

CITY OF DAYTON
INCOME TAX
RULES AND REGULATIONS

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CITY OF DAYTON
INCOME TAX RULES AND REGULATIONS

ARTICLE I – PURPOSE.

To provide funds for municipal purposes there shall be and is hereby levied a tax on all taxable income as hereinafter provided.

ARTICLE II – DEFINITIONS.

As used in these Rules and Regulations, the following words shall have the meaning ascribed to them in this Article, except as and if the context clearly indicates or requires a different meaning.

1. “Board of Tax Appeals” means the Board created by and constituted as provided in Section 36.113 R.C.G.O.
2. “Board of Tax Review” means the Board created by and constituted as provided in Section 36.112 R.C.G.O. and that has replaced the "Board of Adjudication.”
3. "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, pass-through entity, corporation or any other entity, including but not limited to the renting or leasing of property, real, personal or mixed. “Business” conducted within the City includes the direct or indirect ownership of an interest in a pass-through entity that conducts business within the City.
4. “City” means the City of Dayton, Ohio.
5. "Corporation" means a corporation, S corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency, or any unincorporated entity treated as a corporation for federal income tax purposes. “Corporation” also includes a “combined company,” an “electric company” and a “telephone company,” all as defined in Ohio Revised Code section 5727.01. The term “corporation” does not include a limited liability company that is treated as a partnership for federal income tax purposes.
6. “Deferred compensation” means earned compensation the receipt of which is delayed to a later date.
7. "Domicile" means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence. Factors that will be considered in determining a taxpayer’s domicile include, but are not limited to, the address used by the taxpayer for purposes of (i) federal and state income tax returns, (ii) auto registration, (iii) drivers license, and (iv) voter registration.
8. "Employee" means one who works for qualifying wages in the services of an employer.
9. "Employer" means an individual, corporation, pass-through entity, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a qualifying wages basis.
10. "Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31.

11. "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer with his federal income tax return.
12. "Generic form" means an electronic or paper form designed for reporting estimated City income taxes, the annual return of City income tax liability or for filing a claim for refund of City income taxes that is not prescribed by the City for the reporting of City income tax but that comports with the requirements of Ohio Revised Code Section 718.05, this chapter and the rules and regulations.
13. "Intangible income" means that income specified in Ohio Revised Code Section 718.01(A)(5) and includes any of the following types of income: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.
14. "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
15. "Joint Economic Development District" means districts created under the Ohio Revised Code Sections 715.70 through 715.83, as amended from time to time.
16. "Limited liability company" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
17. "Net operating loss" means the negative adjusted federal taxable income recognized by a taxpayer from the operation of a business for the taxable year.
18. "Net profits" means: (i) the case of a corporation, "adjusted federal taxable income," as that term is defined in Ohio Revised Code Section 718.01(A)(1)(a)-(f); (ii) in the case of a pass-through entity, "adjusted federal taxable income," as that term is defined in Ohio Revised Code Section 718.01(A)(1)(g); and (iii) in the case of a sole proprietorship, the profit shown by the individual on Internal Revenue Service Schedule C, Schedule E, and Schedule F. Adjusted federal taxable income shall be determined in accordance with (i) the accounting method used by the taxpayer for federal income tax purposes and (ii) the Internal Revenue Code, Treasury Regulations, federal case law interpreting these authorities and administrative authorities promulgated by the Internal Revenue Service.
19. "Nonqualified deferred compensation plan" means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.
20. "Nonresident" means an individual domiciled outside the City.
21. "Nonresident owner" means an individual domiciled outside the City who has a direct or indirect ownership interest in a pass-through entity that conducts business in the City and a corporation that has a direct or indirect ownership interest in a pass-through entity that conducts business in the City.
22. "Ohio business gateway" means the online computer network system, initially created by the Ohio Department of Administrative Services under Ohio Revised Code Section 125.30 and described in Ohio Revised Code Section 718.051(A), that allows private businesses to file electronically business reply forms with State agencies and includes any successor electronic filing and payment system.

23. "Ordinance" means Chapter 36 of the Dayton Revised Code of General Ordinances.
24. "Owner" means an individual, partner, member, or any other person having an ownership interest in a pass-through entity.
25. "Pass-through entity" means a partnership, limited liability company or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code. "Pass-through entity" does not include an S corporation.
26. "Passive activity" means a business or trade in which the taxpayer does not materially participate, within the meaning of Section 469 of the Internal Revenue Code.
27. "Person" means every natural person, pass-through entity, fiduciary, or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to a pass-through entity, shall mean the owners thereof, and as applied to corporations, the officers thereof.
28. "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.
29. "Qualifying wages" means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with Section 718.03(A) of the Ohio Revised Code. Qualifying wages includes compensation attributable to a nonqualified deferred compensation plan or program described in Section 3121(v)(2)(C) of the Internal Revenue Code and compensation from employment arising from the sale, exchange or other disposition of a stock option, the exercise of a stock option, or the sale, exchange or other disposition of stock purchased under a stock option. Qualifying wages does not include compensation deferred before January 1, 2004, to the extent that such deferred compensation would not be treated as wages within the meaning of Section 3121(a) of the Internal Revenue Code at the time such deferred compensation is paid or distributed.
30. "Resident" means an individual domiciled in the City.
31. "Resident owner" means an individual domiciled in the City who has an ownership interest in a pass-through entity.
32. "Rules and regulations" means the rules and regulations as promulgated by the Tax Administrator and as approved by the Board of Tax Review pursuant to Section 36.112 R.C.G.O.
33. "Schedule A" means the Internal Revenue Service Schedule A filed by a taxpayer with his federal income tax return.
34. "Schedule C" means Internal Revenue Service Schedule C filed by a taxpayer with his federal income tax return.
35. "Schedule E" means Internal Revenue Service Schedule E filed by a taxpayer with his federal income tax return.
36. "Schedule F" means Internal Revenue Service Schedule F filed by a taxpayer with his federal income tax return.
37. "S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

38. "Tax Administrator" or "Tax Superintendent" means the person appointed to administer the City's income tax ordinance and to direct the operation of the City tax division or the person executing the duties of the Tax Administrator.
39. "Taxable income" means qualifying wages, net profits and other income set forth in Section 36.102 R.C.G.O. as taxable.
40. "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.
41. "Taxing municipality" means a municipality other than the City that levies a tax on income earned by nonresidents working within such municipality or on income earned by the municipality's residents.
42. "Taxpayer" means a person, whether an individual, pass-through entity, or corporation, the taxable income of which is subject to the tax imposed by this chapter, whether that tax is imposed on the entity itself or the owners of the entity. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.
43. As set forth in these Rules and Regulations, the singular shall include the plural, the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.

ARTICLE III - IMPOSITION OF TAX.

1. Residents.
 - a) In the case of residents and resident owners there is imposed by ordinance an annual City income tax on all qualifying wages, net profits and other taxable income received during the effective period of the ordinance. For the purpose of determining City income tax on the taxable income of resident taxpayers, the source of the taxable income and the place or places in or at which the services for taxable income were rendered are immaterial. All taxable income of residents and resident owners is subject to City income tax, regardless of where such income is earned, received or paid.
 - b) The following are items that are subject to the tax imposed by ordinance.
 - i) All qualifying wages received by a resident whether directly or through an agent and whether in cash or in property for services rendered during the tax period. Qualifying wages are determined as follows:

- (1) Start with wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations and as shown in Box 5 of the IRS Form W-2 provided to the employee and the IRS by the employer for the taxable year;
 - (2) Deduct any amount included in wages (i.e., Box 5) if the amount constitutes compensation attributable to a plan or program described in Section 125 of the Internal Revenue Code (i.e., a cafeteria plan);
 - (3) Add any amount not included in wages (i.e., Box 5) for the taxable year solely because the employee was employed by the employer prior to April 1, 1986;
 - (4) Add any amount not included in wages (i.e., Box 5) because the amount arises from the sale, exchange or other disposition of a stock option, the exercise of a stock option, or the sale, exchange or other disposition of stock purchased under a stock option;
 - (5) Add any amount not included in wages (i.e., Box 5) if the amount is an employee contribution or deferral described in Section 401(k) or 457 of the Internal Revenue Code; and
 - (6) Add any amount that constitutes supplemental unemployment compensation benefits described in Section 3402(a)(2) of the Internal Revenue Code and that was not included in wages (i.e., Box 5).
- ii) All income derived from prizes, awards, gaming, wagering, lotteries or schemes of chance and as reported on IRS Form W-2G, IRS Form 5754 or any other forms required by the Internal Revenue Service to report such income.
 - iii) All income derived from covenants not to compete, to the extent includible on the resident's federal income tax return.
 - iv) All income derived from cancellation of indebtedness, to the extent includible on the resident's federal income tax return.
 - v) All guardian, executor, conservator, trustee or administration fees earned or received by a resident.
 - vi) A resident owner's distributive share of the net profits of a pass-through entity or sole proprietorship, without regard to the allocation and apportionment provisions set forth in Article III-5 of these rules and regulations. The net profits of a sole proprietorship are the profits that the sole proprietor must report on Schedule C, Schedule E or Schedule F of the proprietor's federal income tax return, exclusive of any amounts that are exempt from City income tax pursuant to Section 36.102(G) R.C.G.O., and with no deduction for any amount paid to or accrued for purposes of federal self-employment tax. The net profits of a pass-through entity are determined as follows:
 - (1) Start with the owner's distributive share of the pass-through entity's adjusted federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code and as shown on Schedule K-1 and Schedule E of the owner's federal income tax return;

