

An ordinance amending ordinance No. 513 dated 11-12-74 of the code of ordinances of the village of Phillipsburg, Ohio by adding rules and regulations and adopting said rules and regulations in book form in accordance with section 731.231 Ohio Revised Code as amended.

Now, therefore, be it ordained by the Council of the Village of Phillipsburg, Ohio, that:

Section 1:

The Village of Phillipsburg Rules and Regulations amending Ordinance No.513 is attached hereto and made a part hereof, marked Exhibit "A" as though fully rewritten herein and is hereby authorized and adopted in book form.

Section 2:

Where City and/or City of Dayton appears it shall be referenced Village and/or Village of Phillipsburg and where the amount of income tax is stated, it shall be referenced one percent (1%).

Section 3:

The Rules and Regulations include the following:

(1) Purpose; Definitions; Imposition of Tax; Effective Period; Collection of Tax at the Source; Declarations; Retention of Records by Taxpayer; Exemptions; Return and Payment of Tax; Information Returns, Schedules and Statements; Consolidated Returns; Amended Returns; Interest and Penalties; Violations/ Penalties; Collection of Unpaid Taxes and Refund of Overpayments; Examination of Books and Records, Information So Obtained Confidential: Penalty; Credit Allowed for Tax Paid in Another Municipality; Collection of Tax After Termination of Ordinance; Allocation of Funds; Duties and Powers of the Superintendent of Taxation; Savings Clause; Board of Adjudication and Board of Tax Appeals; Special Rulings; and Relationship with Rules and Regulations Adopted Pursuant to Ordinance.

Section 4:

A complete copy of such Code of Ordinances of the Village of Phillipsburg, Ohio, is on file with the Clerk of the legislative authority of said Village for inspection by the public and also is on file at the Law Library of Montgomery County, Ohio, and that said Clerk has copies available for distribution to the public at a cost.

This Code of Ordinances of the Village of Phillipsburg, Ohio, is hereby incorporated by reference in accordance with Section 731.231 of the Revised Code of Ohio as amended.

Section 5:

If any sentence, clause, section or part of this Ordinance is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this Ordinance and shall not impair any of the remaining provisions, sentences, clauses, section or other parts of this Ordinance. It is hereby declared to be the intention of the Council of the Village of Phillipsburg, Ohio that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Section 6:

This Ordinance shall revoke and rescind any Ordinances, parts of Ordinances, Resolutions, parts of Resolutions that are in conflict herewith and shall be in force and effect from and after the earliest period allowed by law.

Rules and Regulations

Article I

Purpose

In order to provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the city there is levied a tax on salaries, wages, commissions, and other compensation and on net profits 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.

ASSOCIATION means a partnership, cooperative, limited partnership, or any other form of unincorporated enterprise owned by two (2) or more persons.

BOARD OF ADJUDICATION means the Board created by and constituted as provided in Sections 36.120 through 36.122 R.C.G.O.

BOARD OF TAX APPEALS means the Board created by and constituted as provided in Sections 36.123 through 36.125 R.C.G.O.

BUSINESS means an enterprise, cooperative activity, profession, undertaking or other activity of any nature conducted for profit or ordinarily conducted for profit whether by

an individual, partnership, association, corporation or any other entity. The ordinary administration of a decedent's estate by the executor or administrator, and the mere custody, supervision and management of trust property under passive trust, whether intervivos or testamentary, unaccompanied by the actual operation of a business as herein defined shall not be construed as the operation of a business.

BUSINESS ALLOCATION as used in these Regulations, means the portion of net profits to be allocated to the city as having been made in the city, either under separate accounting method, or under the three (3) factor formula of property, payroll, and sales, provided for in Section 36.102 (B) R.C.G.O.

CITY means The City of Dayton.

CORPORATION means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory or foreign country or dependency.

PERSON means every natural person, partnership, fiduciary, association, corporation, or other entity. Whenever used in any article prescribing or imposing a penalty, the term "person" as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to a corporation, the officers thereof, and in the case of any unincorporated entity or corporation not having any partner, member or officer within the city, any employee or agent of such unincorporated entity or corporation who can be found within the corporate limits of the city, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

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.

RESIDENT means an individual domiciled in the city. Any person who maintains a place of abode within the city for a total of 183 days or more within any twelve (12) month period shall be denied a resident.

RESIDENT UNINCORPORATED BUSINESS ENTITY means an unincorporated business entity having an office or place of business within the city.

SUPERINTENDENT OF TAXATION (ALSO REFERRED TO AS SUPERINTENDENT) means the Superintendent of Taxation of the City of Dayton, or the person executing the duties of the aforesaid Superintendent of Taxation.

TAXABLE INCOME means gross wages, salaries, and other compensation paid by an employer or employers before any deductions or deferrals, other than ordinary and necessary business expenses and in the same manner as provided by the Internal Revenue Code and/or the net profits from the operation of a business, profession, or other

enterprise or activity in accordance with the provisions of the Ordinance and these Regulations.

TAXABLE YEAR means the calendar year, or the fiscal year, used as the basis on which net profits are to be computed under the Ordinance, and in the case of a return for a fractional part of a year, the period for which such return is required to be made. Unless approved by the Superintendent, the taxable year of a wage earned shall be a calendar year.

TAXPAYER means an individual, association, corporation or other entity required by the Ordinance to file a return and/or pay a tax.

WAGES SUBJECT TO WITHHOLDING by an employer or employers is required only on an employee's wages. Generally, the term wages includes all remuneration for services performed by an employee for his employer including the cash value of all remuneration in any medium other than cash, salaries, fees, bonuses, commissions on sales or on insurance premiums, and taxable fringe benefits, are if paid as compensation for services, subject to withholdings.

In all definitions and these Regulations, the singular shall include the plural and the masculine shall include the feminine and the neuter.

