

CITY OF GREEN

Income Tax Division Art Preiksa, Administrator



RULES AND REGULATIONS

Approved March 10, 2000

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ARTICLE 1.00 PURPOSE

The first chapter of the income tax ordinance sets forth the purposes for which the tax collected will be used. They are not repeated here, other than for personal information; they have no effect on these Rules and Regulations.

ARTICLE 2.00 DEFINITIONS

2.01 As used in these Rules and Regulations, the following words defined shall have the meaning ascribed to them herein. In all definitions contained in these regulations, the singular shall include the plural and the masculine shall include the feminine and the neuter with regard to the terms, phrases, words and their derivatives used herein.

2.02 **Administrator** means the individual designated to administer and enforce the provisions of the Income Tax Ordinance of the City of Green.

2.03 **Association** means any partnership, limited partnership, or any other form of unincorporated business or enterprise, owned by two or more persons.

2.04 **Board of Review** means the Board created by and constituted as provided for in the Income Tax Ordinance of the City of Green.

2.05 **Business** means an enterprise, cooperative activity, profession, trade or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, proprietorship, partnership, association, corporation or any other entity, excluding, however, all non-profit corporations which are exempt from the payment of Federal income tax. The administration of a decedent's estate by the executor or administrator and the mere custody, supervision and management of trust property under an intervivos or testamentary trust unaccompanied by the actual operation of a business, shall not be construed as the operation of a business.

2.06 **Business Allocation** as used in these regulations, means the portion of net profits to be allocated as having been made in the City of Green either under the separate accounting method or under the three-factor formula of property, payroll and sales, or under a substitute method, as provided for in the Income Tax Ordinance.

2.07 **Business Deductions** the ordinary and necessary expenses actually incurred in the operation of the business. Expenses itemized and reported as expenses on Federal Form 2106 after deduction of the 2% provision shall be allowed.

2.08 **Corporation** means a corporation, joint stock company, 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.

2.09 **Dishonored Check** means any check received in payment of taxes that is returned by the bank.

2.10 **Domicile** is that place where an individual has his true, fixed, and permanent home, and principle establishment, and to which whenever he is absent he has the intention of returning.

2.11 **Earned Income** is used in determining whether certain income is taxable within the effective dates of the ordinance. "Earned Income" is earned when received if the taxpayer is on a cash basis or when accrued if the taxpayer is on an accrual basis. The taxpayer must use the same accounting method he uses for Federal tax purposes.

2.12 **Employee** means one who works for wages, salary, commission or other type of compensation in the service of an employer and shall include temporary, provisional, casual, or part-time employment. Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished but also as to the details and means by which that result is accomplished. Any person from whom an employer is required to withhold for Federal Income tax purposes shall prima facie be deemed an employee.

2.13 **Employer** Means an individual, proprietorship, association, corporation or other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis, whether or not such employer is engaged in business as herein before defined. The term employer includes the State of Ohio, its political subdivisions and its agencies, instrumentalities, boards, bureaus, departments, etc., as well as other governmental subdivisions, agencies, instrumentalities, boards, bureaus, departments, etc. to the extent that any such body withholds tax on a mandatory or voluntary basis. No rights, duties or obligations are imposed with respect to any such body not otherwise authorized by law.

Employers shall be further defined to be an individual, partnership, association, corporation or any other entity who books or contracts for individuals and/or groups to perform or entertain at their place of business or rents facilities for the purpose of providing such entertainment.

The term **Employer** does not include any person who employs only domestic help for such person's private residence.

2.14 **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 municipal income tax purposes.

2.15 **Independent Contractor** is a person who while performing services for another, is not under the direction and control of such other person, as to the result to be accomplished by the work and as to the details and means by which that result is accomplished such as an author, professional men, etc.

2.16 **Intangible Property** is hereby defined to be:

- (a) Shares of stocks in corporations, associations and joint stock companies.

- (b) Interest bearing obligations (notes, corporate bonds, bonds, either Federal, state and governmental agencies, savings accounts).
- (c) Income from purchased annuities.
- (d) Royalties from patents and copyrights.

2.17 **Net Profits** means the net gain from the conduct, or operation of a trade, business, profession, enterprise, or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal Income Tax purposes without deduction of taxes imposed by the Income Tax Ordinance, Federal, State and other taxes based on income, and in the case of an association, without deduction of salaries and payments to partners and other owners.

2.18 **Non-Resident** means an individual, partnership, association or other entity domiciled outside of the boundaries of the City of Green.

2.19 **Non Resident Unincorporated Business Entity** means an unincorporated business entity not having an office or place of business within the boundaries of the City of Green.

2.20 **Ordinance** means the Ordinance enacted by the Council of the City of Green and any amendments and supplements thereto effective and continuing until repealed.

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

2.22 **Place of Business** means any bona fide office (other than a mere statutory office), factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance. A taxpayer does not have a place of business outside of the boundaries of the City of Green solely by consigning goods to an independent factor for sale outside of said community.

2.23 **Resident** means an individual, partnership, association or other entity domiciled in the City of Green.

2.24 **Resident Unincorporated Business Entity** means an unincorporated business entity having an office or place of business within the City of Green.

2.25 **Salaries, Wages, Commissions** and other **Compensation** shall include salaries, wages, commission, bonuses, incentive payments, fees and tips that may accrue or be received by an individual, whether directly or through an agent and whether in cash or in property for services rendered.

2.26 **Taxable Income** means wages, salaries, and other compensation paid by an employer or employers before deductions of any kind, and/or net profits from the operation of a business, profession and other enterprise or activity adjusted in accordance with the provisions of the Income Tax Ordinance and these regulations.

2.27 **Taxable Year** means the calendar year or the fiscal year, used as the basis on which net profits or other taxable income are to be computed under the ordinance, 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.

2.28 **Taxing Municipality** means any municipal corporation levying a municipal income tax on salaries, wages, commissions and other compensation earned by individuals, and on the net profits earned from the operation of a business, profession or activity.

2.29 **Taxpayer** means a person, whether an individual, partnership, association, corporation, or any other entity, required by the ordinance to file a return of earnings or of net profits.

2.30 **Tangible Property** shall be all property not defined as intangible property.

ARTICLE 3.00 IMPOSITION OF TAX

3.01 Resident Employee

A. In the case of a resident of the City of Green, an annual tax at the rate specified in the ordinance is imposed on all salaries, wages, commissions and other compensation earned and received, or earned and accrued, during the effective period of the Ordinance.

For the purpose of determining the tax on earnings of resident taxpayers under the rate and income taxable section of the ordinance, the source of earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings wherever earned are taxable. The location of the place from which payment is made or where payment is received is immaterial.

B. The following are items which are subject to the tax imposed by the rate and income taxable section of the City of Green ordinance.

(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), joint stock associations, or joint stock company;

- (b) An employee (as distinguished from a partner or member) of a partnership, limited partnership, or any form of unincorporated enterprise owned by one 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 of a corporation created and owned or controlled by the United States Government or any of its agencies; or of the State of Ohio or any of its political subdivisions or agencies thereof; or any foreign country or dependency except as provided in the section of the ordinance indicating sources of income not taxed.
 - (e) An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual unit of production or piecework rates; and whether paid by an individual, partnership, association, or corporation (including charitable and other 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 for services rendered during the effective period of the ordinance, 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 his gross income for the purpose of determining his net profits taxable under Federal law, and the employee is not required to include such receipts as income (or has directly off-setting business expense) on his 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 of which the individual receiving such commission is owner or part owner and therefore subject to the tax on the net profits provision of the ordinance, they shall not be taxed under the provisions relating to salaries, wages or commissions earned.