- (2) Deduct intangible income to the extent included in the owner's distributive share of the pass-through entity's federal taxable income, regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income;
 - (3) Add an amount equal to five percent (5%) of the intangible income deducted from federal taxable income, but excluding that portion of intangible income directly related to the sale, exchange or other disposition of property described in Section 1221 of the Internal Revenue Code (i.e., capital assets);
 - (4) Add any losses allowed as a deduction in the computation of the owner's distributive share of the pass-through entity's federal taxable income of the losses directly related to the sale, exchange or other disposition of an asset described in Sections 1221 or 1231 of the Internal Revenue Code;
 - (5) Deduct income and gain included in the owner's distributive share of the pass-through entity's federal taxable income to the extent the income and gain directly relate to the sale, exchange or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code, except for income and gain described in Sections 1245 or 1250 of the Internal Revenue Code (i.e., depreciation recapture);
 - (6) Add taxes on or measured by net income allowed as a deduction in the computation of the owner's distributive share of the pass-through entity's federal taxable income;
 - (7) Add any amounts deducted from the owner's distributive share of the pass-through entity's federal taxable income as guaranteed payments or similar amounts paid or accrued to a partner, former partner, member or former member of the pass-through entity;
 - (8) Add amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner, amounts paid or accrued to or for health insurance for an owner, and amounts paid or accrued to or for life insurance for an owner; and
 - (9) No deduction is allowed for any amount paid to or accrued for purposes of federal self-employment tax.
- vii) City income tax is imposed on the owners of a pass-through entity rather than on the pass-through entity. However, a pass-through entity having a nonresident owner(s) must withhold and remit City income tax as described in Section 36.105(J) R.C.G.O. and Article V-5 of these rules and regulations.

2. Non-Residents.

- a) In the case of individuals who are not residents of the City, there is imposed an annual City income tax on all qualifying wages, net profits and other taxable income received during the effective period of the ordinance for work done, services performed or rendered and business conducted within the City, regardless of whether such qualifying wages, net profits and other taxable income are received or earned directly or through an agent or whether paid in cash or in property. The location of the place from which payment is made is immaterial. Where a nonresident is employed at a place of business in the City, the qualifying wages of such nonresident for the performance of employee services will be treated as earned outside the City only for those services which of necessity, as distinguished from convenience, obligate such nonresident to duties outside the City in the service of the nonresident's employer.
- b) The items subject to tax are the same as those listed and defined in Article III-1 of these rules and regulations. The items described in Article III-1(b)(ii)-(v) are allocated to the City when derived from sources within the City. For the methods of computing the extent of such work or services performed or business conducted within the City in cases involving compensation for personal services or net profits earned partly within and partly without the City, see Article III-5 of these rules and regulations.

3. Imposition of Tax on Net Profits of Corporations.

- a) In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the City, there is imposed an annual City income tax on the net profits earned and received or accrued during the effective period of the ordinance attributable to the City under the formula or separate accounting *method provided for by ordinance and Article III-5 of these rules and regulations.
- b) Corporations that are required by Sections 5727.24 or 5727.38 of the Ohio Revised Code to pay an excise tax in any taxable year, other than telephone companies, combined companies and electric companies, 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.
- c) The net profits of a corporation are determined as follows:
 - i) Start with the corporation's adjusted federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code and as shown on line 28 of the IRS Form 1120 (corporations and publicly traded partnerships treated as corporations for federal income tax purposes), line 21 of IRS Form 1120-S (S corporations), line 20 of IRS Form 1120-REIT (real estate investment trusts), line 24 of IRS Form 1120-RIC (regulated investment companies) or line 34 of IRS Form 990-T (unrelated business taxable income of an exempt organization);

- ii) Deduct intangible income to the extent included in federal taxable income regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income;
- iii) Add an amount equal to five percent (5%) of the intangible income deducted from federal taxable income, but exclude that portion of intangible income directly related to the sale, exchange or other disposition of property described in Section 1221 of the Internal Revenue Code (i.e., capital assets);
- iv) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange or other disposition of an asset described in Sections 1221 or 1231 of the Internal Revenue Code;
- v) Deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange or other disposition of an asset described in Sections 1221 or 1231 of the Internal Revenue Code, except for income and gain described in Sections 1245 or 1250 of the Internal Revenue Code (i.e., depreciation recapture);
- vi) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income; and
- vii) In the case of either a real estate investment trust or a regulated investment company, add all amounts deducted in the computation of federal taxable income for dividends or distributions to, or amounts set aside for or credited to the benefit of, investors (to the extent that federal taxable income used as the starting point to determine City taxable income includes a dividends paid deduction).

4. Rentals from Real Property.

- a) Rentals received by the taxpayer are to be included in taxable income 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 number and value, aggregate in excess of Two Hundred Dollars (\$200.00) per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to tax; 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 two hundred dollars (\$200.00) per month.
- c) In the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds two hundred dollars (\$200.00) per month.

- d) The person who operates a rooming house of five (5) or more rooms rented shall be considered in business whether or not the gross income exceeds two hundred dollars (\$200.00) per month.
- e) 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.
- f) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- g) Real property, as the term is used in this Regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.
- h) The net profits of a corporation, pass-through entity or individual from rental activities shall be determined in the manner set forth in this Article III for the computation of taxable net profits from a business..
- i) Residents of the City are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned.
- j) Non-residents of the City are subject to such taxation only if the real property is situated within the City. Non-residents, in determining whether gross monthly rentals exceed two hundred dollars (\$200.00) shall take into consideration only real estate situated within the City of Dayton.
- k) Corporations owning or managing real estate are taxable only on that portion of income derived from property located in the City.

5. Allocation of Profits.

- a) Allocation and Apportionment of Net Profits – Neither the net profits of a sole proprietorship operated by a resident nor a resident owner’s distributive share of the net profits of a pass-through entity are subject to allocation or apportionment. Such net profits are subject to City income tax in their entirety. The net profits of a corporation that conducts business both in the City and elsewhere and the net profits of a sole proprietorship operated by a nonresident that conducts business both in the City and elsewhere are subject to allocation and apportionment. A nonresident owner’s distributive share of the net profits of a pass-through entity that conducts business both in the City and elsewhere is also subject to allocation and apportionment. Net profits shall be apportioned according to the business apportionment percentage method set forth below. In the case of a pass-through entity that conducts business both in the City and elsewhere, the business apportionment percentage shall be applied directly to the pass-through entity, with each nonresident owner then subject to City income tax on his distributive share of the net profits apportioned to the City by the business apportionment percentage method. For example, if a resident and a nonresident each own 50% of a pass-through entity that has 50% of its net profits apportioned to the City under the business apportionment percentage method, the resident owner is subject to City income tax on his entire distributive share of the pass-through entity’s net profits and the nonresident owner is subject to City income tax on 50% of his distributive share of the pass-through entity’s net profits.
- b) Business Apportionment Percentage Method.
 - i) STEP 1. Ascertain the percentage that the average original cost of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within the City during the taxable year is of the average original cost of all real and tangible personal

property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the City income tax return.

- ii) The percentage of the taxpayer's real and tangible personal property within the City is determined by dividing the average original cost of such property within the City during the taxable year (without deduction of any encumbrances) by the average original cost of all such property within and without the City during the taxable year. In determining such percentage, property rented to the taxpayer, as well as real and tangible personal property owned by the taxpayer, must be considered.
 - (1) The original cost of real and tangible personal property rented by the taxpayer shall be determined by multiplying gross annual rents payable by eight (8).
 - (2) 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:
 - (a) 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; and
 - (b) 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.
- iii) STEP 2. Ascertain the percentage that the total wages, salaries, commissions and other compensation of employees within the City during the taxable year is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without the City during the period covered by the City income tax return, excluding compensation that is not taxable by the City under Section 718.011 of the Ohio Revised Code.
 - (1) Salaries and reasonable compensation and guaranteed payments paid to shareholders or owners or credited to the account of owners or shareholders for the performance of personal services to the corporation or pass-through entity during the period covered by the City income tax 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 profits of the taxpayer.
 - (3) In the case of an employee who performs services both within and without the City, the amount treated as compensation for services performed within the City shall be deemed to be:

- (a) 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;
 - (b) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received that the value of his services within the City 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 that his working time within the City is of his total working time.
- (4) The qualifying wages of an employee for the performance of employee services will be treated as earned outside the City only for those services which of necessity, as distinguished from convenience, obligate the employee to duties outside the City in the performance of employee services.
- iv) STEP 3. Ascertain the percentage that the gross receipts of the taxpayer derived from sales made, work done, and services rendered in the City during that taxable year is of the total gross receipts wherever derived during the period covered by the City income tax return.
- (1) The following shall be considered sales made within the City:
- (a) All sales made through retail stores located within the City to purchasers within or without the City except such of said sales to purchasers outside the City that are directly attributable to regular solicitations made personally by the taxpayer or his employees outside the City at the place where the purchased goods are delivered.
 - (b) All sales of tangible personal property delivered to purchasers within the City, regardless of where title passes, if shipped or delivered from an office, store, warehouse, factory, or place of storage located within the City.
 - (c) All sales of tangible personal property delivered to purchasers within the City, regardless of where title passes, even though transported from a point outside the City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the 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, regardless of where title passes, to purchasers outside the City if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place of delivery.
 - (e) Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.