Article III

Imposition of Tax

A. Bases

1. Resident Employee:

a. In the case of residents of the city there is imposed by Ordinance, an annual tax on all salaries, wages, commission, and other compensation received during the effective period of the ordinance. For the purpose of determining the tax on the earnings of resident taxpayers, the source of the earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings wherever earned or paid are taxable.

b. The following are items which are subject to the tax imposed by Ordinance.

(1) Salaries, wages, bonuses and incentive payments received by an individual whether directly or through an agent and whether in cash or in property for services rendered during the tax period as:

01. An officer, director or employee of a corporation (including charitable and other non-profit organizations), joint stock association, or joint stock company;

02. An employee (as distinguished from a partner or member) of a partnership, limited partnership, or any form of unincorporated enterprise owned by two (2) or more persons;
 03. An employee (as distinguished from a proprietor) of a business, trade or profession conducted by an individual owner;
 04. An officer or employee (whether elected, appointed or commissioned) of the United States Government or of a corporation created and owned or controlled by the United States Government or any of its agencies; or of the State of Ohio or any of its political subdivisions or agencies thereof, or any foreign country or dependency except as provided in Section 36.107 of the Ordinance.
 05. An employee of any entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates; and whether paid by an individual, partnership, association, corporation, (including charitable and other non-profit corporations), governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity.
- (2) Commissions received by a taxpayer whether directly or through an agent and whether in cash or in property for services rendered during the effective period of the Ordinance, regardless of how computed or by whom or wheresoever paid.
01. If amounts received as a drawing account exceed the commissions earned and the excess is not subject to the demand of the employer for repayment, the tax is payable on the amounts received as a drawing account.
 02. Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expenses or advances as such from his gross income for the purpose of determining his net profits taxable under Federal law, and the employee is not required to include such receipts as income on his Federal income tax return.
 03. If commissions are included in the net earnings of the trade, business, profession, enterprise, or activity, carried on by an unincorporated entity of which the individual receiving such commission is owner or part owner and therefore subject to the tax, they shall not be taxed separately.

or received during the effective period of the Ordinance attributable to the city, under the formula or separate accounting method provided for by Ordinance derived from sales made, work done or services performed or rendered and business or other activities conducted in the City of Dayton.

- (2) The tax imposed on resident associations or other unincorporated entities owned by two (2) or more persons is upon the entities rather than the individual members or owners thereof but the tax imposed on an unincorporated resident entity owned by one (1) person is upon the individual owner. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III A-3b.
- (3) The tax imposed by Ordinance is imposed on all resident unincorporated entities having net profits attributable to the city under the method of allocation provided for in the Ordinance, regardless of where the owner or owners of such resident unincorporated business entity reside.
- (4) Resident unincorporated entities owned by two (2) or more persons all of whom are residents of the city, shall disregard the method of allocation provided for in the Ordinance and pay the tax on their entire net profits thereof. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits; however, an additional return shall be required from any such owner or member having taxable income other than the distributive share of the net profits from the entity.

b. Imposition of Tax on Resident's Distributive Share of Profits of a Resident Unincorporated Business Entity; Not Attributable to the city.

- (1) A resident individual who is sole owner of a resident unincorporated entity shall disregard the business allocation formula and pay the tax on the entire net profits of his resident unincorporated business entity.
- (2) In the case of a resident individual partner or part owner of a resident unincorporated entity, there is imposed an annual tax on such individual's distributive share of net profits earned and accrued or received during the effective period of the Ordinance not attributable to the city under the method of allocation provided for in the Ordinance, and not taxed against the entity.

4. Imposition of Tax on Net Profits of Non-Resident Unincorporated Businesses:

a.

- (1) In the case of non-resident unincorporated businesses, professions, enterprises, undertakings, or other activities conducted, operated engaged in, prosecuted or carried on, there is imposed an annual tax on the net

profits earned and accrued or received during the effective period of the Ordinance attributable to the city, under the formula or separate accounting method provided for in the Ordinance.

- (2) The tax imposed on non-resident unincorporated entities owned by two (2) or more persons is upon the entities rather than the individual members or owners thereof. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III A-4b.
- (3) Non-resident unincorporated entities owned by two (2) or more persons all of whom are residents of the city may elect to disregard the method of allocation provided for in the Ordinance and pay the tax on the entire net profits. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of the net profits, however, an additional return shall be required from such owner or member having taxable income other than the distributive share of the net profits from the entity.

b. Imposition of Tax on Resident's Share of Profits of a Non-Resident Unincorporated Business Entity Not attributable to the city.

- (1) A resident individual who is sole owner of a non-resident unincorporated business entity shall disregard the business allocation formula and pay the tax on the entire net profits of his unincorporated entity.
- (2) In the case of a resident individual partner or part owner of a non-resident unincorporated entity, there is imposed an annual tax on such individual's distributive share of net profits earned and accrued or received during the effective period of the Ordinance not attributable to the city under the method of allocation and not taxed against the entity.

5. 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 of Dayton, there is imposed an annual tax on the net profits earned and received or accrued during the effective period of the Ordinance attributable to the City of Dayton under the formula or separate accounting method provided for by Ordinance.
- b. In determining whether a corporation is conducting a business or other activity in the City of Dayton, the provisions of Article III B of these Regulations shall be applicable.
- c. Corporations which are required by the provisions of Section 5727.38 to 5727.41, inclusive, of the Revised Code of Ohio, to pay an excise tax in any

taxable year as defined by the Ordinance, may exclude that part of their gross receipts upon which the excise tax is paid. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to the tax imposed by the Ordinance.