- (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 owned or partly owned by said individual. Example of fees taxable are those received by a director or officer of a corporation.
- (4) Other compensation shall include:
 - (a) Tips received by waiters and others
 - (b) Bonuses
 - (c) Gifts, gratuities in connection with employment
 - (d) Compensation paid to domestic servants, casual employees and other types of employees
 - (e) Benefits resulting from employers assuming a tax
 - (f) Fellowships, grants or stipends paid to a graduate student in the full amount except that an amount allocated in writing for tuition books and laboratory fees shall be excluded.
 - (g) Dismissal pay which is demandable as a matter of right by virtue of the contract of employment
 - (h) Incentive payments
 - (i) Tax Shelter Plans-Contributions by employees to a retirement system are not deductible by such employee. If such contributions are deducted by an employer from the earnings of an employee, such amounts are subject to withholding.
 - (j) If an employer pays into a tax shelter plan on behalf of an employee in lieu of paying said amount as wages, said payments are considered additional compensation to the employee and are subject to withholding.
 - (k) Contributions to a pension, annuity or tax shelter plan by an employer is deemed to be other compensation subject to withholding if the employee's interest in or entitlement to the amount contributed is vested and non- forfeitable at the time of the contribution.
- (5) Vacation, sickness, etc. Payments made by an employer to an employee during periods of absence from work are taxable when paid and at the tax rate in effect at the time of payment, regardless of the fact that such payments may be labeled sick leave or sick pay, disability, vacation, terminal pay, supplemental unemployment or a non-resident employee.

Payments made to an employee by an employer, either directly or by an insurance company, under a wage continuation plan during periods of disability or sickness, are taxable and may not be excluded from taxable income by an employer or non-resident employee. Such payments are attributable to the city of employment.

- (6) Where compensation is paid or received in property, its fair market value, at the time of receipt, shall be subject to the tax and to withholding. Board, lodging and similar compensation shall be included in earnings at their fair market value.
- (7) Group term life insurance protection over \$50,000.00 taxed on the entire cost.
- (8) Stock options given as compensation and when exercised regardless to the treatment by the Internal Revenue Service (IRS), the employee would be required to withhold on the difference between the fair market value and the amount paid by the employee.

Employers must withhold municipal income tax on the exercise of non-qualified stock options if the employee acquired the option as compensation or in lieu of wages.

- (9) Losses from the operation of a business or profession are not deductible from employee earnings. Rental and business losses may not be used to offset wage income.
- (10) 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 taxable compensation.
- (11) Non-resident "Over the Road Drivers," driving only within the state of Ohio, reporting to a terminal in the City of Green must have the tax withheld from a minimum of 25% of their wages. Residents of the City of Green who are employed as "Over the Road Drivers" who drive both within the state of Ohio and in other states must have the tax withheld on the full amount of their wages for the City of Green. Non-resident "Over the Road Drivers" who drive in both the State of Ohio and in other states must have the tax withheld only if they spend more than fifty percent of their time in the City of Green.

3.02 **Non-resident Employee**

- A. In the case of individuals who are not residents of the City of Green there is imposed under the ordinance, a tax on all salaries, wages, commissions and other compensation earned and received, or earned and accrued, on and after the effective date of the ordinance for work done or services rendered or performed within the City of Green, 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.

- B. The items subject to tax under the ordinance are the same as those listed in Section 3 of the ordinance.
- C. When a resident or non-resident receives compensation for services for sales of real estate or insurance from an employer whose situs is the City of Green, that total compensation is taxable at Green's tax rate and is payable to the City of Green. The site of the property sold or residence of the purchaser of insurance has no bearing on the taxing of the compensation.

3.03 Resident Unincorporated Business

- A. In the case of resident unincorporated businesses, professions, enterprises, undertakings or other entities conducted, operated, engaged in, pursued or carried on, irrespective of whether such taxpayer has an office or place of business in the City of Green there is imposed a tax on the net profits earned during the effective period of the ordinance attributable to the City of Green determined by the separate accounting method or formula provided for in the ordinance, derived from sales made, work done or services performed or rendered, and business or other activities conducted in the City of Green.
- B. The tax imposed on resident associations or other entities is upon the entities rather than the individual members or owners thereof.
- C. The tax imposed by the income tax ordinance, is imposed on all City of Green unincorporated entities having net profits attributable to the City of Green under the method of allocation provided for in the ordinance, regardless of where the owners of such resident unincorporated business entities reside.
- D. Resident unincorporated entities owned by one or more persons all of whom are residents of the City of Green and having all income allocable to the City of Green or having any income allocable to other municipalities not levying a similar tax, shall disregard the method of allocation provided for in the ordinance and pay the tax on the entire net profits thereof.

3.04 Resident's Distributive Share of Profits of a Resident Unincorporated Business Entity, Not Attributable to the City of Green.

In the case of a resident individual who is a member, partner, owner or part owner of a resident unincorporated entity, there is imposed an annual tax on such individual's distributive share of net profits earned during the effective period of the tax ordinance not attributable to the City of Green under the method of allocation provided for in the tax ordinance, and not taxed against the entity. Provided, however, if any portion thereof is allocable to another taxing municipality credit shall be claimed in the same manner as wages earned in another community.

3.05 Non-Resident Unincorporated Businesses

- A. In the case of non-resident unincorporated businesses, professions, enterprises, undertaking, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax on the net profits earned during the effective period of the ordinance attributable to business in the City of Green under the formula or separate accounting method provided for in the ordinance.
- B. The tax imposed on non-resident unincorporated entities owned by one or more persons is upon the entities rather than the individual members or owners thereof, irrespective of where the members or owners reside.

3.06 Resident's Share of Profits of a Non-Resident Unincorporated Business Entity Not Attributable to the City of Green.

In the case of a resident individual who is a member, partner, owner or part owner of a non-resident unincorporated entity, there is imposed an annual tax on such individual's distributive share of net profits earned during the effective period of the ordinance not attributable to the city where the entity is located under the method of determination of allocation as provided for in the tax ordinance and not taxed against the entity. Provided, however, that such resident shall be entitled to credit for tax paid another taxing municipality in accordance with the City of Green ordinance.

3.07 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 of Green, there is imposed an annual tax on the net profits earned during the effective period of the ordinance attributable to said taxing community under the formula or separate accounting method provided for in the ordinance.
- B. Corporations which are required by the provisions of Section 5727.38 to 5727.41, inclusive, of the Revised Code of Ohio, to pay an excise tax in any taxable year as defined by the ordinance, may exclude that part of their gross receipts upon which the excise tax is paid. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to the tax imposed by the ordinance.

3.08 Effective Period of Tax

- A. The tax imposed by the ordinance shall be levied, collected and paid with respect to salaries, wages, bonuses, incentive payments, commissions, fees and other compensation earned during the effective period of the ordinance.
- B. The tax imposed by the ordinance, with respect to net profits of trade, businesses, professions, enterprises, undertakings and other activities is on the net profits earned during the effective period of the ordinance.

