter and is, subject to the approval of the Board of Review, empowered to adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the chapter. The Tax Administrator has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the chapter.
2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the chapter or these rules and regulations, should submit to the Tax Administrator in writing all the facts involved and the ruling sought.
3. These regulations, together with all amendments and supplements hereto and all changes herein, will be on file with the Clerk of Council and at the office of the Tax Administrator and will be open to public inspection.
4. The Tax Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has proved to the Tax Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the chapter and shall exceed a period in excess of six (6) months only with approval of the Tax Administrator. Only the Board of Review shall grant payment agreements of more than twelve (12) months duration.

5. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 161.11 and 161.12 shall apply.
 6. Payments received shall first be applied to delinquent penalties and interest and then to taxes.
- C. **Estimation of Tax by Tax Administrator.**

In any case where a taxpayer or employer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Administrator may assess the amount of tax appearing to be due, together with interest and penalties thereon, if any, in the following manner:

1. *General Provisions:*
 - a. If the Tax Administrator determines that any taxpayer subject to the provisions of the chapter has a tax liability for which he has filed no return, or has filed an incorrect return and has failed to pay the full amount of tax due, the Tax Administrator shall issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.
 - (1) Such proposed assessment shall be served upon the taxpayer in person or by mailing to the taxpayer's last known address. Proof of mailing furnished by the U.S. Post Office shall be presumptive proof of receipt *thereof by the addressee*.
 - (2) A taxpayer may, within thirty (30) days after the date the proposed assessment was served or mailed, file a written protest with the Tax Administrator. Within thirty (30) days after receipt of the protest the Tax Administrator shall give the protestant an opportunity to be heard, provided further that the Tax Administrator might extend the date of hearing for good cause shown. After the hearing the Tax Administrator shall withdraw the assessment or he shall adjust or reaffirm the assessment and it shall then become final. If no protest is filed as herein provided, such proposed assessment shall become final thirty (30) days after being served.
 - b. After a proposed assessment becomes final, notice of such final assessment shall be issued and shall be served in the same manner as a proposed assessment.
 - (1) A taxpayer shall have fifteen days after the date of the final assessment was served or mailed within which to file written notice of appeal with the Board of Review. Such written notice of appeal shall be filed in a sealed envelope plainly marked "Appeal to Board of Review" and mailed or delivered to the Tax Administrator who shall, within five days after receipt thereof, deliver such appeal to the Chairman of the Board of Review or, if the Chairman is not available, to the Vice-Chairman.
 - (2) The Board of Review, upon receipt of a notice of appeal, shall within fifteen days notify the Tax Administrator thereof who within fifteen days of such notification will forward to the Board a certified transcript of all actions taken by him with respect to said final assessment. Such transcript shall be open to inspection by the appellant and the taxpayer's counsel.
 - (3) The Board of Review shall grant any taxpayer against whom a final assessment has

been issued and who has filed a notice of appeal. At such hearing the appellant and the Tax Administrator shall be given opportunity to present evidence relating to the said final assessment. After the conclusion of such hearing the Board of Review shall affirm, reverse or modify the said final assessment and shall furnish a copy of its decision in respect thereof to the appellant and the Tax Administrator. The appellant's copy of said decision shall be served upon him in the same manner as herein provided for the serving of assessments.

- c. When any taxpayer subject to the provisions of the chapter has filed a return indicating the amount of tax due and has failed to pay said tax into the City Treasury as required by the chapter, the Tax Administrator need not issue an assessment but may proceed under the provisions of Sections 161.11 and 161.12.

2. *Provisions Affecting Employers:*

- a. If the Tax Administrator determines that an employer subject to the provisions of the chapter has failed to file a return for tax withheld and has failed to pay into the City Treasury the full amount of said taxes, the Tax Administrator shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon, and the provisions of Section 161.08(d) shall then apply.