6. Amplification:

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

a. Net Profits

- (1) Net profits as used in the Ordinance and these Regulations means net profits derived from any business, profession or other activity or undertaking carried on for profit or normally carried on for profit.
- (2) Net profits as disclosed on any return filed pursuant to the provisions of the Ordinance shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service (providing such method does not conflict with any provisions of the Ordinance.) Net profits, shown on returns filed pursuant to the Ordinance must be reconciled with the income reported to the Federal Internal Revenue Service.

b. Gross Receipts

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

c. Expenses

- (1) All ordinary and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed but no deduction may be claimed for salary and withdrawal of a proprietor or of the partners, members, or other owners of an unincorporated business or enterprise.
 01. If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or

casualty, not compensated for by insurance or otherwise, of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the Federal income tax. Provided, however, that loss on the sale, exchange or other disposition of real estate, used in the taxpayer's business shall not be allowed as a deductible expense.

02. Current amortization of emergency facilities under the provisions of the Internal Revenue Code, if recognized as such for Federal income tax purposes, may be included as an expense deduction hereunder.
03. Where depreciable property is voluntarily destroyed, only the cost of such demolition and the undepreciated balance thereof will be allowed as an expense in the year of such demolition, to the extent allowable for Federal income tax purposes.
04. Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Superintendent (if the reserve method is used), a reasonable addition to the reserve may be claimed, but in no event shall the amount exceed the amount allowable for Federal income tax purposes.
05. Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from the property is not subject to the tax, then taxes on and other expenses of said property are not deductible. In any event, the following taxes are not deductible from income: (1) the tax under the Ordinance; (2) Federal or other taxes based on income; (3) gift, estate or inheritance taxes; and (4) taxes for local benefits or improvements to property which tend to appreciate the value thereof.
06. In general, non-taxable income and expenses incurred in connection therewith are not to be considered in determining net profits. Income from intangibles, by way of dividends, interest and the like, shall not be included if such income is subject to taxation under the intangible personal property laws of the State of Ohio or is specifically exempt from taxation under said law.
07. If the taxpayer reports income that is non-taxable under the Ordinance and such amounts are deducted in order to reconcile the city return with the taxpayer's Federal income tax return, expenses attributable to this non-taxable income shall not be allowed. In the absence of records showing the actual expenses attributable to such non-taxable income, and upon approval of the Superintendent, such amount shall be deemed to equal five percent (5%) of such non-taxable income.

08. Capital gains and losses from a sale, exchange or other disposition of capital assets shall not be taken into consideration in arriving at net profits earned.
09. Losses sustained on a sale or other disposition of tangible personal property used in business are deductible to the extent of the undepreciated value thereof. Any amount received on a sale or other disposition of tangible personal property used in business, in excess of book value, shall be treated as taxable income under the Ordinance to the extent of depreciation allowable after January 1, 1962. The balance shall be treated as a capital gain.

(i) Definition of Property Used in Trade or Business:

For purposes of this Article, the term "property used in the trade or business" means property used in the trade or business of a character which is subject to the allowance for depreciation and real property used in the trade or business, held for more than six (6) months, which is not:

1. Property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year;
2. Property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or
3. A copyright, a literary, musical, or artistic composition, or similar property held by the taxpayer.

7. Rentals from Real Property:

- a. Rentals received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by 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; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds Two Hundred Dollars (\$200.00) per month; and provided further that 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.

- c. In determining the amount of gross monthly rental of any real property, periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.
 - d. Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
 - e. Real property, as the term is used in this Regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.
 - f. In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for Federal income tax purposes.
 - g. 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.
 - h. 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.
 - i. Corporations owning or managing real estate are taxable only on that portion of income derived from property located in the city.
8. Allocation of Profits:
- a. Allocation of Business Profits
- A request to change the method of allocation must be made in writing before the end of the taxable year.
- (1) Separate Accounting Method:

01. The net profits allocable to the city from business, professional or other activities conducted in the city by corporations or unincorporated entities (whether resident or non-resident) may be determined from the records of the taxpayer if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within the city.
02. If the books and records of the taxpayer are used as the basis for apportioning net profits rather than the business allocation formula, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Superintendent to determine whether the net profits attributable to the city are apportioned with reasonable accuracy.
03. In determining the income allocable to the city from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the city.

(2) Business Allocation Percentage Method:

01. STEP 1. Ascertain the percentage which the average net book value of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within the city is of the average net book value of all real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.
 - (i) The percentage of taxpayer's real and tangible personal property within the city is determined by dividing the average net book value of such property within the city (without deduction of any encumbrances) by the average net book value of all such property within and without the city. In determining such percentage, property rented to the taxpayer, as well as real and tangible personal property owned by the taxpayer, must be considered.
 1. The net book value of real and tangible personal property rented by the taxpayer shall be determined by multiplying gross annual rents payable by eight (8).
 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;

- 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.

02. STEP 2. Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within the city is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without the city during the period covered by the return.

- (i) Salaries and reasonable compensation paid owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purpose of this computation.
- (ii) Wages, salaries, and other compensation shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.
- (iii) 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:
 - 1. In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the city.
 - 2. In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services within the city bears to the value of all his services; and
 - 3. In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the city is of his total working time.

03. STEP 3. Ascertain the percentage which the gross receipts of the taxpayer derived from sales made, work done, and services rendered in the city is of the total gross receipts wherever derived during the period covered by the return.

- (i) The following sales shall be considered Dayton sales:

1. 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 outside the city personally by the taxpayer or his employees.
 2. All sales of tangible personal property delivered to purchasers within the city if shipped or delivered from an office, store, warehouse, factory, or place of storage located within the city.
 3. All sales of tangible personal property delivered to purchasers within the city even though transported from a point outside the city if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the city and the sale is directly or indirectly the result of such solicitation.
 4. All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within the city to purchasers outside the city if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place of delivery.
 5. 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.
04. 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 allocation percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely outside the city. A factor is excluded only when it does not exist anywhere.
05. STEP 5. The business allocation percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits allocable to the city.

(3) Substitute Method:

01. In the event a just and equitable result cannot be obtained under the formula, the Superintendent, upon application of the taxpayer, may

substitute other factors in the formula or prescribe other methods of allocating net income calculated to effect a fair and proper allocation.