3.09 Amplification

A. Net Profits

1. Net profits as used in the ordinance 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.
2. Net profits are disclosed on any return filed pursuant to the provisions of the ordinance shall be computed by the same accounting method used in reporting net income to the Federal Revenue Service (providing such method does not conflict with any provisions of the ordinance.)

B. Expenses

1. 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 or enterprise.
 - (a) 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 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.
 - (b) 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 a deductible expense hereunder.
 - (c) 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.
 - (d) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off; or if the reserve method is used a reasonable addition to the reserve may be claimed, but in no event shall the amount exceed the amount allowable for Federal Income Tax purposes.
 - (e) 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) the tax under the ordinance; (2) Federal or other taxes based upon income; (3) gift, estate or inheritance taxes; and, (4) taxes or assessments for direct benefits or improvements to property which tend to appreciate the value thereof.

- (f) In general, non-taxable income and expenses incurred in connection therewith are not to be considered in determining net profits.
- (g) If the taxpayer reports income that is non-taxable under the ordinance and such amounts are deducted in order to reconcile the tax return for the City of Green with the taxpayer's Federal Income Tax return, expenses attributable to the non-taxable income shall not be allowed. In the absence of records showing the actual expenses attributable to such non-taxable income, and upon approval of the administrator, such amount shall be deemed to equal five percent of such non-taxable income.
- (h) Corporate contributions not to exceed the amount allowed by the Internal Revenue Service made to qualified charitable organizations recognized as such by the Internal Revenue Service will be permitted as a business expense.
- (i) Capital gains and losses from sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned. Any amount received on a sale or other disposition of tangible personal property used in business, in excess of book value, shall be treated as taxable income under the ordinance to the extent of depreciation allowable (under the ordinance). The balance shall be treated as capital gain. Gains or losses from involuntary conversion shall not be taken into consideration on arriving at net profits.

3.10 Determination of Allocation of Tax

A request to change the method of allocation must be made in writing before the end of the taxable year.

3.11 Separate Accounting Method

- A. The net profits allocable to taxing community from business, professional, or other activities conducted in said taxing community by corporations or unincorporated entities (whether resident or non-resident) shall be determined from the records of the taxpayer if taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within the City of Green.
- 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 Administrator to determine whether the net profits are apportioned with reasonable accuracy.

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

3.12 Business Allocation Percentage Method.

- A. **Step 1.** Ascertain the percentage which the average net book value of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within the City of Green is of the average net book value of real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return. Average net book value of property may be computed on a monthly, quarterly, semi-annual basis, provided such method is consistently followed each year.
 - 1. The percentage of taxpayer's real and tangible personal property within the City of Green is determined by dividing the average net book value of such property within taxing community (without deduction of any encumbrances) by the average net book value of all such property within or without the City of Green, in determining such percentage, property rented to the taxpayer as well as real and tangible personal property owned by 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.
 - (b) Gross Rents 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:
 - (1) 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.
 - (2) 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 which the total wages, salaries, commissions and other compensation of employees within the City of Green is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without the City of Green 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 with the method of accounting used in the computation of the entire net income of the taxpayer.
3. In the case of an employee who performs services both within and without the City of Green, the amount treated as compensation for services performed within the city shall be deemed to be:
 - (a) 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 his efforts within the City of Green.
 - (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 his services within the City of Green bears to the value of all his services; and
 - (c) In the case of an employee compensated on a time basis, the proportion of the total amount received by him which is working time within the City of Green is of his total working time.

- C. **Step 3.** Ascertain the percentage which the net sales of the taxpayer derived from sales made and services rendered in the City of Green is of the total net sales and wherever derived during the period covered by the return (Line 1 of 1120). Income not taxable and deducted on Schedule X is not to be included in Schedule Y.

3.13 Sales Made In The Taxing Community

- A. All sales made through retail stores located within the City of Green to purchase within or without the City of Green except sales to purchasers outside the City of Green that are directly attributable to regular solicitations made outside the City of Green personally by taxpayer's employees.
- B. All sales of tangible personal property delivered to purchasers within the City of Green if shipped or delivered from an office, store, warehouse, factory or place of storage located within the City of Green.
- C. All sales of tangible personal property delivered to purchasers within the City of Green even though transported from a point outside of the City of Green if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Green 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 of Green to purchasers outside of the City of Green 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 sales.
- F. In the application of the foregoing subparagraphs, 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 of the City of Green by mail or phone from an office within the City of Green shall not be considered a solicitation of sales outside of the City of Green.

3.14 **Total Allocation**

- A. **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, however, if one of the factors (property, receipts or payroll) is missing, the other two percentages are added and the sum is divided by two, and if two of the factors are missing the remaining percentage is the business allocation percentage.
- B. **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 of Green.

3.15 **Substitute Method**

- A. In the event a just and equitable result cannot be obtained under the formula, the Administrator 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 administrator to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing not less than sixty (60) days before the end of the taxable year and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. No specific form need be followed in making such application.

Once a taxpayer has filed under a substitute method, he must continue to file until

given permission to change. In the event a substitute method of allocation is authorized, a statement should be attached to each annual return indicating that the allocation is in conformity with the ruling and setting forth the date of the filing.

3.16 **Operating Loss Carry Forward**

- A. The portion of a loss, based on income taxable under the ordinance, sustained in any taxable year subsequent to effective date of the Income Tax Ordinance allocable to the City of Green may be applied against the portion of the profit of succeeding year(s) allocable to the City of Green until exhausted but in no event for more than five (5) years. No portion of a net operating loss shall be carried back against net profits of prior year.

The loss may continue to be carried forward in subsequent years only when in each year following that in which loss occurred, the taxpayer has offset the profit of such years up to the entire amount of such profit by the amount of carry-forward loss needed to offset such profit. Any amount of carry-forward loss not so used is lost for subsequent years.

When succeeding losses are experienced, the first year can be carried for five (5) years, and the second, third, etc. need not be claimed until the first year has been used up. However, even in such cases the five-year limitation is followed.

- B. In the event net profits are allocated both within and without the City of Green, the portion of net operating loss sustained shall be allocated to the City of Green in the same manner as provided herein for allocating net profits to the City of Green. The portion of a net operating loss to be carried forward shall be determined in the year the net operating loss is sustained on the basis of the allocation factors applicable to that year.
- C. In the case of fiscal years beginning prior to the effective date of the ordinance, the net operating loss deduction will be that portion of the operating loss that the number of months of the fiscal year after the effective date of the ordinance bears to the total number of months in such fiscal year.
- D. A short fiscal year (a fiscal year of less than twelve (12) months) in cases where there has been a change in accounting period, where a new taxpayer selects a short fiscal year, or where a new taxpayer operates in the City of Green for less than his full accounting period, shall be considered as full taxable fiscal year.
- E. In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:
1. Year in which net operating loss was sustained.
 2. Method of accounting and allocation, used to determine portion of net operating loss allocable to taxing community.