- b. If the Tax Administrator determines that an employer subject to the provisions of the chapter has failed to withhold tax, the Tax Administrator shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon, and the provisions of Section 161.08(a) shall then apply.

- d. When an employer subject to the provisions of the chapter has filed a return indicating the amount of tax withheld and has failed to pay said tax into the City Treasury as required by the chapter, the Tax Administrator may proceed under the provisions of Sections 161.11 and 161.12 and need not issue an assessment as provided in Section 161.08(D).

ARTICLE IX

EXAMINATION OF BOOKS AND RECORDS, INFORMATION SO OBTAINED CONFIDENTIAL: PENALTY

A. **Investigation by Tax Administrator.**

- 1. The Tax Administrator, or the taxpayer's duly authorized agent, is empowered to examine the books, papers, records and copies of Federal income tax returns of any employer, taxpayer or person subject to the chapter, for the purpose of verifying the accuracy of any return made to the City; or if no return was made, to ascertain the tax due under the chapter.
- 2. An employer or taxpayer shall furnish within ten (10) days following a written request by the Tax Administrator or the taxpayer's duly authorized agent, the means, facilities and opportunity for making examinations and investigations authorized by the chapter.

B. Subpoena of Records and Persons.

1. The Tax Administrator, or any person acting in the taxpayer's capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The Tax Administrator may compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transactions of the taxpayer.
2. The Tax Administrator's order to examine any document mentioned in the proceeding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Tax Administrator.
3. The Tax Administrator may order the appearance before him, or the taxpayer's duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Tax Administrator is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
4. Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show time and place of the hearing and what books, papers or records the witness is to make available at such hearing.
5. The notice shall be served by the Tax Administrator or his duly authorized agent, by delivering it to the person named in the notice or by leaving the notice at the taxpayer's usual place of business or residence, or by mailing it to the person by registered mail, return receipt requested, addressed to the taxpayer's usual place of business or residence.

C. Penalty for Non-compliance.

Refusal of any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Tax Administrator or the taxpayer's duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 161.12.

D. Confidential Nature of Examinations.

Any information gained as a result of any returns, investigations, verifications or hearings before the Tax Administrator required by the chapter or authorized by these rules and regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of one thousand dollars (\$1,000.00) or imprisonment for not more than six (6) months, or both. In addition to the above penalty, any employee of the City who violates the provisions of Section 161.09 relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

E. Retention of Records.

All employers and taxpayers are required to keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits or both. Such records shall be preserved for a period of (5) years from the date the final return is filed and paid or the withholding taxes are paid.

ARTICLE X

INTEREST AND PENALTIES

A. Interest.

Except as provided in paragraph C of this Article, all taxes imposed and monies withheld by employers under the provisions of the chapter and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of two (2.0) percent per month or fraction thereof.

B. Penalties.

In addition to interest as provided in paragraph A of this article, penalties based on the unpaid tax are hereby imposed as follows:

1. For failure to pay taxes due, other than taxes withheld, one and one half (1.5) percent per month or fraction thereof, or fifteen percent (15%), whichever is greater.
2. For failure to remit taxes withheld from employees: five percent (5%) per month or fraction thereof, or fifteen percent (15%), whichever is greater.
3. For failure to file income tax returns, \$25.00 for the first instance and \$100.00 for each subsequent instance.
4. Except in the case of fraud, the penalty shall not exceed fifty percent (50%) of the unpaid tax for direct accounts or one hundred percent (100%) for withholding accounts.

C. Exceptions.

1. No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within fifteen (15) days from the date the taxpayer was notified of such findings.
2. In the absence of fraud neither penalty nor interest shall be assessed on any additional taxes resulting from a Federal audit for Federal income tax purposes provided an amended return is filed and the additional tax paid within three (3) months after final determination of the Federal tax liability.

D. Appellate Review.

The Tax Administrator may abate penalty, or interest, or both, up to \$5,000 per account.