02. Application to the Superintendent to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing before the end of the taxable year. The application shall state the specific grounds on which the substitution of factors or use of 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 Superintendent.

B. Operating Losses

1. Net losses incurred during any taxable period, in a business or other activity subject to the Ordinance, are deductible from all the taxable net profits and earnings, for the same period, included in the taxpayer's return.
2. Losses are deductible only in the taxable period in which they are incurred.

Article IV

Effective Period

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

Article V

Collection of Tax at the Source

A. Duty of Withholding

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within the city, who employs one (1) or more persons whether as an employee, officer, director or otherwise, to deduct each time any compensation is paid the tax as imposed by Ordinance.
 - a. The gross amount of all salaries, wages, bonuses, incentive payments, fees, commissions or other forms of compensation paid to residents of Dayton, regardless of the place where the services are rendered; and

- b. All compensation paid non-residents for services rendered, work performed or other activities engaged in within the city.
2. All employers within or doing business within the city are required to make the collections and deductions specified in this Article, regardless of the fact that the services on account of which any particular deduction is required, as to residents of the city, were performed outside the city.
3. Employers who do not maintain a permanent office or place of business in the city, but who are subject to tax on net profits attributable to the city under the method of allocation provided for in the Ordinance, are considered to be employers within the city and subject to the requirement of withholding.
4. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation paid. If the employer has withheld the tax and failed to pay the tax withheld to the Superintendent, the employee is not liable for the tax so withheld.
5. Commissions and fees paid to professional men, brokers and others who are independent contractors, and not employees of the payer, are not subject to withholding or collection of the tax at the source. Such taxpayers must, in all instances, file a declaration and return and pay the tax pursuant to the provisions of the Ordinance and Articles VI and IX of these Regulations.
6. Where a non-resident receives compensation for personal services rendered or performed partly without the city, the withholding employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within the city in accordance with the following rules of apportionment:
 - a. If the non-resident is a salesman, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within the city bears to the total volume of business transacted by him.
 - b. The deducting and withholding of personal service compensation of other non-resident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee which the total number of his working hours within the city bears to the total volume of business transacted by him.
 - c. The fact that non-resident employees are subject to call at any time does not permit the allocation of pay for time worked within the city on a seven (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 Superintendent that a greater or lesser number of hours per week is worked.

- d. The occasional entry into the city of non-resident employee who performs the duties for which he is employed primarily outside the city, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the city.
 - e. Wage continuation plans paid by the employer for 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 are taxable on the same ratio as the normal earnings of such employee for his primary job assignment.
7. An employer shall withhold the tax on the full amount of any advance made to an employee on account of commissions.
 8. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services provided such expenses are incurred in earning compensation, including commissions, and are not deducted as business expense by the employee under Article III of these Regulations.
 9. An employer whose records show that an employee is a non-resident of the city had has no knowledge to the contrary shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside the city by such employee. Provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Superintendent notifies said employer in writing that such employee is a resident of the city. All employees are required to notify the employer of any change of residence and the date thereof.
 10. A Dayton employer required to withhold the tax from a Dayton resident for work done or services performed in another municipality, and who does so withhold and remit to such other municipality, shall be relieved from the requirement of withholding the city tax from such Dayton resident, except where the rate of tax for such other municipality is less than the rate of tax imposed by the Dayton Income Tax Ordinance. In such case, the employer shall withhold and remit the difference to the
 11. No person shall be required to withhold the tax on the wages or other compensation paid domestic help employed exclusively in or about such person's residence, but such employees shall be subject to all of the requirements of the Ordinance.

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

1. The deductions from salaries, wages, and other compensation required to be made by employers are to begin with the compensation earned on and after the effective date of the Ordinance. The employer (in addition to any return required to be filed with respect to his own earnings or net profits) shall, on or before the last day of each month, make a return and pay to the Superintendent, the tax withheld during the preceding month. Provided, however, the Superintendent shall have the authority to approve the filing of returns and payments of the tax withheld on shorter or longer period.
 - a. The Superintendent may authorize any employer to file returns and remit the tax withheld on a quarterly basis provided that such authorization does not jeopardize the interest of the City of Dayton.
 - b. Any employer who wishes to file and remit on a quarterly basis may request the authority for quarterly filing from the Superintendent. Such request must be in writing, stating the name and the City of Dayton 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.
 - c. In consideration such a request, the Superintendent will base his decision on the facts so that the best interest 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 Superintendent will notify the employer, in writing, of the decision made upon his request.
 - d. If the request is granted, the notice will specify the effective date of the authorization. In such case, the employer shall, on or before the last day of each month following the calendar quarter ending March 31, June 30, September 30 and December 31, make a return and pay to the Superintendent the tax withheld during the preceding calendar quarter. Once this approval is granted, the employer may continue on such basis unless notified in writing by the Superintendent that approval to file quarterly is withdrawn.
 - e. The Superintendent 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 to the best interests of the City to do so. Notice of the withdrawal shall be made in writing and may be served in person or mailed to the address

where the returns are mailed. Proof of mailing, furnished by the U. S. Post Office, shall be presumptive proof of receipt by the addressee. In such case, the employer must begin to file monthly.