3. Amount of net operating loss used as a deduction in prior years.
 4. Amount of net operating loss claimed as a deduction in current year.
 5. Return must be timely filed to take advantage of five (5) year loss carry forward.
- F. Loss from one community may never be used to offset the gain in another community.
- G. The net operating loss of a business which loses its identity through mergers, consolidation, etc., shall be allowed as a carry forward loss deduction to the surviving business entity to the extent permitted by the Internal Revenue Code.

3.17 **Rentals From Real Property**

- A. Rentals received by the taxpayer are to be included in the computation of net profits from business activities only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by the taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.
- B. Where the gross monthly rental of any real properties, regardless of the number and value aggregate in excess of \$100 per month in any one month of a taxable year, it shall be prima facie evidence that the rental, ownership, management or operation of such rental properties shall be subject to tax; 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 per month, 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 net income exceeds \$100 per month; and provided, further, that the person who operates a licensed room house shall be considered in business whether or not the gross income exceeds \$100 per month.

The test of whether rental income constitutes a business activity is determined by the amount of gross rent yielded by the property or properties without regard to the number of registered owners of the property. The tax is then imposed against the business entity and not the separate owners (e.g. husband and wife own properties, under no formal agreement, which yield in excess of \$100 in any month of the taxable year. A return must be filed indicating the tax liability.

- C. 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.
- D. Rentals received by a taxpayer engaged in the business of buying and selling real

estate shall be considered as part of business income.

- E. Real property, as the term is used in this regulation, shall include commercial property, farm property, and any and all other types of real estate.
- F. In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for Federal Income Tax purposes.
- G. Owners of rental property who are non-residents of the City of Green whether individuals or business entities, are subject to tax only on the income from real property located in the City of Green and, in determining whether gross monthly rentals exceed \$100 shall take into consideration only the income from such properties located within said the City of Green.
- H. Owners of rental property who are residents are subject to tax on the net income from rentals (to the extent above specified), regardless of the location of the real property owned excepting that, if any such other taxing municipality has taxed the net income the resident may claim a credit as provided in the ordinance.
- I. Owners of rental property who are residents of the City of Green may offset net losses against net profits from all rental property located within the City of Green and any other municipality which does not levy a similar tax. Net profits and losses from one taxing community may not be combined with net profits and losses in other municipalities levying a similar tax.
- J. Owners of rental property who are not residents of the City of Green, may offset net losses against net profits only between rental properties located in the City of Green.
- K. Corporations owning or managing real estate are taxable only on the portion of income derived from property located in the City of Green.
- L. Any person receiving rental income from commercial property, farm property, or a licensed rooming house, irrespective of the rental amount limitation, must file a return whether or not there is any tax due.

ARTICLE 4.00 EXEMPTIONS

4.01 Income, Members of Armed Forces and Certain Institutions

- A. All active duty pay and allowances of any member of the Armed Forces of the United States are exempt from the tax imposed by the ordinance. This exemption includes not only the military pay and allowances received by the member himself, but also military pay and allowances, such as dependency allowances, received by another person by reason of the member's service. Any bonus or additional compensation paid to a person by the United States, State of Ohio, or any other state for active service in the Army, Navy or Air Force, shall also be exempt from tax.
- B. The income of religious, fraternal, charitable, scientific, literary or educational institutions is exempt from the tax imposed by the ordinance to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities. The income and profits of organizations exempt from Federal Income Tax under Section 501(a) of the Internal Revenue Code shall be exempt from taxation under the ordinance.

4.02 Payments From Governments and Certain Organizations

Poor relief, unemployment insurance benefits, old age pensions or similar payments, including disability benefits, received from local, state or federal governments or charitable, religious or educational organizations, are exempt from the tax imposed by the ordinance. The exempted benefits include all types of payments and allowances made or given such governments organizations for the relief or correction of poverty, unemployment, delinquency, problems of health or advanced age, lack of education and similar problems. The exempted benefits include, for example, aid to dependent children and the aged; rent, food and clothing allowances or subsidies; job training allowances; Social Security and Medicare benefits; and Worker's Compensation benefits.

4.03 Insurance and Annuity Proceeds, Certain Employee Benefits and Gifts

- A. Proceeds of insurance paid by reason of the death of the insured, gratuities not in the nature of compensation for services rendered, pensions, disability benefits (not under a wage continuation plan), retirement benefits, and annuities are exempt from the tax imposed by the ordinance, irrespective of the source from which derived. The exemption includes inheritances, scholarships, and student grants-in-aid, but not fellowships. Disability benefits include the proceeds of health and accident insurance and similar benefits. Benefits under a wage continuation plan are not exempt. Death benefits, pensions, retirement benefits, annuities and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan (whether formal or informal) after termination of employment are exempt from the tax; however, supplemental unemployment benefits are not exempt from taxation, payments for longevity are not exempt.

- B. Gifts not in connection with services rendered or work performed, are exempt.
1. Religious offerings. These items, which are goodwill offerings made by individuals for performance of religious ceremonies such as baptisms, weddings, funerals, etc. received by clergymen are considered unearned income and are not taxable.
 2. Cash or property received under a will or under Statute of Descent and Distribution is not taxable.

4.04 Receipts of Certain Organizations and Associations

Receipts from seasonal or casual entertainment, amusement, sports events and health and welfare activities, when any such activities are conducted by charitable, religious or educational organizations or associations are exempt from the tax imposed by the ordinance. This exemption refers only to the receipts of the organization and not to the compensation of employees.

4.05 Alimony

Alimony received is exempted from the tax imposed by the ordinance. Support payments made by one spouse for the benefit of the other spouse or children in connection with any divorce or separation, whether or not awarded by the court, shall be deemed alimony for purposes of this exemption.

4.06 Natural Persons Under Age 18

Personal earnings of any natural person under 18 years of age are exempt from the tax.

4.07 Personal Injuries and Damage To Property

Compensation for personal injuries or for damages to property by way of insurance or otherwise is exempt from the tax imposed by the ordinance.

4.08 Interest, Dividends and Other Revenue From Intangible Property

Income from intangibles by way of dividends, interest and the like, if such income is subject to taxation under the intangible personal property laws of the State of Ohio or specifically exempt from municipal taxation under said law.

4.09 Involuntary Conversion and Other Exemptions

Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio from which the taxing community is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business) are exempt from the tax imposed by the ordinance.

4.10 Taxation Prohibited By Federal Government

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 tax on income derived from interstate commerce, are exempt from the tax imposed by the ordinance.

4.11 Taxation Prohibited By State of Ohio

Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of a municipality to impose net income taxes, are exempt from the tax imposed by the ordinance.

4.12 General

No person shall be exempt from the imposition of this income tax unless specifically excluded or exempted by the laws of the State of Ohio or this ordinance. Upon request of the Administrator, any person who claims exemption from tax under the ordinance shall provide detailed information to show the basis of such claim. The information shall be furnished on a form supplied by the Administrator and be returned within thirty (30) days after receipt of the request.