- v) STEP 4. Add the percentages 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 apportionment percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely outside the City. A factor is excluded only when it does not exist anywhere.
- vi) STEP 5. The business allocation percentage determined in Step 4 above shall be applied to the entire net profits of the taxpayer wherever derived to determine the net profits apportioned to the City.

(1) Substitute Method.

- (a) In the event a just and equitable result cannot be obtained under the business apportionment percentage method, the Tax Administrator, upon application of the taxpayer, may substitute other factors in the formula or prescribe other methods of allocating or apportioning net profits to effect a fair and proper allocation and apportionment.
- (b) Application to the Tax Administrator to substitute other factors in the formula or to use a different method to allocate or apportion net profits must be made in writing before the end of the taxable year for which the change is sought. The application 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 so file until given permission to change by the Tax Administrator.
- (c) Separate Accounting Method. Upon the foregoing application of the taxpayer and the approval of the Tax Administrator, the taxpayer may allocate net profits to the City pursuant to the separate accounting method.
 - (i) The net profits allowable to the City may be determined from the records of the taxpayer if the taxpayer has bona fide records that disclose with reasonable accuracy what portion of the taxpayer's net profits is attributable to the taxpayer's activities conducted within the City.
 - (ii) In determining the income allocable to the City from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters office is within or without the City.

c) Operating Losses.

- i) Net operating losses incurred during any taxable year in a business subject to City income tax are deductible from all net profits earned by the taxpayer during the same taxable year and included in the taxpayer's City income tax return for that taxable year. Net operating losses cannot be deducted from qualifying wages or any form of taxable income other than net profits.

- ii) Net operating losses are deductible only in the taxable year in which they are incurred and may not be carried forward or carried back to any other taxable year.

ARTICLE IV - EFFECTIVE PERIOD.

The tax imposed by ordinance shall be levied, collected and paid with respect to qualifying wages, net profits and other taxable income earned, accrued or received during the effective period of the ordinance.

ARTICLE V - COLLECTION OF TAX AT THE SOURCE.

1. Duty of Withholding.

- a) Except as otherwise provided herein, it is the duty of each employer within or doing business within the City, who employs one (1) or more persons, whether as an employee, officer, director or otherwise, to deduct each time any qualifying wages are paid the City income tax as imposed by ordinance.
 - i) The gross amount of all qualifying wages paid to residents and nonresidents for services rendered, work performed or other activities engaged in within the City are subject to City income tax withholding.
 - ii) Qualifying wages of an individual employed at a place of business in the City will be treated as earned outside the City only for those services which of necessity, as distinguished from convenience, obligate such individual to duties outside the City in the performance of employee services.
- b) Employers who do not maintain a permanent office or place of business in the City, but who are subject to tax on net profits attributable to the City under the method of allocation and apportionment provided for in the ordinance, are considered to be employers within the City and subject to the requirement of withholding City income tax on qualifying wages.
- c) Commissions and fees paid to professionals, brokers and others who are independent contractors, and not employees, of the payor for services rendered, work performed or other activities engaged in within the City are not subject to withholding or collection of City income tax at the source of payment. Such independent contractors must, in all instances, file a declaration and return of, and pay City income tax on, such payments pursuant to the provisions of the ordinance and Articles VI and IX of these rules and regulations.
- d) Subject to Article V-1(a)(ii) of these rules and regulations, where an employee receives qualifying wages for personal services rendered or performed partly within the City, the withholding employer shall deduct, withhold and remit City income tax on that portion of the qualifying wages that are earned within the City in accordance with the following rules of apportionment:

- i) If the employee is a salesman, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding of City income tax shall attach to the portion of the entire qualifying wages that the volume of business transacted or chiefly effected by the employee within the City bears to the total volume of business transacted by him.
- ii) The deducting and withholding of City income on qualifying wages paid for the personal service of other employees, including officers of corporations, shall attach to the proportion of the qualifying wages of such employee that the total number of his working hours within the City bears to the total number of his working hours everywhere.
- iii) The fact that employees are subject to call at any time does not permit the allocation of qualifying wages for time worked within the City on a seven (7) day per week basis. The percentage of time worked in the City will be computed on the basis of a forty (40) hour week unless the employer notifies the Tax Administrator that a greater or lesser number of hours per week is worked.
- iv) Wage continuation plans paid by the employer for purposes of health, rest, recuperation or other reward are deemed to have the same tax situs as the primary job assignment or job location of the employee and, to the extent included in qualifying wages, are taxable on the same ratio as the other qualifying wages of such employee for his primary job assignment.
- e) An employer shall withhold City income tax on the full amount of any advance made to an employee on account of commissions.
- f) An employer required to withhold City income tax on qualifying wages paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services provided such expenses are incurred in earning qualifying wages and are not deducted as business expense by the employee under Article III of these rules and regulations.
- g) No person shall be required to withhold City income tax on the qualifying wages paid to an individual employed exclusively to provide domestic service in or about the employer's residence, but such employees shall be subject to all City income tax and reporting requirements of the ordinance. Employers shall provide to the City the name, address, Social Security Number and wages of each individual employed to provide domestic service in or about the employer's residence.

2. Return and Payment of City Income Tax Withheld and Status of Employers.

- a) The deductions of City income tax from qualifying wages employers are required to make begin with the qualifying wages earned on and after the effective date of the ordinance. The employer (in addition to any City income tax return required to be filed with respect to the employer's net profits) shall, on or before the fifteenth (15th) day of each month, make a return and pay to the Tax Administrator the City income tax withheld during the preceding month. Provided, however, the Tax Administrator shall have the authority to approve the filing of such returns and payments of the tax withheld on a shorter or longer period.
- i) The Tax Administrator may authorize any employer to file returns and remit the City income tax withheld on a quarterly basis provided that such authorization does not jeopardize the interests of the City.

- ii) Any employer who wishes to file a withholding tax return and remit City income tax withheld on a quarterly basis may request the authority for quarterly filing from the Tax Administrator. Such request must be in writing, stating the name and the City withholding account number of the employer; the address to which withholding forms should be mailed; the estimated amount of tax to be withheld each quarter and the name and title of the person responsible for complying with the withholding requirements of the ordinance.
- iii) In considering such a request, the Tax Administrator will base his decision on the facts so that the best interests of the City are served. He shall refuse such authority if he has reason to believe that the employer is a below average credit risk, engaged in seasonal or transitory business in fact or as to location, or for any other reason known to him which might place a burden upon the City, or where such request is contrary to the policy of the City. The Tax Administrator will notify the employer, in writing, of the decision made upon the employer's request.
- iv) If the request is granted, the notice will specify the effective date of the authorization. In such case, the employer shall, on or before the fifteenth (15th) day of each month following the calendar quarters ending March 31, June 30, September 30 and December 31, make a return and pay to the Tax Administrator the City income tax withheld during the preceding calendar quarter. Once this approval is granted, the employer may continue on such basis unless notified in writing by the Tax Administrator that approval to file quarterly is withdrawn.
- v) The Tax Administrator may withdraw the authorization for special filing and payments whenever he has reason to believe that the conditions for granting such authorization have changed, were judged incorrectly, were not met, or when it is in the best interests of the City to withdraw such authorization. Notice of the withdrawal shall be made in writing and may be served in person or mailed to the employer's last known address. Proof of mailing, furnished by the U. S. Post Office, shall be presumptive proof of receipt by the addressee. In such case, the employer must begin on a monthly basis to file the City income tax withholding return and remit the tax withheld.
- vi) If more than the amount of City income tax required to be deducted by the ordinance is withheld from an employee's qualifying wages, such excess may be refunded to the employee by the employer or the Tax Administrator, depending upon the circumstances and the time when such over withholding is determined, as follows:
 - (1) Current employees:
 - (a) If the over withholding is discovered in the same withholding period, the employer shall make the necessary adjustment directly with the employee and the amount to be reported as withheld shall be the corrected amount;

- (b) If the over withholding is discovered in a subsequent period of the same calendar year, the employer may make the proper adjustment with the employee. In such case the report for the period in which the adjustment is made shall indicate the total amount actually withheld, the amount of the adjustment deducted therefrom, and the corrected amount reported; and
 - (c) If the over withholding is discovered in the following year, the employer should notify the Tax Administrator of such over withholding and the circumstances thereof. Upon proper verification, the Tax Administrator shall refund to the employee the amount of such excess withholding.
- (2) Former employees:
- (a) Where City income tax has been over withheld from an employee who is no longer employed by the employer, the employer shall notify the Tax Administrator of the amount and circumstances of such over withholding and the Tax Administrator shall then refund to the former employee the amount of such excess withholding; or
 - (b) If the error is discovered by the former employee, such employee shall file a claim with the Tax Administrator and, upon verification thereof by the employer, the Tax Administrator shall refund to the employee the amount of such excess withholding.
- (3) Individuals employed outside the City. Where an employer has withheld City income tax from all qualifying wages of an employee and such employee has been employed outside of the City for all or part of the time, such employee shall file a claim with the Tax Administrator in respect of the City income tax withheld on qualifying wages earned outside the City and the Tax Administrator shall, upon verification thereof by the employer, refund to the employee the amount of any excess withholding.
- (4) Insufficient withholding: If less than the amount of City income tax required to be deducted is withheld from an employee, such deficiency shall be withheld from subsequent qualifying wages. However, if the employee-employer relationship has terminated, the employer shall notify the Tax Administrator of such deficiency and the reason therefor.
- vii) Every employer is deemed to be a trustee for the City 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.
- viii) Every such employer required to deduct and withhold City income tax at the source of payment is liable directly to the City for payment of such tax whether the tax was actually collected from such employee or not.