2. If more than the amount of tax required to be deducted by the Ordinance is withheld from an employee's pay, such excess may be refunded by the employer or the Superintendent, depending upon the circumstances and the time when the over withholding is determined as follows:
 - a. Current employees:
 - (1) 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;
 - (2) 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;
 - (3) If the over withholding is discovered in the following year, the employer should notify the Superintendent of such over withholding and the circumstances thereof. Upon proper verification, the Superintendent shall refund to the employee, the amount of such excess withholding.
 - b. Former employees:
 - (1) In case too much has been withheld from an employee who is no longer employed by the employer, the employer shall notify the Superintendent of the amount and circumstances of such over withholding and the Superintendent shall then refund to the employee the amount of such excess withholding; or
 - (2) If the error is discovered by the employee, such employee shall file a claim with the Superintendent, and upon verification thereof by the employer, the Superintendent shall refund to the employee the amount of such excess withholding.
 - c. Non-resident employed outside the city:

Where an employer has withheld the tax from all wages of a non-resident of the city and such non-resident has been employed outside of the city for all or part of the time, such employee shall file a claim with the Superintendent, covering such withholding and the Superintendent shall, upon verification thereof by the employer, refund to the employee, the amount of any excess withholding.

d. Insufficient withholding:

If less than the amount of tax required to be deducted is withheld from an employee, such deficiency shall be withheld from subsequent wages. However, if the employee-employer relationship has terminated, the employer shall notify the Superintendent of such deficiency and the reason therefor.

3. Every employer is deemed to be a trustee for the City of Dayton 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.
4. Every such employer required to deduct and withhold the tax at the source is liable directly to the City of Dayton for payment of such tax whether the tax was actually collected from such employee or not.
5. On or before the 31st day of January, following any calendar year in which such deductions have been made by any employer, such employer shall file with the Superintendent, in the form prescribed by the Superintendent, an information return for each employee from whom the City of Dayton income tax has been withheld, clearly showing the name, address, and social security number of the employee, the total amount of compensation paid during the year and the amount of the City of Dayton income tax withheld from such employee.
6. For the convenience of employers, the information return referred to in Paragraph 5 above may be made in one of four (4) ways at the election of each employer, as follows:
 - a. Those employers using Form W-2 furnished commercially, may submit a copy of such commercial Form W-2 providing the copy furnished the City of Dayton clearly shows the information required in Paragraph 5 immediately preceding.
 - b. Those employers not using Form W-2 furnished commercially may obtain forms upon request from the Superintendent.
 - c. Where the furnishing of this information as indicated above will create a distinct hardship, the employer, upon written request to the Superintendent, may be permitted to furnish a list of all employees subject to the tax, which list shall show the employee's full name, last known address, social security number, gross amount of compensation paid during the year and the amount of Dayton 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 indicated on the first page.

- d. Those employers using or having access to electronic data processing equipment may be permitted, upon written request to the Superintendent, to furnish the required information in magnetic tape form. Such request should state the proposed format to insure that the City of Dayton is prepared to receive and utilize such information through computer methods. In addition, information may be provided on floppy disc if it meets the specifications established by the Superintendent.
 - e. 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.
7. In addition to such information returns, and at the time the same are filed, each employer shall file with the Superintendent a Reconciliation of Returns to enable the Superintendent to reconcile the sum total of compensation paid and taxes withheld as disclosed by information returns/ list of employees, and prior returns and remittances made pursuant to the Ordinance.
 8. Upon entering into an agreement with the Superintendent, an employer may file semi-annual 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 Superintendent.

C. Fractional Parts of Cent

In deducting and withholding the tax at the source and in payment of any tax due under the Ordinance, A fractional part of a cent shall be disregarded unless it amounts to one-half cent (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.

Article VI

Declarations

A. Requirement of Filing

1. A declaration of estimated 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. Where required, such declaration shall be filed within four (4) months after the beginning of the taxable year.
2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year. In the event a

taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith.

B. Date of Filing

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

C. Form for Filing

1. Such declaration shall be filed upon a form or forms furnished by or obtainable upon request from the Superintendent. Provided, however, credit shall be taken for the City of Dayton tax to be withheld from any portion of such income. In accordance with the provisions of Section 36.115 R.C.G.O., credit may be taken for tax to be paid or withheld and remitted to another taxing municipality.
2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any quarterly payment date as set forth in Article VI (E). Such amendment may be made on the regular declaration form or on the back of any quarterly notice form.

- D. An amended declaration must be filed on or before January 31 of the following 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 made for such taxable year underestimated the taxpayer's income by ten percent (10%) or more.

At such time, a payment which, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability shall be made. If, upon the filing of the return required by Section 5 of the Ordinance, it appears that taxpayer did not pay ninety percent (90%) of his 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 36.112 R.C.G.O.

E. Dates of Payment

1. The estimated tax may be paid in full with the declaration or in equal installments on or before the last day of the fourth, seventh, tenth and thirteenth month after the beginning of the taxable year.

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

F. Final Returns Required

The filing of a declaration does not relieve the taxpayer of the necessity of filing a final return even though there is no change in the declared tax liability. A final return must be filed to obtain a refund of any overpayment.

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 returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits, or both. Such records shall be preserved for a period of not less than five (5) years from the date the final return is filed and paid or the withholding taxes are paid.

Article VIII

Exemptions

The following shall not be considered taxable:

- A. Poor relief, unemployment insurance benefits, old age pensions or similar payments received from local, state or federal governments or charitable or religious organizations.
- B. Proceeds of insurance, annuities, workmen's compensation, social security benefits, pensions, compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits.
- C. Compensation for damage to property by way of insurance or otherwise.
- D. Interest and dividends from intangible property. If interest income is not specifically identifiable from the taxpayer's records, the amount deductible will be limited to the maximum interest chargeable under the general laws of the State of Ohio.
- E. Military pay and allowances received as a member of the armed forces of the United States. In the case of members of the National Guard, Air National Guard, Organized Reserves and Air Reserves, this exception shall apply only to their drill and flight pay.

- F. Any charitable, educational, fraternal or other type of non-profit organization or association enumerated in Section 718.01 of the Revised Code of Ohio which is exempt from payment of real estate taxes is exempt from payment of the tax imposed by the Ordinance.
1. Any association or organization falling in the category listed in the preceding paragraph not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the taxes levied under the Ordinance on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.
 2. Where such non-profit association or organization conducts income producing business both within and without the corporate limits, it shall calculate its profits allocable to the city under the method or methods provided above.
- G. Salaries, wages, commissions, and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any, act of Congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from interstate commerce.
- H. Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.