ARTICLE 5.00 RETURNS

5.01 Dates and Requirements for Filing

- A. On or before April 30th of the year following the effective date of the ordinance and on or before April 30th of each year thereafter, every person subject to the tax rate and income taxable provisions of the ordinance shall, except as herein provided, make and file with the Administrator, a return on a form prescribed by and obtainable upon request from the Administrator, whether or not a tax be due.
- B. 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 each fiscal year or other period.
- C. Every person subject to the provisions of the Rate and Income Taxable section of the ordinance shall, except as herein 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 use of real and tangible personal property, and other income taxable under the ordinance, for the period covered by the return and such other pertinent facts and information in detail as the Administrator may require.
- D. Where a non resident of the City of Green's entire taxable earnings for the tax period are paid by an employer or employers, and the current rate of tax thereon has in each

instance been withheld and deducted by the employer or employers from the gross amount of the entire taxable earnings of such employee taxpayer, and where the employer of such employee has filed a report or return in which such employee's entire taxable earnings are reported to the Administrator and the tax so withheld paid to the Administrator, and where such employee has no taxable income other than such earnings; such employee need not file a return with the City of Green.

- E. An individual taxpayer who is permitted for Federal Income Tax purposes to deduct certain business expenses from gross wages, salaries, or commissions, may file a copy of Federal Income Tax Form 2106 or an itemized statement of expenses with his municipal tax return, claiming only deductions allowable under Part 1 of Form 2106, no matter whether all or part of such wages, salaries, or commissions are subject to withholding.
- F. City Income Tax withhold on moving expenses reimbursed by employer and so indicated on W-2, Lines 1 thru 4 on Federal form 3903 are taken into consideration when refund is requested.
- G. Except as otherwise provided, a return must be filed by all residents of the City of Green, eighteen years of age or older.
- H. Any taxpayer having income, wages, or other compensation for which a return must be filed, and also having net profits from a business, may report the wage income and business operation on the same return. However, business losses cannot be offset against the wage or non-business income, business losses may be carried forward in accordance with the provisions of the ordinance.
- I. Except as otherwise provided, the tax is on the unincorporated business, partnership, or association as an entity, whether resident or non-resident, and a return is required disclosing the net profits allocable to the City of Green and the tax paid thereon. However, any resident of the City of Green who is the owner, or partner of an unincorporated business is required to file a return and pay the tax thereon to the City of Green after taking credit for taxes paid on the same income to the other taxing community as provided in the ordinance.
- J. Trustees of trusts and executors and administrators of estates having taxable income are required to file and pay the tax thereon.

5.02 Information Required and Reconciliation With Federal Returns

- A. In returns filed hereunder, there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation subject to the tax earned from each employer, taxable net profits and other pertinent information as the Administrator may require.
- B. Where figures of total income, total deductions, and net profits are included as shown by a Federal return then any items of income not subject to municipal tax and unallowable expenses shall be eliminated in determining net income subject to

municipal tax. The fact that any taxpayer is not required to file a Federal tax return does not relieve him from filing a municipal income tax return provided he has income as defined in the rate and income taxable provisions of the ordinance.

- C. If a change in Federal income tax liability, as finally determined by the Internal Revenue Service or by a judicial decision, results in an additional amount of tax payable to City of Green, a report of such change shall be filed by the taxpayer within three (3) months from the final determination of the Federal tax liability.
- D. If a change in Federal income tax liability results in a reduction of taxes owed and paid to the taxing community, a claim for refund shall be filed with the Administrator as prescribed in the refunds and overpayments sections of the ordinance.

5.03 **Extensions**

Upon written request of the taxpayer made on or before the date for filing the return, and for good cause shown, the Administrator may extend the time for filing such return for a period of not to exceed six (6) months, or to one (1) month beyond any extension requested of or granted by the Federal Internal Revenue Service. Whenever he deems such necessary, the Administrator may require a tentative return accompanied by payment of the estimate tax. No penalty will 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 ordinance have been met. In any event such payments made after the due date, shall be subject to interest charges as provided in the ordinance. The Administrator will honor a copy of the Federal automatic extension.

5.04 **Consolidated Returns**

- A. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership. 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 which are so affiliated, along with all required schedules and amount and manner of determining income subject to municipal income tax.
- B. Once a consolidated return has been filed for any taxable year the consolidated group must continue to file consolidated returns in subsequent years unless:
 - 1. Permission in writing is granted by the Administrator to file separate returns; or
 - 2. 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; or
 - 3. A corporate 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.

- C. If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income for 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 for the period after it ceases to be a member, separate returns must be filed. 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 the 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.

- D. 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 fraction (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 fraction, however, shall be computed at eight (8) times the annual rent. The gross receipts and wage fractions shall be based on the actual figures.
- E. 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.
- F. The net operating loss carryover of a corporation which filed a separate return in a prior year may be carried over to a consolidated return year to the extent permitted by the Internal Revenue Code, but not to exceed the limitation of the operating loss-carry forward provision of the ordinance.

For purpose of this rule, to the extent that the loss can only be carried forward to the same corporation's taxable net income, the net income attributable to taxing community in a year a loss is being utilized shall be computed by using only the same corporation's net income and allocation method.

- G. 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.

- H. 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, inter-company dividends which are eliminated in the consolidation will not be taken into consideration in determining non-taxable income.

5.05 Allocation Of Net Profits - By Administrator

- A. In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within taxing community constituting a portion only of its total business, the Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City of Green.
- B. If the Administrator finds that net profits are not properly allocated to taxing community by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such division, branches, factory, office, laboratory or activity or by such other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to City of Green.

5.06 Amended Returns

- A. 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 the ordinance, such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.
- B. Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's municipal tax liability, such taxpayer shall make and file an amended municipal income tax return showing income subject to the municipal income tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

5.07 Payment with Return

- A. The payment due at the time of filing the return shall be the amount of the tax:
 - 1. withheld by the employer from employees wages pursuant to the provisions of the ordinance;
 - 2. the amount due on a declaration of estimated income tax after taking into consideration any overpayment of previous years' tax which has not been

otherwise applied, less amounts paid previously on said declaration.

- B. Except as otherwise provided, should the return indicate an overpayment of the tax to which the City of Green is entitled under the provisions of the ordinance, such overpayment may be applied against subsequent liability, outstanding penalty and interest assessments or, at the election of the taxpayer and so indicated on the return, such overpayment (or portion thereof) shall be refunded. Provided, however, that no additional taxes or refunds of less than Five Dollars (\$5.00) shall be collected or refunded.
- C. Whenever the ordinance of these regulations requires filing a return or payment of tax to the Administrator, or to the City of Green, such returns and/or payments for the City of Green, shall be made directly to the City of Green, Division of Taxation, P.O. Box 460 Green, Ohio 44232-0460.

5.08 **Withholding -- Collection At Source**

- A. It is the duty of each employer who employs one or more persons on a salary, wage, commission or other compensation basis to deduct each time any such salary, wage, bonus, incentive payment, commission or other compensation due by said employer to said employee, together with the tax at the current rate of the tips or gratuities reported to said employer by each said employee for social security or federal income tax purposes and shall make a return and pay to the Tax Administrator the amount of taxes so deducted.
 - 1. The gross amount of all salaries, wages, bonuses, incentive payments, commissions or other forms of compensation paid to employees who are residents of the City of Green regardless of the place where the services are rendered.
 - 2. All compensation paid to employees who are non-residents of the City of Green for services rendered, work performed, or other activities engaged in to earn such compensation within the City of Green.
- B. All employers within or doing business within the City of Green are required to make the collections and deductions regardless of the fact that the services on account of which any particular deduction is required as to residents of the City of Green were performed at a place of business of any such employer situated outside the City of Green.