Upon recommendation of the Tax Administrator, the Board of Review may abate penalty or interest, or both, in any amount or upon appeal the Board of Review may abate penalty or interest, or both, even though the Tax Administrator has not recommended this abatement.

ARTICLE XI

COLLECTION OF UNPAID TAXES AND REFUND OF OVER PAYMENT

A. Unpaid Sums--A Civil Debt.

1. All taxes imposed by the chapter and not paid when due become, together with interest and penalties thereon, a debt due the City from the taxpayer and are recoverable, as are other debts by civil suit. Employers who are required under Section 161.06 to withhold and remit the taxes required to be withheld at the source, and who fail to withhold and/or remit, become liable to the City in a civil suit to enforce the payment of the debt created by such failure.
2. No additional assessment shall be made by the Tax Administrator after three (3) years from the time the return was due or filed whichever is later. Provided, however, there shall be a six (6) year period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report 25% or more of gross income shall be considered a substantial omission.
3. In those cases in which the Tax Administrator of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an assessment may be made by the Tax Administrator is extended to one (1) year from the time of final determination of the Federal tax liability.

B. Refunds and Overpayments.

1. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made or the return was due or three (3) months after the determination of the Federal income tax liability, whichever is later.
2. No refund shall be made to any taxpayer until he has complied with all provisions of the chapter and has furnished all information required by the Tax Administrator.
3. Items included on Federal Form 2106 are eligible as deductions, subject to review and approval by the Tax Administrator, and subject to limitations imposed by the Federal government.
4. Overpayments will either be refunded, or credited to the taxpayer's current year's liability, at the taxpayer's option. Where no election has been made, overpayment of any year's taxes shall be applied as follows:
 - a. To the taxes owed for any previous year in the order in which such taxes became due.

- b. To the taxpayer's current estimated tax liability.
 - c. Credit to the taxpayer's next years tax liability.
5. Refunds are normally available only to non-residents, and refunds shall be computed by dividing total wages by total days worked in order to determine an average daily wage. If the information is submitted, holidays, sick days, and/or vacation days shall be subtracted from two hundred sixty (260) to determine the total days worked. Saturdays, Sundays, vacation days, sick days, and holidays shall not normally be considered workdays. Additions, deletions, or other changes to the method for calculating refunds shall be at the discretion of the Tax Administrator.

C. Limitations.

- 1. Amounts of less than one dollar (\$1.00) shall not be refunded or assessed.

ARTICLE XII

VIOLATIONS -- PENALTIES

A. Any person who shall:

- 1. Fail, neglect or refuse to make any return or declaration required by this chapter; or
- 2. Make any incomplete, false or fraudulent return; or
- 3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
- 4. Fail, neglect or refuse to withhold the tax from the taxpayer's employees or remit such withholdings to the Tax Administrator; or
- 5. Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine the taxpayer's books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
- 6. Fail to appear before the Tax Administrator and to produce the taxpayer's books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator; or
- 7. Refuse to disclose to the Tax Administrator any information with respect to the income or net profits of a taxpayer; or
- 8. Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator authorized hereby; or
- 9. Give to an employer false information as to the taxpayer's true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
- 10. Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total

wages paid and the City tax withheld, or knowingly give the Tax Administrator false information; or

11. Evade or attempt to evade in any manner the payment of the whole or any part of the tax, penalties or interest imposed by this chapter; shall be guilty of a first degree misdemeanor and shall be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned not more than six (6) months, or both, for each offense.

B. Prosecutions.

Prosecutions under the chapter must be commenced within the period specified in O.R.C. Section 718.06.

C. Failure to Receive Forms--Not a Defense.

The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him (1) from making any information return, declaration or return, (2) from filing such form, or (3) from paying the tax.