Article IX

Return and Payment of Tax

- A. Date and Requirement for Filing.
1. On or before April 30 of the year following the effective date of the Ordinance and each year thereafter, every person subject to the provisions of the Ordinance shall, except as hereinafter provided, make and file with the Superintendent, a return on a form prescribed by and obtainable upon request from the Superintendent, whether or not a tax be due.
 2. If the return is made for a fiscal year or any period less than a year, said return shall be made within four (4) months from the end of such fiscal year or other period.
 3. Every person subject to the provisions of the Ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, wages, commissions, and other personal service compensation, net profits from business or other activities, including the rental from real and personal property, and other income taxable under the Ordinance, earned and accrued or received for

- the period covered by the return and such other pertinent facts and information in detail as the Superintendent may require.
4. Where an employees entire earnings for the tax period are paid by an employer or employers, and the full tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire earnings 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 earnings are reported to the Superintendent, and where such employee has no taxable income other than such earnings and the tax so withheld has been paid to the Superintendent, such employee need not file a return.
 5. An employee who is permitted to deduct business expenses from gross wages, salaries, or commissions must file a return in order to claim such deductions even though all or part of such wages, salaries, or commissions are subject to withholding.
 6. Any taxpayer who received taxable income not subject to withholding under the Ordinance must file a return.
 7. Any taxpayer having income, wages, or other compensation for which a return must be filed, and also having net profits from a business covering the same or a different period, is required to file only one (1) return.
 8. Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof.
 9. Except as provided for herein, the tax is on the partnership or association as an entity, whether resident or non-resident and a return is required disclosing the net profits allocable to the city and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity is required to make a return and pay the tax in accordance with Article III A-3b(2) of these Regulations.
 10. A husband and wife may file a joint return.
 11. Operating losses from business or professional activities, the profits of which would be taxable under the Ordinance, may be offset against salaries, wages, commissions and other personal service compensation or against net profits from other business or professional activities. Such losses are deductible only in the year incurred.

B. Extensions

1. Upon written request of the taxpayer made on or before the date for filing the return, and for good cause shown, the Superintendent may extend the time for filing such return for a period of not to exceed six (6) months or to one (1) month

beyond any extension requested of or granted by the Federal Internal Revenue Service. Whenever he deems such necessary, the Superintendent may require a tentative return accompanied by payment of the estimated tax. No penalty shall be assessed in those cases in which the return is filed and final tax paid within the period as extended provided all other filings and payment requirements of the Ordinance have been met.

2. Information returns, schedules and statements needed to support tax returns are to be filed within the time limits set forth for filing tax returns.
3. An automatic extension of 120 days is available for filing returns without request; however, a copy of the federal extension request form must be attached to the return.
4. Requests for extensions in excess of 120 days must be made in writing to the Superintendent prior to the original due date of the return. Such requests must be accompanied by a tentative or estimated return paying the full amount of liability shown due.

C. Payment with Return

1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Superintendent the amount of taxes shown as due thereon; provided, however, that where any portion of the tax do due, shall have been deducted at the source pursuant to the provisions of Section 36.104 R.C.G.O. or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 36.105 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 shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.
2. A taxpayer who has overpaid the amount of tax to which the City of Dayton is entitled under the provisions of the Ordinance may have such overpayment applied against any subsequent 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, Schedules and Statements

1. In returns filed hereunder, there shall be set forth the amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation subject to the tax earned from each employer, taxable net profits and other pertinent information as the Superintendent may require.

2. Where figures of total income, total deductions, and net profits are included, as shown by a Federal return, any items of income which are not subject to the Dayton tax and unallowable expenses shall be eliminated in determining net income subject to the Dayton tax. In such absence of records showing the actual unallowable expenses, such expenses shall be determined in accordance with Article III, A-6c (1) 07 of these Regulations. The fact that any taxpayer is not required to file a Federal tax return does not relieve him from filing a City of Dayton tax return.
3. If a change in Federal income tax liability, made by the Federal Internal Revenue Service, or by a judicial decision, results in an additional amount of tax payable to the City of Dayton, a report of such change shall be filed by the taxpayer within three (3) months after receipt of the final notice from the Federal Internal Revenue Service or final court decision.
4. If a change in Federal income tax liability results in a reduction of taxes owed and paid to the City of Dayton, a claim for refund shall be filed with the Superintendent as prescribed in Section 36.114 (B) R.C.G.O. and Article XV B1 of these Regulations.

Article XI

Consolidated Returns

- A. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership provided such group files consolidated returns for Federal Income tax purposes. For a subsidiary corporation to be included in a consolidated return, eighty percent (80%) of its stock must be owned by the other member of the affiliated group. A consolidated return must include all companies which are so affiliated.
- B. Once a consolidated return has been filed for any taxable year, the consolidated group must continue to file consolidated returns in subsequent years. unless:
 1. Permission in writing is granted by the Superintendent to file separate returns.
 2. A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year.
 3. A corporation member of the group is sold or exchanged. Liquidating a cooperation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.
- C. If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income from the entire taxable year of the common parent corporation and any subsidiaries which were members of the group

for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member -of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group, but 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.

- D. In determining the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property factor (Step 1 of the formula) shall be determined on the basis of the average net book value of the property during the period such corporation was a member of the group. The rental portion of the factor, however, shall be computed at 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 36.113 and 36.114 R.C.G.O. Such amended returns shall be on a form obtainable upon request from the Superintendent. 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 Superintendent.
2. Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's Dayton tax liability, such taxpayer shall make and file an amended City of Dayton income tax return showing income subject to the 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****A. Interest**

Except as provided in Paragraph C of this Article, all taxes imposed and all monies withheld or required to be withheld, by employers under the provisions of the Ordinance and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the prime rate plus 3 percentage points. The interest rate will be determined in the first business day of December from the rate published in the Wall Street Journal to be effective January 1 of the following year.