- ix) On or before the 28th day of February following any calendar year in which an employer is required to deduct and remit City income tax on qualifying wages, such employer shall file with the Tax Administrator, on the form prescribed by the Tax Administrator, an information return for each employee from whom City income tax has been withheld, clearly showing the name, address, and Social Security number of the employee, the total amount of qualifying wages paid during the year and the amount of City income tax withheld from such employee's qualifying wages. Additionally, a copy of each IRS Form 1099-MISC issued by the employer shall be forwarded to the City.
- x) For the convenience of employers, the annual information return described above may be made in one of four (4) ways at the election of each employer, as follows:
- (1) Those employers using IRS Form W-2 furnished commercially may submit a copy of such commercial Form W-2 to the Tax Administrator, provided that the copy submitted to the Tax Administrator clearly shows the information required to be shown on the annual information return.
 - (2) Those employers not using IRS Form W-2 furnished commercially may obtain forms upon request from the Tax Administrator.
 - (3) Where the furnishing of this information as indicated above will create a distinct hardship, the employer, upon written request to the Tax Administrator, may be permitted to furnish a list of all employees subject to City income tax, which list shall show each such employee's full name, last known address, Social Security number, gross amount of qualifying wages paid during the year and the amount of City income tax withheld. Such list may be compiled on any mechanical equipment presently used by the employer, but provision must be made for spacing equal to at least three (3) lines between each name. The employer's name must be indicated on each sheet, each sheet must be numbered and the total number of sheets comprising the complete report must be indicated on the first page.
 - (4) Employers having 100 or more employee records are required to submit the required information on a floppy disc or CD electronic media. Such filing must be done on a format provided by the City.
 - (5) The gross compensation to be reported for each employee shall be for the full twelve (12) calendar months of the year or such portion thereof as the employee reported on was employed.
- xi) In addition to the annual information return, and at the time the same is filed, each employer shall file with the Tax Administrator a reconciliation of returns to enable the Tax Administrator to reconcile the sum total of qualifying wages paid and City income taxes withheld as disclosed by information returns, list of employees, and prior returns and remittances made pursuant to the ordinance.

- xii) Upon entering into an agreement with the Tax Administrator, an employer may file semi-annual City income withholding tax returns in lieu of monthly or quarterly returns. If monthly or quarterly deposits are made electronically to the City's depository under procedures established by the Tax Administrator, semi-annual returns may be filed. Employers having 100 or more employees must make electronic deposits of withheld City income tax to the City's depository.
 - xiii) An employer may report the amount of City income tax withheld from qualifying wages paid on or after January 1, 2007, and may remit such amounts, by using the Ohio business gateway, in conformance with rules promulgated by the Ohio tax commissioner pursuant to Ohio Revised Code Section 718.051(H).
3. Fractional Parts of Cent. In deducting and withholding City income 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 (1/2 cent) or more in which case it shall be increased to one cent (1 cent). No person shall be entitled to a refund merely because such rounding off of the tax results in an apparent overpayment based on total earnings.
4. Withholding City Income Tax on Payments to Entertainers and Athletes.
- a) Any person who makes any payment for the services of an entertainer(s) or professional athlete(s) is required to withhold, report and remit City income tax on the gross amount paid to the professional entertainer(s) or professional athlete(s) for services performed in the City.
 - i) City income tax withheld from such payments shall be paid to the City in a separate submission using a Form DW1-E on the 15th day of the first month following the close of the calendar quarter in which such payments are made. Accordingly, payment of City income tax withheld on payments to entertainers or athletes must be made by April 15, July 15, October 15 or January 15, as the case may be.
 - ii) Any payments made to an entertainer or professional athlete in amounts in excess of \$600 annually, whether made directly, through an agent or through an entity controlled by the entertainer or athlete, are subject to this withholding of City income tax.
 - iii) The quarterly return shall include as specified on Form DW1-E:
 - (1) Date of the event;
 - (2) Event name and the name(s) of the entertainer(s) or athlete(s);
 - (3) Federal tax identification number of the person to whom IRS Form 1099-MISC was issued;
 - (4) Name of payee;
 - (5) Amount of payment shown on IRS Form 1099-MISC; and
 - (6) The amount of City income tax withheld.

5. A pass-through entity required by Section 36.105(J) R.C.G.O. to withhold City income tax on a nonresident owner's distributive share of the net profits of the pass-through entity must remit such withheld tax to the City on or before the fifteenth (15th) day of the month immediately following the close of the calendar quarter or fiscal quarter, as the case may be, in which the pass-through entity earned the net profits.

ARTICLE VI – DECLARATIONS.

1. Requirement of Filing.
 - a) A declaration of estimated City income tax shall be filed by every taxpayer who may reasonably be expected to have taxable income, the tax on which is not or will not be withheld by an employer or employers.
 - b) The City income tax shown on a taxpayer's annual City income tax return for the preceding taxable year may be used as the basis for computing his declaration of estimated tax for the current taxable year. In the event a taxpayer has not previously been required to file a City income tax return, a declaration of estimated tax on anticipated taxable income for the current taxable year shall be filed in good faith.
 - c) The declaration of estimated City income tax shall be filed by the applicable date specified in Section 36.106(B) R.C.G.O.
2. Form of Filing.
 - a) Such declaration shall be filed upon a form or forms furnished by or obtainable upon request from the Tax Administrator or on a generic form; provided, however, credit shall be taken for City income tax to be withheld from any portion of estimated taxable income reported on such form. In accordance with the provisions of Section 36.114 R.C.G.O., credit may be taken for tax to be paid or withheld and remitted to another taxing municipality.
 - b) The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any quarterly payment date as set forth in Article VI-4 of these rules and regulations. Such amendment may be made on the regular declaration form or on the back of any quarterly notice form.
3. Amended Declaration.
 - a) An amended declaration must be filed on or before January 31 of the following taxable year, or in the case of a taxpayer on a fiscal year, on or before the last day of the 13th month following the beginning of such fiscal year, if it appears that the original declaration of estimated taxable income made for the taxable year underestimated the taxpayer's income by ten percent (10%) or more.

b) At such time, a payment that, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability shall be made. If, upon the filing of the annual City income tax return required by the ordinance, it appears that the taxpayer did not pay ninety percent (90%) of his City income tax liability, as shown on said return, the difference between ninety percent (90%) of said taxpayer's tax liability and the amount of estimated tax actually paid on or before the above mentioned date, shall be subject to the interest and penalty provisions of Section 36.109 R.C.G.O., subject to the exceptions set forth in Section 36.106(D)(3) R.C.G.O.

4. Dates of Payment.

- a) The estimated City income tax may be paid in full with the declaration or may be paid in the amounts and on the dates set forth in Section 36.106(C) R.C.G.O.
- b) The declaration must be accompanied by at least one installment of the estimated tax shown due thereon.
- c) In the event an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.
- d) For taxable years beginning on or after January 1, 2005, or taxpayer subject to City income tax on the taxpayer's net profits may file the declaration, and may pay estimated City income tax, by using the Ohio business gateway in conformance with the rules promulgated by the Ohio tax commissioner pursuant to Ohio Revised Code Section 718.051(H).

5. Annual Returns Required. The filing of a declaration of estimated City income tax does not relieve the taxpayer of the necessity of filing an annual City income tax return even though there is no change in the declared tax liability. An annual City income tax return must be filed to obtain a refund of any overpayment of City income tax.

ARTICLE VII - RETENTION OF RECORDS BY TAXPAYER.

All employers and taxpayers are required to keep such records as will enable the filing of true and accurate City income tax returns, whether of City income taxes withheld at the source or of City income tax payable upon other taxable income or net profits, or both. Such records shall be preserved for a period of not less than six (6) years from the date the City income tax return for the taxable year is filed or the City income tax or withholding tax owed for such taxable year is paid, whichever is later.

ARTICLE VIII – EXEMPTIONS.

Generally, the items set forth in Section 36.102(F) R.C.G.O. are the only forms of income not subject to the tax imposed by ordinance. Any other income, economic benefits or other forms of compensation earned or received by a taxpayer shall be subject to City income tax.

ARTICLE IX - RETURN AND PAYMENT OF TAX.