Employers who do not maintain a permanent office or place of business in the City of Green, but who are subject to tax on net profits under the ordinance, are considered to be employers within the City of Green and subject to the requirement of withholding.

- C. The mere fact that tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation received.
- D. All individuals, businesses, employers, brokers or others doing business who engage persons, either on a commission basis, or as independent contractors,

subcontractors, contract employees, and are not subject to withholding shall indicate the total amount of earnings, payments, commissions and bonuses to such as are residents of the City of Green, or who do business in the City of Green copies of Federal Form 1099 or shall attach a list which shall indicate social security numbers, names, addresses and amounts paid to each employee.

- E. In the case of employees who are non-residents of the City of Green, the amount to be deducted is the current rate of tax on the compensation paid with respect to personal services rendered in the City of Green.

Where a non-resident receives compensation for personal services, rendered or performed partly within and partly outside the City of Green, the withholding employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within the City of Green in accordance with the following rules of apportionment:

1. If the non-resident is a salesman, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him, the deduction and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the City of Green bears to the volume of business transacted by him within and outside of the City of Green.
2. The deduction and withholding of personal service compensation of all other employees (including officers of corporations) shall attach to the portion of the personal service compensation of such employee which the total number of working days employed within the City of Green bears to the total number of working days employed within and outside the City of Green. Holidays, vacation days and sick days are attributable to the city of employment.
3. If it is impossible to apportion the earnings as provided above, because of (a) the peculiar nature of the services of the employee or (b) the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly. With respect to each such employee (or group of employees similarly or identically circumstanced) the employer shall furnish the Administrator a detailed statement of facts.
4. The occasional entry into the City of Green of a non-resident employee who performs the regular duties for which he is employed almost entirely, or entirely, outside such municipality, but also enters such municipality for the purpose of reporting, receiving instructions, accounting, etc., incidental to his duties, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the City of Green.
5. In apportioning the earnings of an employee, an employer may accept the written reports of his employee as to any of the items set forth in (1),(2),(3) above. However, the employer shall be responsible for any material error in allocation as to employment within the City of Green.

- F. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions (but not then on the commissions also).
- G. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount of 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 his services, provided such expenses are incurred in earning compensation, including commissions, and are not deducted as a business expense by the employee (other than as an offset to an advance or reimbursement).
- H. Except as otherwise provided, an employer in the City of Green is required to withhold the current tax rate from the compensation paid to the City of Green residents regardless of where the services compensated for were performed, except as hereinafter set forth. Any employer, who employs a resident of the City of Green in another taxing municipality, which employer is subject to the withholding provisions of both ordinances, shall withhold and remit tax as follows:
 1. If the rate of tax levied by the other taxing municipality (city of employment) is the same or higher than is imposed by the City of Green, the employer shall withhold at the current rate of tax on the entire wage earned and shall remit to such other taxing municipality in the full amount of the tax withheld on the wages earned by such employee. The place of employment takes precedence over the place of residence.
 2. If the rate of tax levied by the other taxing municipality is less than the rate imposed by the City of Green ordinance, the employer shall withhold at the higher rate of tax on the entire wage earned by such resident of the City of Green employee and shall remit to the other taxing municipality only the tax imposed by the ordinance of the employment municipality on the income earned therein and shall remit the balance of the tax withheld to the City of Green.
 3. If the employer is subject to withholding the City of Green tax, the employer must also withhold from residents of Green working in non-taxing areas and remit the tax to the City of Green.

In instances where the above provisions are applicable, the employer must advise the respective municipalities in which the employer is subject to the withholding provisions of the amount of salaries, wages, or other compensation earned within such municipalities, such information to be incorporated in a form approved by the Administrator.

- I. An employer whose records show that an employee is a non-resident of the City of Green and has no knowledge to the contrary shall be relieved of responsibility of withholding the tax on personal services compensation paid to such employee for services rendered or work done outside the City of Green by such employee, provided, however, that such employer must withhold the tax on compensation paid such

employee after the Administrator notifies said employer in writing that such employee is a resident of the City of Green. All employees are required to notify the employer of any change of residence and the date thereof.

- J. 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 ordinance.

5.09 Collection At Source -- Return And Payment Of Tax Withheld and Status of Employers.

- A. Every employer is deemed to be a Trustee of Taxing community in collecting and holding the tax required under the ordinance to be withheld, and the funds so collected by such withholding are deemed to be trust funds. The dissolution, bankruptcy, or reorganization of any such employer does not discharge an employer's liability for a prior failure of such business to file a return or pay taxes due.

Except as otherwise provided, every such employer required to deduct and withhold the tax at the source is liable directly to the City of Green for the payment of such tax, whether actually collected by such employer or not.

Any tax deducted and withheld is to be considered paid to taxing community whether or not the employer actually remits the tax to taxing community, for purposes of determining employee payments or credits.

- B. The deductions from salaries, wages and other compensation required to be made by employers are to begin with compensation earned on and after the effective dates of the income tax ordinance.

Quarter reporting and remittances are required by the City of Green from all employers withholding less than one hundred dollars (\$100.00) per month.

Monthly reporting and remittances are required by the City of Green tax ordinance when the amount of tax withheld equals or exceeds one hundred dollars (\$100.00) per month.

- C. If more than the amount of tax required to be deducted by the ordinance is withheld from an employee's pay, such excess may be refunded by the employer or the Administrator, depending upon the circumstances and the time when the over-withholding is determined as follows: If the over-withholding is within the calendar year, the employer may refund the over-withheld tax to the employee. If the over-withholding is discovered after the calendar year, the over-withholding will be refunded to the employee by the Income Tax Department.
- D. Monthly remittances are due on or before the last day of the month following the end of the month in which the tax was withheld. Quarterly remittances are due on or before the last day of the month following the end of the quarter.

- E. Former Employees:
1. In case too much has been withheld from an employee who is no longer employed by the employer, the employer shall notify the Administrator of the amount and circumstances of such over-withholding; and the Administrator, after verification, shall then refund to the employee the amount of such excess withholding; or
 2. If the error is discovered by the employee, such employee shall file a claim with the Administrator; and, upon verification thereof by the employer, the Administrator shall refund to the employee the amount of such excess withholding.
- F. Insufficient withholding -- if less than the amount of tax required to be deducted is withheld from an employee, such deficiency shall be withheld from subsequent wages paid in the same calendar year. However, if the employee-employer relationship has terminated, or if deficiency was for a prior year, the employer shall notify the Administrator of such deficiency, the reason therefore, and in a separate return pay the withholding deficiency.
- G. 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 Administrator, in the form prescribed by the Administrator, an information return for each employee from whom municipal income tax has been withheld, showing the name, address and social security number of the employee, the total amount of taxable compensation paid during the year and the amount of municipal income tax withheld for such employees. Information returns must also be submitted for each person receiving payments on a commission or fee basis as non-employees.
- H. For the convenience of employers, such information returns shall be made in one of three ways at the election of each employer, as follows:
1. Those employers using Form W-2 furnished commercially may submit a copy of such commercial W-2 provided the copy furnished to the City of Green clearly shows the information required in Subsection E immediately preceding.
 2. Computer generated ASCII format magnetic media in the form of diskettes.
 3. Where the furnishing of this information as above indicated will create a distinct hardship, the employer, upon written request to the Administrator, may be permitted to furnish a list of all employees subject to the tax, which list shall show the employee's full name, last known address, social security number, gross amount of taxable compensation paid during the year and the amount of municipal income tax withheld.
- I. In addition to such information returns, and at the time the same are filed, such employer shall file with the Administrator Form W-3 to enable the Administrator to reconcile the sum total of compensation paid and taxes withheld as disclosed by the total of the W-2's or lists of employees. The W-3 shall also reconcile to prior

remittances and returns filed by the employer for such tax year with respect to taxes withheld.