B. Penalties

In addition to interest as provided in Paragraph A hereof, penalties based on the unpaid tax are hereby imposed as follows:

1. For failure to pay taxes due, other than taxes withheld: one half of one percent (1/2 of 1%) per month or fraction thereof, or ten percent (10%) whichever is greater.
2. For failure to remit taxes withheld from employees: five percent (5%) per month or fraction thereof, or ten percent (10%), whichever is greater.
3. On the excess of ninety percent (90%) of the actual tax over the amount paid on declaration of estimated tax where a declaration has not been filed estimating a tax liability in the same or greater amount than paid the previous year, or where a final return has not been filed and the total paid on or before the end of the month following the close of the taxable year: ten percent (10%) of the difference between ninety percent (90%) of the total tax for the year and the amount paid through withholding or declarations.
4. Except in the case of fraud, the penalty shall not exceed fifty percent (50%) of the unpaid tax.

C. Exceptions

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

D. Appellate Review

Upon recommendation of the Superintendent, the Board of Adjudication may abate penalty and interest, or both.

E. Minimum Assessment

Penalty and interest charges shall not be levied when the total of such charges amounts to less than one dollar (\$1.00).

F. Violations by Employers

Any person required to withhold the tax who knowingly fails to withhold such tax, or pay over such tax or 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 to a penalty equal to the total amount of the tax evaded, or not withheld, or not paid over. No other penalty under Section 36.112 of the Ordinance shall be applied to any offense to which this penalty is applied.

G. Effect on Extensions

1. No penalty will be assessed on a return where a balance due is paid within the extended period for filing that return when such extension was authorized by the Superintendent as provided in Section 36.108, Paragraph C, R. C. G.O.
2. Penalty will be assessed from the date the return was due as provided in Sections 36.104, 36.105, and 36.108 R.C.G.O., when the return is not filed within the extended period referred to above.
3. Interest as provided in Section 36.112, Paragraph A, R.C.G.O. will be assessed on returns not filed within the due dates provided in Sections 36.104, 36.105, and 36.108, R.C.G.O. even though the time for filing the return has been extended.

H. Bad Checks

1. Where a check is used to pay tax, interest, and/or penalties and is subsequently returned by a financial institutional as not negotiable a \$15.00 return check fee will be assessed. This amount will be added to the account and is payable along with any tax, interest, or penalty remaining unpaid.

Article XIV

Violations / Penalties

- A. A person shall be guilty of a misdemeanor of the third degree if he shall:

1. Fail, neglect, or refuse to make any return or declaration required by the Ordinance; or
 2. Knowingly make an incorrect return; or
 3. Knowingly, fail, or refuse to pay the tax, penalties or interest imposed by the Ordinance; or
 4. Knowingly, fail, or refuse to withhold the tax from his employees, or remit such withholding to the Superintendent; or
 5. Refuse to permit the Superintendent or any duly authorized agent or employee to examine his books, records, papers and copies of Federal Income Tax Returns relating to the income or net profits of a taxpayer; or
 6. Fail to appear before the Superintendent and to produce the books, records, papers or copies of federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Superintendent; or
 7. Refuse to disclose to the Superintendent any information with respect to the income or net profits of a. taxpayers; or
 8. Fail to comply. with the provisions of the Ordinance or any order or subpoena of the Superintendent authorized hereby; or
 9. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by the Ordinance.
- B. Any person who has filed a return under the provisions of the Ordinance indicating the amount of tax due, and has failed -IP pay the said tax, together with any penalties or interest that may have accrued thereon, Shall not be deemed to have committed an offense for having knowingly failed-to pay the tax, penalties and interest due as provided in Division A-3, until the date of the filing of such return.
- C. The term "person" as used in this Article, shall, in addition to the meaning prescribed in Article II of these Regulations, include in the case of an association or corporation not having any partner, member or officer within the city of Dayton, any employee or agent of such association Or: corporation who can be found within the corporate limits of the city of Dayton.
- D. Prosecutions

All prosecutions under this section must be commenced within three (3) years from the time of the offense complained of; provided that in the case of fraud, failure to file-a return, or the omission that 25% or more of income required to be

reported, prosecutions may be commenced within six (6) years .H after the commission of the offense.

E. Failure to Receive Forms - Not a Defense

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

Article XV

Collection of Unpaid Taxes and Refund of Overpayments

A. Unpaid Sums: Civil. Suit

1. In addition to any criminal penalties which may be imposed pursuant to Section 36.113 R.C.G.O., all taxes imposed shall be collectible, together with any interest and penalties thereon, by Civil suit. Employers who are required, under Section 36.104 R.C.G.O. to withhold and remit the taxes required to. be Withheld wt:the source, and who' fail to withhold and/or remit, become liable to the City in a Civil suit to enforce the payment of the deficiency created by Such failure.
2. No additional assessment shall be made by the Superintendent after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall: be no period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report twenty-five percent (25%) or more of gross income shall be considered a substantial omission.
3. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the' Federal statute of limitations, the period within which an assessment may be made by the Superintendent is extended to one (1) year from the time of final determination of Federal tax liability.

B. Refunds and Overpayments

1. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made, or the return was due, or three (3) months after the determination of the Federal income tax liability, whichever is later.
2. No refund shall be made to .any taxpayer until he has complied with all provisions of the Ordinance and has furnished all information required by the Superintendent.

3. Overpayments will be either refunded or credited to the taxpayer's current year's liability at his option. Where no election has been made by the taxpayer, overpayments of any years' taxes shall be applied as follows:
 - a. To taxes owed for any previous years in the order in which such taxes become due.
 - b. To his current estimated tax liability.

C. Limitation

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

Article XVI

Examination of Books and Records, Information so Obtained Confidential: Penalty

A. Investigations by Superintendent

1. The Superintendent, 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 Superintendent 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 tax due under the Ordinance.
2. An employer or taxpayer shall furnish, within ten (10) days following a written request by the Superintendent, or his duly authorized agent, the means, facilities and opportunity for making examinations and investigations authorized by the Ordinance.