1. Date and Requirement for Filing.

- a) On or before April 15 of the year following the close of the taxpayer's taxable year, the taxpayer shall, except as hereinafter provided, make and file with the Tax Administrator a City income tax return on a form prescribed by and obtainable upon request from the Tax Administrator, or a generic form, whether or not City income tax is due.
- b) If the City income tax return is made for a fiscal year or any period less than a year, said return shall be made within three (3) months and fifteen (15) days from the end of such fiscal year or other period.
- c) Every person subject to the provisions of the ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of qualifying wages, net profits from business or other activities, including the rental from real and personal property, and other income taxable under the ordinance, earned and accrued or received for the period covered by the City income tax return, and such other pertinent facts and information in detail as the Tax Administrator may require.
- d) Where an employee's entire qualifying wages for the taxable year are paid by an employer or employers, and the full City income tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire qualifying wages of such employee-taxpayer, and where the employer of such employee has filed a report or return in which said employee's entire and only qualifying wages are reported to the Tax Administrator, and where such employee has no taxable income other than such qualifying wages and the City income tax so withheld has been paid to the Tax Administrator, such employee need not file a City income tax return.
- e) An employee who is permitted to deduct employee business expenses, as reported on IRS Form 2106, from qualifying wages must file a City income tax return in order to claim such deductions even though all or part of such qualifying wages are subject to withholding.
- f) Any taxpayer who received taxable income not subject to withholding under the ordinance must file a City income tax return.
- g) Any taxpayer having taxable income for which a City income tax return must be filed, and also having net profits from a business covering the same or a different period, is required to file only one (1) City income tax return on which the taxpayer reports each item of taxable income.
- h) Trustees of trusts having taxable income are required to file City income tax returns for such trusts and pay the tax on the taxable income thereof.
- i) A husband and wife may, but are not required to, file a joint City income tax return.
- j) Net operating losses from business, the net profits of which would be taxable under the ordinance, may be offset only against net profits from another business conducted by the taxpayer, the net profits of which are subject to City income tax. Such losses are deductible only in the year incurred.

k) For taxable years beginning on or after January 1, 2005, a taxpayer subject to City income tax on the taxpayer's net profits may file the City income tax return, and pay City income tax, by using the Ohio business gateway in conformance with the rules promulgated by the Ohio tax commissioner pursuant to Ohio Revised Code Section 718.051(H).

2. Extensions.

a) Extension of the due date for filing the City income tax return is governed by Section 36.104(E) R.C.G.O.

b) Information returns, schedules and statements needed to support the City income tax return are to be filed within the time limits set forth for filing the City income tax return, as extended.

c) A taxpayer's request for extension of the due date for filing the City income tax return, made in conformance with Section 36.104(E)(1) R.C.G.O., will automatically be granted by the Tax Administrator unless the taxpayer:

i) fails to timely file the extension request;

ii) fails to file a copy of the taxpayer's federal extension request, if applicable;

iii) owes the City any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of City income tax; or

iv) has failed to file any required City income tax return, report, or other related document for a prior taxable year.

d) For taxable years beginning on or after January 1, 2005, a taxpayer subject to City income tax on the Taxpayer's net profits and who has received an extension to file the taxpayer's federal income tax return for the taxable year will not be required to notify the Tax Administrator of the federal extension and will not be required to file the City income tax return for the same taxable year until the last day of the month to which the due date for filing the federal return has been extended; provided that, on or before the date for filing the City income tax return, the taxpayer notifies the Ohio tax commissioner of the federal extension through the Ohio business gateway, in conformance with the rules promulgated by the Ohio tax commissioner pursuant to Ohio Revised Code Section 718.051(H). The foregoing extension of time to file the City income tax return will not extend the time by which the taxpayer must pay any City income tax due.

3. Payment with Return

a) The taxpayer making a City income tax return shall, at the time of the filing thereof, pay to the Tax Administrator the amount of City income tax shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 36.105, R.C.G.O. or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 36.106, R.C.G.O. or where an income tax has been paid to another municipality, credit for the amount so paid, in accordance with Article XVII hereof, shall be deducted from the amount of City income tax shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.

b) A taxpayer who has overpaid the amount of City income tax due may have such overpayment applied against any subsequent City income tax liability or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

ARTICLE X - INFORMATION RETURNS AND SCHEDULES AND STATEMENTS.

1. City income tax returns filed hereunder shall set forth the amount of qualifying wages subject to City income tax received from each employer, taxable net profits, other items of taxable income received, and other pertinent information as the Tax Administrator may require.
2. The fact that any taxpayer is not required to file a federal income tax return does not relieve him from filing a City income tax return.

ARTICLE XI - CONSOLIDATED RETURNS.

1. The filing of consolidated City income tax returns is governed by Section 36.102(F) R.C.G.O.
2. Once a consolidated return has been filed for any taxable year, the consolidated group must continue to file consolidated returns in subsequent years unless:
 - a) Permission in writing is granted by the Tax Administrator to file separate returns.
 - b) A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year.
 - c) A corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.
3. If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income from the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary that 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 (1) 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 (1) month. If a subsidiary is a member of the consolidate group for only part of a taxable year, the income considered to be earned in such fractional part of the year, shall be that portion of the net income for the entire year which the number of days it was a member of the group bears to the total number of days in the taxable year.
4. In determining the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property factor (Step 1 of the formula) shall be determined on the basis of the average original cost of the property during the period such corporation was a member of the group. The rental portion of the factor, however, shall be computed at eight (8) times the annual rent. The gross receipts and wage factors shall be based on the actual figures.

ARTICLE XII - AMENDED RETURNS.

1. Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 36.110 and 36.111 R.C.G.O. Such amended returns shall be on a form obtainable upon request from the Tax Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return without approval of the Tax Administrator.
2. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's City income tax liability, such taxpayer shall make and file an amended City income tax return showing income subject to the City 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.

ARTICLE XIII - INTEREST AND PENALTIES.

1. Section 36.109(A) R.C.G.O. governs the rate of interest that accrues on (i) unpaid City income tax owed by any taxpayer and (ii) City income tax required to be withheld but that has not been remitted to the City. Section 36.109(A) R.C.G.O. also governs the time from which such interest accrues.
2. Section 36.109(B) R.C.G.O. governs the penalties that apply to the late payment, underpayment, or nonpayment of City income tax owed or required to be withheld and remitted to the City. Such penalties apply in addition to the interest imposed under Section 36.109(A) R.C.G.O.
3. Sections 36.106(D)(3) and 36.109(C) set forth the exceptions to the interest and penalty provisions that otherwise apply to the late payment, underpayment, or nonpayment of City income tax owed or required to be withheld and remitted to the City.
4. Violations by Employers. Any person required to withhold City income tax who knowingly fails to withhold such tax or pay over such tax or who knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a penalty equal to the total amount of the City income tax evaded, not withheld, or not paid over to the City. No other penalty under Section 36.109(B) R.C.G.O. shall be applied to any offense to which this penalty is applied. However, interest as provided under Section 36.109(A) R.C.G.O. shall accrue once the penalty set forth in this Article XIII-4 is imposed.

5. Effect on Extensions

- a) No penalty will be assessed where the balance of City income tax shown on the City income tax return is paid within the extended period for filing that return; provided, however, that such extension was authorized by the Tax Administrator as provided in Section 36.104(E) R.C.G.O.
 - b) Penalty will be assessed from the date the City income tax return was due, as provided in Section 36.104(A) R.C.G.O., when the return is not filed within the extended period referred to above.
 - c) Interest as provided in Section 36.109(A) R.C.G.O will be assessed on City income tax not paid by the due date set forth in Section 36.104(A) R.C.G.O. even though the time for filing the City income tax return has been extended.
6. Any employer required to file employee wage and tax statements and reconciliation of returns in accordance with Section 36.105 R.C.G.O. and who fails to file such returns or statements or files incomplete returns or statements shall be subject to a penalty of \$50.00 per each required return or statement, up to a maximum of \$1,000.00.
 7. Any employer required to file employee wage and tax statements who fails to report electronically when required by the Tax Administrator will be assessed a penalty of \$1.00 per record.
 8. The Tax Administrator may by regulation establish fees for returns and associated statements and schedules when reproduced upon request of the taxpayer.
 9. The Tax Administrator may by regulation establish a fee to cover printing, postage, and personnel costs for forms requested in quantities of ten (10) or more per request.

ARTICLE XIV – VIOLATIONS AND CRIMINAL PENALTIES.

Section 36.111 R.C.G.O. governs the violations of City income tax law that will result in criminal prosecution. Section 36.110(A) sets forth the statute of limitations for the prosecution of such offenses.

ARTICLE XV - COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS.

1. Section 36.110(A) R.C.G.O. governs the prosecution of civil suits by the City to enforce collection of City income tax, penalties, interest and costs of collection, and also sets forth the statute of limitations for the prosecution of such civil suits.
2. Section 36.110(B) and (C) R.C.G.O. governs the refund of overpayments of City income tax, the period during which refund claims must be made, and the allowance of interest on refunds of City income tax.

3. Limitation

- a) Additional amounts of less than one dollar (\$1.00) shall not be refunded.
- b) Additional amounts of less than one dollar (\$1.00) shall not be assessed unless:
 - i) The full amount of tax due as originally shown on the return has not been paid in full; or
 - ii) Such assessment results from income which the taxpayer has failed to report.

ARTICLE XVI - EXAMINATION OF BOOKS AND RECORDS; CONFIDENTIALITY OF INFORMATION SO OBTAINED; PENALTY FOR BREACH OF CONFIDENTIALITY.