- J. In deducting and withholding the tax at the source and in payment of any tax due under the ordinance, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

5.10 **Declaration of Estimated Tax (Tax On Income Not Collected At Source)**

A. Requirement of Filing

1. A declaration of estimated tax shall be filed by every taxpayer who anticipates receiving taxable income not subject to withholding.
2. Taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year, or he may use the same figures used for estimating the Federal income tax adjusted to exclude any income or deductions not taxable or permissible under the municipal income tax ordinance. 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. Those taxpayers reporting on a calendar year basis shall file a declaration of estimated tax on or before April 30 of each year or within four (4) months of the date the taxpayer becomes subject to the tax for the first time.
2. Those taxpayers reporting on a fiscal year basis shall file a declaration of estimated tax within four (4) months of the date the taxpayer becomes subject to the tax for the first time.

C. Forms of Filing

1. Such declaration of estimated tax shall be filed on a form furnished by or obtainable from the Administrator of the City of Green.
2. Should the declaration of estimated tax indicate an overpayment, such overpayment shall not be refunded until the final return has been filed.
3. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration of estimated tax on or before any quarterly payment dates. Such amendment may be made on the quarterly billing forms.

D. Dates of Payments

1. The estimated tax may be paid in full with the first declaration of estimated tax in each tax year or in equal installments on or before the last day of the fourth,

sixth, ninth or thirteenth months of the taxable year.

2. The declaration of estimated tax must be accompanied by at least one-fourth (1/4) of the estimated tax shown due thereon.
3. In the event an amended declaration of estimated tax has been filed, the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

E. Final Returns Required

The filing of a declaration of estimated tax does not relieve the taxpayer of the necessity of filing a final return even though there is no change in the declared tax liability.

ARTICLE 6.00 INTEREST AND PENALTIES

6.01 Interest

Except as provided herein, all taxes imposed and all monies withheld, or required to be withheld, by employers under the provisions of this ordinance and remaining unpaid after they have become due shall bear interest at the rate of one and one-half percent (1.5%) per month or fraction thereof.

6.02 Penalties

A. In addition to interest as provided herein, 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 percent (1.5%) per month or fraction thereof.
2. For failure to remit taxes withheld from employees: ten percent (10%) per month or fraction thereof or \$25.00 whichever is greater.
3. For failure to file an annual return by the due date of such return, a penalty of \$25.00 is imposed even if no tax shows due on said return
4. For failure to file an estimate if the estimated tax due for the year is more than \$50.00, the penalty shall be fifteen percent (15%) of the actual tax liability. For estimating less than 80% of the actual liability the penalty shall be 15% of the difference between 80% of the actual tax liability and the amount paid on the estimate.

6.03 Exceptions

- A. 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 the prescribed time.
- B. 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.
- C. A taxpayer or employer shall have thirty (30) days after receipt of notice of any proposed imposition of interest and penalties within which to file a written protest or explanation with the Administrator. If no protest or explanation is filed within the prescribed time, the proposed imposition of interest and penalties shall become and be the final assessment. Upon filing of a written protest or explanation, the Administrator shall determine the assessment which may or may not be the same as the proposed assessment.

6.04 **Abatement Of Interest and Penalty**

The Administrator may abate penalties and interest for just cause. If the taxpayer is dissatisfied with the ruling of the Administrator an appeal may be filed within thirty days from the date of the ruling of the Administrator to the Board of Review who may affirm the ruling of the Administrator or abate the penalty and interest or set the amount to be assessed.

6.05 **Violations**

- A. No person shall:
 - 1. Fail, neglect or refuse to make any return or declaration required by this ordinance; 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 ordinance; or
 - 4. Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
 - 5. Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and Federal Income Tax returns relating to the income or net profit of a taxpayer; or
 - 6. Fail to appear before the Administrator and to produce his books, records, papers or Federal Income Tax returns relating to the income or net profits of a

taxpayer upon order or subpoena of the Administrator; or

7. Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
8. Fail to comply with the provisions of this ordinance or any order or subpoena of the Administrator authorized hereby; or
9. Give to an employer false information as to his 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.
10. Fail to use ordinary diligence in maintaining proper records of employees' residence and address, total wages paid and municipal tax withheld, or to knowingly give the Administrator false information; or
11. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this ordinance.

For any of the above violations, a person shall be guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned not more than 60 days or both, for each offense.

6.06 Limitation On Prosecutions

- A. Civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within three (3) years after the tax was due or the return was filed, whichever is later.
- B. Prosecutions under the ordinance shall be commenced within three (3) years after the commission of the offense provided that in the case of fraud, failure to file a return, or the omission of twenty five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.

6.07 Failure To Receive Forms No Excuse

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

ARTICLE 7.00 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

7.01 Unpaid Taxes Recoverable As Other Debts

- A. All taxes imposed by the ordinance and not paid when due become, together with interest and penalties thereon, a debt due the municipality from the taxpayer and are

recoverable as are other debts by civil suit. Employers who are required to be withheld at the source, and who fail to withhold and/or remit, become liable to the municipality in a civil action to enforce the payment of the debt created by such failure.

- B. No additional assessment shall be made by the Administrator after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be no 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 an omission of a substantial portion of income subject to this tax.
- C. In those cases in which the Commissioner 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 Administrator is extended to one (1) year from the time of final determination of Federal tax liability.

7.02 Refunds of Taxes Erroneously Paid

- A. Taxes erroneously paid shall not be refunded unless claim for refund is made within three (3) years from the time of payment thereof, or within three (3) months after final determination of the federal tax audit. Federal adjustment must have a direct effect on items subject to city tax to extend the statute.

Based on the three (3) year statute of limitations, taxpayers required to file an annual return use April 30th as the due date of the return. Taxpayers not required to file a return other than a request for refund use January 31st as the due date of the return.

- B. No refund shall be made to any taxpayer until he has complied with all provisions of the ordinance and has furnished all information required by the Administrator.

7.03 Limitation

Where the total amount due or refund claim for a tax year is less than Five Dollars (\$5.00) such amount shall not be collected or refunded.

ARTICLE 8.00 TAXPAYER RELIEF AND RECIPROCITY PROVISIONS

8.01 Residents Of The City of Green

- A. When a resident of the City of Green is subject to a municipal income tax in another municipality on the same income taxable under the Ordinance, the credit will not be calculated in excess of the rate in effect in the City of Green.
- B. In the event a resident is entitled to credit for taxes paid another municipality, such resident is required to file a return in such manner as the Administrator may prescribe.
- C. In the event such resident fails, neglects or refuses to file such return or form as is prescribed by the Administrator, the taxpayer shall not be entitled to such credit and shall be considered in violation of the ordinance for failure to file a return and make payment of taxes due hereunder.
- D. The Administrator shall require all residents of the City of Green to file an annual return.