ARTICLE XIII

BOARD OF REVIEW

A. Board of Review.

1. A Board of Review, consisting of five members, one of which is the Chairman, with each individual to be appointed by the Mayor, with the consent of Council, three individuals to serve for initial terms of one year and two individuals to serve for two years, respectively, and thereafter two-year terms for all members. These public members shall not all be adherents to the same political party; they may be paid such per diem compensation, as Council shall fix. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 161.09 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.
2. All rules, regulations and amendments or changes thereto, which are adopted by the Tax Administrator under the authority conferred in the chapter, must be approved by the Board of Review before the same shall become effective. The Board shall hear and pass on appeals from any ruling or decision of the Tax Administrator, and, at the request of the taxpayer or Tax Administrator, as empowered to substitute alternate methods of allocations.

B. Appeals by Taxpayers.

1. The Board of Review shall, on hearing, have jurisdiction to affirm, modify or reverse any assessment, ruling or decision, or any part thereof made by the Tax Administrator from which an appeal has been filed as provided in Section 161.13. Such appeal must be made in writing, must state why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days from the service or mailing of the ruling or decision to which exception is taken by a taxpayer. The Board of Review must 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 Board may affirm, reverse, or modify the Tax Administrators decision or any part of that decision. The Board of Review shall issue a decision on the appeal within ninety days after the Board's final hearing on the appeal, and send notice of its decision by ordinary mail to the petitioner within fifteen days after issuing the decision.

2. A taxpayer dissatisfied with a decision or ruling by the Board of Review may appeal to a court of competent jurisdiction within sixty days from the date of announcement of the ruling or decision to which exception is taken.

C. Organizational Procedure.

1. The Board of Review shall elect from its members a chairman, a vice-chairman, and a secretary.
2. A majority of members present at any hearing or meeting shall constitute a quorum.
3. The Board of Review shall adopt its own procedural rules and keep records of all proceedings accordingly.
4. All hearings upon appeal by the Board of Review shall be conducted privately, and the provisions of Section 161.09 with reference to the confidential character of information required to be disclosed shall apply to such matters as may be heard before the Board of Review, unless a public hearing is requested by the taxpayer, in which case the taxpayer shall execute a waiver of said confidentiality.

ARTICLE XIV

CREDIT ALLOWED FOR TAX PAID IN ANOTHER MUNICIPALITY

A. Limitation.

Where a resident of the City is subject to a municipal income tax in another municipality he shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.

B. Credits to Residents.

Resident individuals of the City who are required to pay and do pay a tax to another municipality on salaries, income, wages, commissions or other compensation for work done or services performed in such other municipality, or on net profits from businesses, professions or other activities conducted in such other municipality, may claim a credit of the amount of tax paid by them or on their behalf to such other municipality but only to the extent of the tax imposed on such compensation or net profits.

C. Method of Applying for Credit.

1. No credit will be given unless the taxpayer claims such credit on the taxpayer's final return or other form prescribed by the Tax Administrator and presents such evidence of the payment of a similar tax to another municipality as the Tax Administrator may require.
2. A statement satisfactory to the Tax Administrator from the taxing authority of the municipality to which the taxes are paid that a City resident or the taxpayer's employer is paying the tax shall be considered as fulfilling the requirements of this article.

ARTICLE XV

SAVINGS CLAUSE

- A. These rules and regulations shall not apply to any person, firm, corporation, or income, as to whom, or as to which it is beyond the power of the City Council to impose the tax provided for in the chapter.
- B. If any sentence, clause, section or part of the chapter, or any article or part of these rules and regulations, or any tax against any individual, or any of the several groups specified in the chapter or rules and regulations, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only such sentence, clause, section or part of the chapter or article, or part of these rules and regulations and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the chapter or these rules and regulations. It is hereby declared to be the intention of the Board of Review that these rules and regulations would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section, article or part thereof not been included therein or herein.

ARTICLE XVI

AMENDMENTS AND SUPPLEMENTS

- A. The effectiveness of these regulations issued under Chapter 161 are to be considered effective January 1, 1967.
- B. The Tax Administrator, subject to the approval of the Board of Review may issue from time to time amendments and supplements to these regulations.

Approved by the Board of Review _____.