1. Investigations by Tax Administrator.

- a) Section 718.01(A)(1) of the Ohio Revised Code provides that nothing in Ohio Revised Code Chapter 718 “shall be construed as limiting or removing the ability of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.” Accordingly, the Tax Administrator, or his duly authorized agent, is empowered to examine the books, papers, records and copies of federal income tax returns of any employer, taxpayer or person subject to the ordinance, or whom the Tax 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 the City income tax due under the ordinance.
- b) An employer or taxpayer shall furnish within fifteen (15) days following a written request by the Tax Administrator or his duly authorized agent the means, facilities and opportunity for making examinations and investigations authorized by the ordinance.

2. Subpoena of Records and Persons.

- a) The Tax Administrator, or any person acting in his capacity, is authorized to examine any person under oath concerning any income that was, or should have been, returned for taxation or any transaction tending to affect such income. The Tax Administrator may compel the production of books, papers, and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.
- b) The Tax Administrator's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Tax Administrator.
- c) The Tax Administrator may order the appearance before him, or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Tax Administrator is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
- 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 hearings.
- e) The notice shall be served by the Tax Administrator or his duly appointed agent by delivering it to

the person named in the notice, or by leaving the notice at such person's usual place of business or residence, or by mailing it to the person by registered mail, return receipt requested, addressed to such person's usual place of business or residence.

3. **Penalty for Non-Compliance.** Refusal by any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Tax Administrator or his duly authorized agent, to submit to such examination and to produce the records requested, constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 36.111 R.C.G.O.
4. **Confidential Nature of Examinations.** Any information gained as a result of any returns, investigations, verifications, or hearings before the Tax Administrator, 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 so ordered by a court of competent jurisdiction or except in the exchange of tax information with other municipal corporations. Any person divulging any such information shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be penalized as provided in Section 36.108(E). Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the City who violates the provisions of Section 36.108 R.C.G.O. relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

ARTICLE XVII CREDIT ALLOWED FOR TAX PAID IN ANOTHER MUNICIPALITY.

1. **Limitation.** Where a resident of the City is subject to a municipal tax, on or measured by income, in another municipality, either located within or without the State of Ohio, he shall not pay a total municipal tax on the same income greater than the tax imposed at the higher rate.
2. **Credits to Residents.** Residents who are required to pay and do pay a tax to another municipality on qualifying wages for work done or services performed in such other municipality, on net profits from business conducted in such other municipality, or on other taxable income may claim a credit of the amount of tax paid by them or on their behalf to such other municipality, but only to the extent of the tax City income imposed by ordinance on such qualifying wages, net profits, or other taxable income.
3. **No credit will be given unless the taxpayer claims such credit on his annual City income tax return or other form prescribed by the Tax Administrator and presents such evidence of the payment of a similar tax to another municipality, as the Tax Administrator may require. A statement satisfactory to the Tax Administrator from the taxing authority of the municipality to which the taxes are paid that a City resident or his employer is paying the tax shall be considered as fulfilling the requirements of this Article.**

ARTICLE XVIII - COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE.

1. Although provisions of the ordinance expire as provided in the ordinance, the ordinance remains in full force and effect for purposes of collection and payment of taxes due and payable beyond any such expiration, subject, however, to the provisions of Section 36.110 R.C.G.O. with respect to the limitation of time within which an additional assessment may be made.
2. Payment of Taxes. City income tax due and unpaid on qualifying wages paid or received, net profits earned on other taxable income received in the last effective year of the ordinance or any part thereof are payable in full on or before the dates specified in Sections 36.104, 36.105 and 36.106 R.C.G.O. and Articles V, VI and IX of these rules and regulations, and all final returns and withholding reports must be filed on or before such date, unless such dates are extended by the Tax Administrator.
3. For purposes of collection of delinquent or unpaid taxes, actions or proceedings for such collection and/or the collection of interest and penalties thereon and costs of collection, or enforcing any provisions of the ordinance (including prosecutions under the criminal sections of the ordinance and including appeals before the Board of Tax Review and Board of Tax Appeals), the ordinance remains in full force and effect until such time as all taxes accruing during the term of the ordinance shall have been fully paid and all actions, suits, prosecutions, appeals and other judicial or administrative proceedings relative to the collection or payment of such taxes have been finally terminated.

ARTICLE XIX - ALLOCATION OF FUNDS.

The funds collected under the provisions of the ordinance shall be placed in the Income Tax Collection Fund of the City to be used for the purpose of paying all costs of collecting the taxes levied and the cost of administering and enforcing the provisions thereof; for the payment of other current operating expenses of the City; and for payment of the costs of making such permanent improvements as the City Commission may determine from time to time. However, a portion of such funds may be placed in a Sundry Trust Tax Refund account as may be determined from time to time by the Director of Finance on the basis of need to provide a fund for the refund of income tax overpayments, as provided in Section 36.110 R.C.G.O. The cash balance of such Sundry Trust Tax Refund Account shall not exceed at any time an amount equal to 1% of the funds collected during the previous calendar year.

ARTICLE XX - DUTIES AND POWERS OF THE TAX ADMINISTRATOR.

1. Collection of Tax and Retention of Records.
 - a) It shall be the duty of the Tax Administrator to receive the City income tax imposed by the ordinance in the manner prescribed therein from the taxpayers, to keep accurate record thereof, and to report daily to the Director of Finance all monies so received.

b) It shall be the duty of the Tax Administrator to enforce payment of all taxes owing the City of Dayton, to keep accurate records for a minimum of six (6) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

2. Enforcement Provisions.

- a) The Tax Administrator is charged with the administration and enforcement of the provisions of the ordinance and is, subject to the approval of the Board of Tax Review by motion, 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 Tax Administrator has the authority to correct or adjust any City income tax 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 Tax Administrator in writing all facts involved and the ruling sought.
- c) These rules and regulations, together with all amendments and supplements hereto and all changes herein, will be on file with the Clerk of Commission and at the office of the Tax Administrator and will be open to public inspection.
- d) The Tax Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proven to the Tax Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax, interest and penalties due. Such authorization shall not be granted until proper City income tax returns are filed by the taxpayer for all amounts owed by him under the ordinance, and the deferral authorized by the Tax Administrator shall not exceed a period in excess of twelve (12) months beyond the date the taxpayer files an application for deferred payment.
- e) Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 36.110 and 36.111 R.C.G.O. shall apply.

3. Estimation of Tax by Tax Administrator. In any case where a taxpayer or employer has failed to file a City income tax return or has filed a return that does not show the proper amount of City income tax due, the Tax Administrator may assess the amount of City income tax appearing to be due, together with interest and penalties thereon, if any, in the manner prescribed by Section 36.107(C), (D), (E) or (F) R.C.G.O., as the case may be.

ARTICLE XXI - SAVINGS CLAUSE.

1. These rules and regulations shall not apply to any individual, business, entity, or type of income as to whom, or as to which, it is beyond the power of the City Commission to impose the tax provided for in the ordinance.

2. If any sentence, clause, section or part of the ordinance, or any Article or part of these rules and regulations, or any tax against any individual or any of the several groups specified in the ordinance or rules and regulations, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality or invalidity shall affect only such sentence, clause, section or part of the ordinance or these rules and regulations and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of the ordinance or these rules and regulations. It is hereby declared to be the intention of the Tax Administrator that these rules and regulations would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section, article or part thereof not been included therein or herein.

ARTICLE XXII - BOARD OF TAX REVIEW AND BOARD OF TAX APPEALS.

1. Section 36.112 R.C.G.O. governs the composition of the Board of Tax Review, the authority of that Board, the conduct of hearings by that Board, and appeals to and from that Board. Section 36.113 governs the composition of the Board of Tax Appeals, the authority of that Board, the conduct of hearings by that Board, and appeals to and from that Board.

ARTICLE XXIII – OPERATING RULES.

1. ALIMONY payments are not deductible from the gross income of the payer; also, such payments are not taxable to the recipient.
2. ANNEXATION. When an area is annexed during the year, new taxpayers may file either on a prorated basis of the number of months in the City to the total year or on the basis of actual taxable income received or accrued during the period between the annexation date and the close of the taxable year.
3. BANKS.
 - a) State banks cannot be taxed on their income from intangibles, but are taxable on other income in the same manner as other corporations.
 - b) Expenses incurred in securing non-taxable income may not be considered in calculating the net profits from taxable income.
 - c) Banks cannot be required to file separate returns for their banking and real estate activities.
4. BROKERS.
 - a) Taxable on following types of income:
 - b) Commission earned.
 - c) Profits from trading accounts.
 - d) Floor brokerage fees from City Exchange.