ARTICLE 9.00 DISBURSEMENTS OF RECEIPTS AND TAX COLLECTORS

9.01 Disbursements Of Funds Collected.

Refer to the Ordinance.

ARTICLE 10.00 DUTIES AND AUTHORITY OF THE ADMINISTRATOR

10.01 Duty To Receive Tax Imposed

It shall be the duty of the Administrator to receive the tax imposed by the ordinance in the manner prescribed herein from the taxpayers; to keep an accurate record thereof and to report all monies so received.

10.02 Duty To Enforce Collection

It shall be the duty of the Administrator to enforce payment of all taxes owing the City of Green, to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

10.03 Authority To Make and Enforce Regulations

- A. The Administrator is charged with the administration and enforcement of the provisions of the ordinance 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 ordinance.

The Administrator has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the ordinance.

- B. Any taxpayer or employer desiring a special ruling on any matter pertaining to the ordinance or these rules and regulations should submit to the Administrator in writing all the facts involved and the ruling sought.
- C. These regulations, together with all amendments and supplements hereto and all changes herein, will be on file at the office of the Administrator and will be open to public inspection. The Administrator's office is located in the Administration Building at **1900 Steese Road, P.O. Box 460, Green, Ohio 44232-0460.**

10.04 **Authority To Arrange Installment Payments**

- A. Except as otherwise provided in these regulations, the 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 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 ordinance.
- B. 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 the ordinance pertaining to penalties and interest and collections of unpaid taxes of the Income Tax Ordinance shall apply.

10.05 **Authority To Determine Amount of Tax Due**

- A. Whenever the Administrator has been unable to secure information from the taxpayer as to his taxable income for any year, or the taxpayer has filed an return which does not show the proper amount of tax due, he may determine the amount of tax appearing to be due and assess the taxpayer upon the basis of such determination, together with the interest and penalties as prescribed in the Income Tax Ordinance.
- B. Such determination of tax may be adjusted upon submission by the taxpayer of actual records from which his tax may be computed.

10.06 **Authority To Make Investigation**

- A. The administrator, or his duly authorized employee, is authorized to examine the books, papers, records and Federal Income Tax returns of any employer, taxpayer or person subject to the ordinance or whom the Administrator believes is subject to the provisions of the ordinance, for the purpose of verifying the accuracy of any return

made; or, if no return was made, to ascertain and determine the tax due under the ordinance.

- B. An employer or taxpayer shall furnish, within ten (10) days following a written request by the Administrator, or his duly authorized agent, the means, facilities and opportunity for making examinations and investigations authorized by the ordinance.

10.07 Authority To Compel Production Of Records

- A. The Administrator, or any person acting in his 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 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 transaction of the taxpayer.
- B. The 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 Administrator.
- C. The Administrator may order the appearance before him, or his duly authorized agent, or any party whom he believes to have knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered as actual custody of the records of the taxpayer being investigated. The Administrator is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
- D. 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 the time and place of the hearing and what books, papers or records the witness is to make available at such hearing.
- E. The notice shall be served by the Administrator, or his duly authorized agent, by delivering it to the person named personally, or by leaving the notice at his usual place of business or residence, or by mailing it to the person by registered or certified mail, return receipt requested, addressed to his usual place of business or residence.

10.08 Refusal To Produce Records

Refusal by any employer, supposed employer, taxpayer or supposed taxpayer, or the refusal of any such person to appear before the Administrator or his duly authorized agent, to submit to such examination or to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by the violation provisions of the ordinance.

10.09 Confidential Nature Of Information

- A. Any information gained as a result of any returns, investigations, verifications or hearings before the Administrator or the Board, required by the ordinance 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 or competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than six (6) months, or both.
- B. In addition to the above penalty, any employee of the City of Green who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

10.10 Taxpayer Required To Retain 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 not less than five (5) years from the date the final return is filed and paid or the withholding taxes are paid.

ARTICLE 11.00 BOARD OF REVIEW

11.01 Board of Review Established

A Board of Review consisting of the Law Director as an ex-officio member, two members appointed by the Mayor with the consent of Council and a third member to be appointed by the two members is hereby created. The Board shall select, each year for an one-year term, one of its members to serve as Chairman and one to serve as Secretary. A majority 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 or publicly with waiver of confidentiality at the request of the taxpayer and the provisions of Article 10.09 hereof with reference to the confidential character of information required to be disclosed by the ordinance shall apply to such matters as may be heard before the Board of Review.

11.02 Duty To Approve Regulations And To Hear Appeals

All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by the ordinance, must be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator, and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.

11.03 Right Of Appeal

- A. An appeal from a ruling of the Administrator by a taxpayer or employer is affected by filing a written notice of appeal with the Board at 1900 Steese Road, P.O. Box 460, Green, Ohio 44232-0460, within thirty (30) days after the announcement of the Administrator's ruling or decision from which the appeal is taken. A copy of such notice of appeal must be filed with the Administrator.
- B. The Board, by majority vote, may affirm, modify or reverse, in whole or part any such ruling or decision of the Administrator.
- C. Hearings before the Board shall be private unless the taxpayer requests, in writing, a public hearing.

ARTICLE 12 OTHER PROVISIONS

12.01 Collection of Tax After Termination

Refer to Ordinance section 15.

12.02 Declaration of Legislative Intent (Saving Clause)

Refer to Ordinance section 16.

Instructions For Filing Notice of Appeal With The Board of Review

1. An appeal from the ruling of the Administration by a taxpayer or employer is effected by filing a notice of appeal with the Board at the Division of Taxation, P.O Box 460, 1900 Steese Road, Green, Ohio 44232-0460 within thirty (30) days after the announcement of the Administrator's ruling or decision from which the appeal is taken. A copy of such appeal must be filed with the Administrator. The Board has no power to hear an appeal not filed within the time limit.
2. No particular form of notice of appeal is required provided that the notice contains the following information:
 - (a) A statement that the taxpayer appeals from the final assessment of the Tax Administrator;
 - (b) The tax year or years and the amount of tax involved in the final assessment;
 - (c) The date of receipt by the taxpayer of the final assessment appealed from;
 - (d) The reason or reasons why the taxpayer believes the final assessment is objectionable, incorrect or illegal;
 - (e) The name and address of the Representative, if any, of the taxpayer who is authorized to present the appeal before the Board of Review. (Note: The Board of Review, cannot recognize any attorney or other representative unless he is so authorized by the taxpayer in the notice of appeal by letter, power of attorney, or other written document), and
 - (f) The name and address of the taxpayer.
3. The notice of appeal must be signed by the taxpayer and filed in duplicate. The copy may be a conformed copy.
4. The notice of appeal should be filed in a sealed envelope plainly marked "Appeal to Board of Review" and mailed or delivered to the Chairman of the Board of Review, or if the Chairman is not available, to the Secretary.
5. All papers filed with the Board of Review should be typewritten.
6. For information concerning the hearing and disposition of the appeal, obtain a copy of the Rules of Procedure adopted by the Board of Review.

Approved by the Board of Review, March 10, 2000.