- e) Not taxable on income from:
 - i) Capital gains.
 - ii) Dividends.
 - iii) Floor brokerage fees, other than City exchange.
 - iv) Interest.
 - v) Life insurance proceeds.
 - vi) Settlement of damage suit.
- 5. Building and loan companies. Only their income from intangibles and capital gains is exempt from taxation.
- 6. Bus terminals. Rentals from bus terminals are not taxable if owned by a motor carrier.
- 7. Capital gains.
 - a) Except to the extent otherwise provided by ordinance or Ohio Revised Code Chapter 718, capital gains from the sale or exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned.
 - b) Any amount received on a sale or other disposition of tangible personal property used in trade or business in excess of such property's adjusted tax basis shall be treated as taxable income under the ordinance to the extent of depreciation allowable after January 1, 1962. The balance shall be treated as a capital gain.
 - c) Ordinary gain realized from the disposition of real property held more than six (6) months and used in trade or business shall be treated as taxable income in the same amount as computed for federal income tax purposes in accordance with the Internal Revenue Code.
 - d) If a taxpayer shows over 50% of his gross income as attributable to capital gains, it should be verified that he is not actually engaged in a trade or business.
- 8. Capital losses are not deductible except to the extent otherwise provided by ordinance or Ohio Revised Code Chapter 718.
- 9. Carriers operating under a certificate issued by the P.U.C.O. are immune from City income tax under the Ohio Revised Code exemption for motor carriers, even if the certificate under which they are operating is held by someone else.
- 10. Carry-over losses. No loss may be carried backward or forward to a different taxable year than the one in which such loss was incurred.
- 11. Churches and other religious organizations. Income from property owned by churches and other religious organizations and not incidental to their activities is taxable (to the extent such income is not derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities).

12. Crediting of payments.

- a) Payments of City income tax are to be applied first to settlement of assessment of oldest year unless taxpayer specifies the payment is for taxes of a particular year.
- b) A tax payment submitted for one year cannot be credited to an assessment for a prior year without notifying the taxpayer.

13. Division of funds. The Tax Administrator may grant permission to file on a separate accounting basis providing each division doing business in the City files for all taxable years on such basis.

14. Employee.

- a) The question of whether an individual is an employee or an independent contractor is determined on the basis of how he is treated for federal income tax purposes. If any of the following is done, the individual is an employee:
 - i) Wages withheld for federal income tax purposes.
 - ii) Withholding for Social Security.
 - iii) Payment of Workmen's Compensation by an employer for his/her benefit.
 - iv) If none of these are done, the individual is not an employee.
- b) Employee is to be considered as reporting for City income tax purposes on a cash basis.
- c) Contributions by an employer to a retirement system on behalf of his employees are deductible in the same amount and at the same time as permitted by the appropriate section of the Internal Revenue Code.
- d) Individuals employed by a place of business in the City are presumed to earn all their qualifying wages in the City unless the employer submits to the City appropriate substantiation to the contrary.
 - i) To qualify for a refund based on days worked outside of the City the taxpayer must supply a statement on company letterhead stating that "as a condition of the employee's employment (employee name and Social Security number) was required to work (X) number of days outside the City Of Dayton." The director (or equivalent) of the employer's department of human resources must certify this report.
 - ii) The employee must provide a signed statement listing the specific dates and locations worked outside the City.
 - iii) No refunds will be made for 12 or fewer work days worked outside the City in any year unless proof is shown of taxes paid to another jurisdiction for those days.

15. Estates.

- a) Taxes owed by decedent may be collected from his estate and the mere fact that an estate is not probated does not cancel a tax obligation.
- b) Amounts paid to a widow or widower of a former employee by an employer in excess of \$5,000.00 are subject to City income tax.

16. Exemption. Burden of proof of exemption from City income tax is on the prospective taxpayer.
17. Expenses.
 - a) Judgments of personal injuries against an owner of real property used in business are a deductible expense.
 - b) Attorneys fees that are related to taxable activities are deductible expenses.
 - c) Unless the taxpayer can present definite records of actual costs, a formula of 5% of nontaxable income will be considered as the applicable expense incurred in the production of nontaxable income. The ratio of non-taxable income to total income will often be a more equitable percentage.
 - d) The 5% add back rule applies only to the net profits of a business, not to persons whose only taxable income is from wages.
18. Federal employees.
 - a) Federal employees are taxable by City on the same basis as any privately employed person.
 - b) Nonresidents who are federal employees are subject to City income tax even though working in an area within the City exclusively under the jurisdiction of the United States.
19. Fees paid a realtor for arranging a loan are taxable.
20. Fellowship grants are not taxable to the extent of tuition, room and board. Stipends received for work done and services performed are taxable.
21. Formula.
 - a) Required where the parent corporation sells its product to its local offices at a profit.
 - b) Geographic location of mobile equipment governs its tax liability both when in use and at rest.
 - c) Wages, salaries, and other compensation for personal services are defined as payments made by the employer directly to his employees and not through any sub-contractor. Therefore, individual payments for labor to a subcontractor may not be included as wages in computing the percentage applicable to City.
22. Franchise fees. Royalty income from foreign (outside the United States) subsidiaries is not taxable.
23. General code.
 - a) Under Ohio Revised Code Section 718.01(F)(6), public utilities subject to tax under Ohio Revised Code Sections 5727.24 (natural gas companies) and 5727.30 (telegraphic companies, pipeline companies, waterworks companies, water transportation companies and heating companies) are not subject to municipal income tax. Under Ohio Revised Code Section 718.01(F)(6), combined companies, electric companies and telephone companies are not exempt from municipal income tax and are therefore subject to City income tax.
 - b) Under the Doctrine of Preemption, the Ohio Supreme Court has held that the types of companies enumerated in the following sections are not subject to municipal taxes.
 - i) Domestic Insurance Companies (Ohio Revised Code Section 5725.18).
 - ii) Foreign Insurance Companies (Ohio Revised Code Section 5729.03).
 - iii) Private Motor Carriers (Ohio Revised Code Section 4923.11).

24. Ground rents.
- a) Ground rents are defined as income received from perpetual leases in which the lessor does nothing but receive the rents. A monthly rental contract is not ground rent even though the lessee does nothing.
 - b) To be earned income, it must be the result of labor, management or supervision of real estate and since ground rents are the same as receipts from intangibles, they are not taxable.
25. Group term insurance. Employer paid premiums for group term life insurance for coverage up to \$50,000 are not taxed to the employee. The cost of coverage over \$50,000 provided by one or more employers is taxable to the employee in his tax year in which the premiums are paid.
26. Income. Payments for suggestions for improving a business are taxable.
27. Independent contractors. Lists of independent contractors must be furnished by brokers and insurance contractors even though payment is on a commission basis.
28. Information received through tax returns is confidential and cannot be disclosed to other City departments, except in the administration of the tax and only with authorization of the Tax Administrator.
29. Insurance.
- a) When a domestic insurance company has filed a certificate that is so classified, it need not file a declaration or final return.
 - b) With respect to nonresident agents, if sales only are used, situs of personal life insurance is the residence of the insured. Sale of commercial life insurance, partnership insurance, etc. is the business location of the insured.
 - c) Terminal Payments: When a guaranteed continuance of wages for a specified period has been agreed to with a union, such payments are considered as insurance and not taxable as wages when no personal services are performed.
30. Insurance agents. Commissions received by heirs, after the death of the agent, are not earned income and are non-taxable.
31. Intangible income.
- a) Though the intangible tax has been repealed by the State of Ohio, cities are still preempted from taxing intangible income.
 - b) A mercantile company retaining its notes cannot claim these as intangible income.

32. Investment interest expense is deductible only to the extent that it is a result of a taxable operation.
33. Joint returns. Husband and wife may file whether in same or separate business and may NOT deduct business losses from qualifying wages.
34. Loans by professional persons to clients are not deductible.
35. Losses.
 - a) Business losses only will be permitted.
 - b) Losses may not be carried backward or forward to a different taxable year than one in which such loss was incurred.
 - c) Applicable schedules must all be completed before an operating loss is allowed.
36. Manufacturers' agents. Sales by persons who are independent contractors and who do not come under the definition of an employee may not be used in computing the sales factor of the taxpayer selling to such independent contractor.
37. Moving expenses. All reimbursements and other payments to both old and new employees for moving expenses are to be included in gross income to the extent they constitute qualifying wages. For allowable expenses refer, to Section 217 of the Internal Revenue Code.
38. Nonresident.
 - a) Non-resident firms without any place of business in the City, whose only City sales are made by agents who are not classifiable as employees, are not subject to tax.
 - b) Non-resident employers doing business in a City must withhold on their employees.
39. Pay.
 - a) Severance pay is taxable.
 - b) Sick and vacation pay is taxable in the same ratio as normal earnings, to the extent such items constitute qualifying wages.
40. Pseudo corporation (1120s small business corporation). A legal corporation is taxable as a separate entity for City income tax purposes and distributions to shareholders are considered as nontaxable intangible income to the shareholders. The losses of the corporation are not deductible by individual stockholders.
41. Records.
 - a) Refunds may be withheld from an employee until the employer has filed withholding statements.
 - b) All forms required, including current declarations, completed schedules, and the furnishing of any information requested by an auditor, are to be filed before a refund is processed.
 - c) Where an employee also has outside income upon which he has filed and paid, the employer must require substantiation of the amount withheld.

- d) Refunds will not be made to an individual or business moving from the City until a City income tax return for the portion of the year prior to such move has been filed and audited.
- e) Computation of employee's tax liability is to be computed on the formula of the total number of days worked in the City, divided by the total number of days worked during the year, excluding holidays, vacation, and sick leave time, with the resulting percentage applied to the total annual income from qualifying wages. Where no records can be substantiated of the total number of days worked in the year, the figure 260 is to be used as the base number of days worked.

42. Rentals.

- a) Rentals received by a corporation from property outside the City are not taxable, even though the stockholders may be residents.
- b) Fair rental value of a parsonage is not considered as income.

43. Residence.

- a) An individual retaining his domicile within the City is liable for City income tax on his qualifying wages.
- b) The term "resident" means an individual domiciled in the City. "Domicile" means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence.

44. Retirement plans. Contributions by an individual to the following retirement plans are not to be excluded from taxable income:

- a) Keogh Plans.
- b) Individual Retirement Accounts (IRA).
- c) State of Ohio Deferred Compensation Plans.
- d) International City Managers Association Retirement Co. (I.C.M.A.).
- e) Tax Shelter Annuities (Income tax notice was effective January 1, 1975).
- f) Other Plans. There are varying types of retirement and benefit plans employers may establish for their employees. Due to this variety, no specific statement as to the taxable or non-taxable status to the employee can be made. The determination of the taxable status of these plans will be on an individual basis.

45. Returned check charge.

- a) After February 1, 2004, a returned check charge of \$25 will be assessed on any check returned unpaid for insufficient or uncollected funds each time it is represented at the City's financial institution.
- b) In the event that a taxpayer's or employer's check is returned unpaid for insufficient or uncollected funds, the City may electronically debit the taxpayer's or employer's account for the principal amount of the check.

46. Returns.

- a) Any corporation engaged in business in the City or any owner engaged in business in the City

through a pass-through entity or sale proprietorship must file a City income tax return until declared nontaxable.

- b) Returns are required even where the tax liability is the same as the amount declared or is almost entirely from nontaxable sources.
 - c) Formula Expenses of a national organization filing under separate accounting may not be disallowed merely because they pertain to the national office.
 - d) Trustees are required to file returns for the trust even though a beneficiary pays the tax, and the said return must give the names and addresses of the beneficiaries of the trust.
 - e) Preparation of City income tax returns.
 - i) City employees will only assist with the preparation of City income tax returns.
 - ii) City income tax of Dayton returns will be completed only for the taxpayer requesting assistance and information will be released only to such taxpayer unless a notarized release form signed by the taxpayer or a Power of Attorney is on record with our office. In lieu of a notarized release, the taxpayer may check the appropriate box on the City income tax return to authorize release of information to a tax preparer.
 - iii) A government issued ID must be presented for on-site assistance.
 - iv) No information can be shared with a family member or tax preparer without a notarized release form signed by the taxpayer. The taxpayer may give authority for a tax preparer to access account information by checking the appropriate box on the tax return.
 - v) On-site interviews and assistance with tax preparations require an appointment. Walk-in's may be assisted as time allows.
 - vi) City employees shall assist taxpayer(s) in completing the City income tax return of a taxpayer whose household income is \$35,000 or less and shall provide such assistance either in person with an appointment or over the telephone.
 - vii) To protect confidentiality, no income, payment, or previously processed tax information can be shared with a taxpayer, family member or tax preparer over the telephone or via email or facsimile without the account identifier. Responses to information requests will be mailed to the primary address or email address on the account.
47. Royalties derived from land leases (mineral rights, oil, gravel, etc.) are taxable, but royalties from intangible property (patents, copyrights, trademarks, tradenames, etc.) are not subject to City income tax.
48. School district income taxes. Credit cannot be taken for taxes paid to a school district on the same income taxed by the City.

49. Solicitation.

- a) Soliciting within the City on a regular basis is a taxable activity regardless of where the sale is consummated.
- b) Telephone orders given as a result of telephone solicitation made outside the City with no other solicitation are not taxable.

50. State income taxes. No credit will be allowed for state income taxes paid, but credit will be allowed for taxes paid on the same income to another municipality within or without the State of Ohio.

51. Trustee. The primary liability for reporting and paying taxes of a trust on income taxable under the ordinance is on the trustee. However, this does not relieve the beneficiary of any liability to report and pay such City income tax when the trustee does not report and pay such tax.

52. Vow of poverty. Qualifying wages are considered received not by the individual member but instead are considered received by the order of organization. Sections 501(a) and (d) of the Internal Revenue Code prohibit taxation of religious or apostolic associations or organizations.

53. Withholding.

- a) Employers not required to withhold City income tax but doing so voluntarily will be assessed for late filing of withholding taxes.
- b) Withholding is not required by or on behalf of a wholly owned subsidiary of a corporation that conducts business in the City when said subsidiary does not conduct business in the City.

ARTICLE XXIV - RELATIONSHIP WITH RULES AND REGULATIONS ADOPTED PURSUANT TO ORDINANCE.

- 1. The effectiveness of these rules and regulations and the regulations issued under Section 36.118 R.C.G.O. are to be considered consecutive.
- 2. From time to time, amendments and supplements to these rules and regulations may be issued by the Tax Administrator subject to the approval of the Board of Tax Review.

Appendix

DUE DATES FOR FILING DAYTON INCOME TAX RETURNS AND PAYING DAYTON
INCOMETAX

January 15	<p>EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax withheld in December of preceding year (Forms DW-1).</p> <p>EMPLOYERS WITHHOLDING (QUARTERLY): Return of Income Tax withheld in the fourth quarter of the preceding year (Form DW-1).</p> <p>ENTERTAINMENT AND PROFESSIONAL ATHLETES TAX (QUARTERLY): Return of Income Tax withheld in the fourth quarter of the preceding year (Form DW-1E).</p> <p>PASS-THROUGH ENTITIES (QUARTERLY): Return of Income Tax on nonresident owner's share of pass-through entity's net profits earned in fourth quarter of preceding year.</p>
January 31	<p>TAXPAYERS (INDIVIDUALS): Fourth quarterly installment payment of the preceding year's estimated income tax (Form DQ -1).</p> <p>TAXPAYERS (ALL): Amended Declaration of Estimated Tax (Form D-1) if original Declaration for previous year underestimated income by ten percent (10%) or more.</p>
February 15	<p>EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax withheld in January (Form DW-1).</p>
February 28	<p>EMPLOYERS: Withholding Statements (Form DW -2) showing total wages paid and tax withheld for each employee during the preceding year, accompanied by Reconciliation of Returns (Forms DW-3).</p>
March 15	<p>EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax withheld in February (Form DW-1).</p>
April 15	<p>TAXPAYERS (ALL): Final Income Tax Return for the preceding calendar year (Form R).</p> <p>TAXPAYERS (ALL): Declaration of Estimated Tax for the current calendar (Form R), accompanied by first quarterly installment payment.</p> <p>EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax withheld in March (Form DW-1).</p> <p>EMPLOYERS WITHHOLDING (QUARTERLY): Return of Income Tax withheld in the first quarter (Form DW -1).</p>
April 15	<p>ENTERTAINMENT AND PROFESSIONAL ATHLETES TAX (QUARTERLY) Return of Income Tax withheld in the first quarter of the year (Form DW-1E).</p> <p>PASS-THROUGH ENTITIES (QUARTERLY): Return of Income Tax on</p>

	nonresident owner's share of pass-through entity's net profits earned in the first quarter.
May 15	EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax withheld in April (Form DW-1).
June 15	EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax withheld in May (Form DW-1). TAXPAYERS (CORPORATIONS): Second quarterly installation of estimated Income Tax (Form DQ-1).
July 15	EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax withheld in June (Form DW-1). EMPLOYERS WITHHOLDING (QUARTERLY): Return of Income Tax withheld the second quarter (Form DW -1). ENTERTAINMENT AND PROFESSIONAL ATHLETES TAX (QUARTERLY) Return of Income Tax withheld in the second quarter of the year (Form DW-1E). PASS-THROUGH ENTITIES (QUARTERLY): Return of Income Tax on nonresident owner's share of pass-through entity's net profits earned in the second quarter.
July 31	TAXPAYERS (INDIVIDUALS): Second quarterly installation of estimated Income Tax (Form DQ-1).
August 15	EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax withheld in July (Form DW-1).
September 15	EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax withheld in August (Form DW-1). TAXPAYERS (CORPORATIONS): Third quarterly installation of estimated Income Tax (Form DQ-1).
October 15	EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax withheld in September (Form DW-1). EMPLOYERS WITHHOLDING (QUARTERLY): Return of income tax withheld in the third quarter (Form DW -1). ENTERTAINMENT AND PROFESSIONAL ATHLETES TAX (QUARTERLY) Return of Income Tax withheld in the third quarter of the year (Form DW-1E). PASS-THROUGH ENTITIES (QUARTERLY): Return of Income Tax on nonresident owner's share of pass-through entity's net profits earned in the third quarter.
October 31	TAXPAYERS (INDIVIDUALS): Third quarterly installation of estimated Income Tax (Form DQ-1).
November 15	EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax

withheld in October (Form DW-1).

December 15

EMPLOYERS WITHHOLDING (MONTHLY): Return of Income Tax withheld in November (Form DW-1).

TAXPAYERS (CORPORATIONS): Fourth quarterly installation of estimated Income Tax (Form DQ-1).

NOTE: Fiscal year taxpayers shall file Tax Return (Form R) and Declarations of estimated Tax (Form D-1) by the fifteenth (15th) day of the fourth month after the close of their fiscal year. Subsequent quarterly installments payments of estimated tax are due by the fifteenth (15th) day of the sixth (6th), ninth (9th) and twelfth (12th) months after the start of fiscal year. Taxpayers whose entire income is derived from salary and wages shall file on a calendar year basis. However, no return is required when the tax is withheld on all of the income and such income constitutes all of the taxpayer's income that is subject to City income tax.

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