B. Subpoena of Records and Persons

1. The Superintendent, or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The Superintendent may compel the production of books, papers, and records and the attendance of all persons before him, whether as parties or witness, whenever he

- believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.
2. The Superintendent'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 Superintendent.
 3. The Superintendent 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 Superintendent is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
 4. Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show the time and place of the hearing and what books, papers or records the witness is to make available at such hearings.
 5. The notice shall be served by the Superintendent or his duly appointed agent, by delivering it to the person named in the notice, or by leaving the notice at his usual place of business or residence, or by mailing it to the person by registered mail, return receipt requested, addressed to his usual place of business or residence.

C. 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 Superintendent 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 36.113 R.C.G.O.

D. Confidential Nature of Examinations

Any information gained as a result of any returns, investigations, verifications, or hearings before the Superintendent, 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 of the third degree and shall be penalized as provided in the General Offense Code. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the City of Dayton who violates the provisions

of Section 36.119 R.C.G.O. relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

E. Retention of Records

All employers and taxpayers are required to keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits, or both. Such records shall be preserved for a period of not less than five (5) years from the date the final return is filed and paid or the withholding taxes are paid.

Article XVII

Credit Allowed for Tax Paid in Another Municipality

A. 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.

B. Credits to Residents

Resident individuals of the city who are required to Pay and do pay, a tax to another municipality on salaries, wages, commissions or other compensation for work done or services performed in such other municipality or on net profits from business, professions or other activities conducted in such other municipality, may claim a credit of the amount of tax paid by them or on their behalf to such other municipality but only to the extent of the tax imposed by Sections 36.100 through 36.125 R.C.a.0. on such compensation or net profits.

C. No credit will be given unless the taxpayer claims such credit on his final return or other form prescribed by the Superintendent, and presents such evidence of the payment of a similar tax to another municipality, as the Superintendent may require.

A statement satisfactory to the Superintendent 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 Terminations of Ordinance

A. Authority to Collect after Termination of Ordinance 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

that date, subject, however, to the provisions of Section 36.113 R.C.G.O., with respect to the limitation of time within which an additional assessment may be made.

B. Payment of Taxes

1. Taxes due and unpaid on account of compensation paid or received and on account of profits earned in the last effective year of the Ordinance or any part thereof which remain unpaid on December 31, 1994, are payable in full on or before the dates specified in Sections 36.104 and 36.108 R.C.G.O. and Articles V and IX of these Regulations, and all final returns and withholding reports must be filed on or before that date, unless such dates are extended by the Superintendent,
2. For purposes of collection of delinquent or unpaid taxes, actions or proceedings for such collection and/or the collection of interest and penalties thereon, or enforcing any provisions of the Ordinance, (including prosecutions under the criminal sections of the Ordinance and including appeals before the 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 this chapter 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, 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 such income tax overpayments as provided in Section 36.114 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 Superintendent of Taxation

A. Collection of Tax and Retention of Records

1. It shall be the duty of the Superintendent to receive the tax imposed by the Ordinance in the, manner prescribed therein from the taxpayers; to keep an accurate record thereof, and to report daily all monies so received.

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

B. Enforcement Provisions

1. The Superintendent is charged with the administration and enforcement of the provisions of the Ordinance and is subject to the approval of the City Commission 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 Superintendent has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the Ordinance.
2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the Ordinance or these Rules and Regulations, should submit to the Superintendent in writing, all facts involved and the ruling sought.
3. These Regulations, together with all amendments and supplements hereto and all changes herein, will be on file with the Clerk of Commission and at the office of the Superintendent and will be open to public inspection.
4. The Superintendent 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 Superintendent that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the Ordinance and shall not exceed a period in excess of twelve (12) months.
5. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections. 36.113 and 36.114 R.C.G.O. shall apply.

C. Estimation of Tax by Superintendent

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

1. General Provisions:

- a. If the Superintendent determines that any taxpayer subject to the provisions of the Ordinance had a tax liability for which he has filed no return or has filed an incorrect return and has failed to pay the full amount of tax due, the Superintendent may cause issuance of a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.
 - (1) Such proposed assessment shall be served upon the taxpayer in person or by mailing to his last known address. Proof of mailing furnished by the U. S. Post Office shall be presumptive proof of receipt thereof by the addressee.
 - (2) A taxpayer may, within fifteen (15) days after the date the proposed assessment was served or mailed, file a written protest with the Superintendent. Within fifteen (15) days after receipt of the protest, the Superintendent shall give the protestant an opportunity to be heard; provided further that the Superintendent May extend the date of hearing for good cause shown. After the hearing, the Superintendent shall withdraw the assessment or he shall adjust or reaffirm the assessment and it shall then become final. If no protest is filed as herein provided, such proposed assessment shall become final fifteen (15) days after being served.
- b. After a proposed assessment becomes final, notice of such final assessment shall be issued and shall be served in the same manner as a proposed assessment.
 - (1) A taxpayer shall have fifteen (15) days after the date the final assessment was served or mailed within which to file a written notice of appeal with the Board of Tax Appeals. Such written notice of appeal shall be filed in a sealed envelope plainly marked "Appeal to Board of Tax Appeals" and mailed or delivered to the Superintendent who shall, within five (5) days after receipt thereof, deliver such appeal to the Chairman of the Board of Tax Appeals or, if the Chairman is not available, to the Vice-Chairman.
 - (2) The Board Of Tax Appeals, upon receipt of a notice of appeal, shall within fifteen (15) days notify the Superintendent thereof who shall forward within fifteen (15) days to the Board, a certified transcript of all actions taken by him with respect to said final assessment. Such transcript shall be open to inspection by the appellant and his counsel.
 - (3) Any taxpayer against whom a final assessment has been issued and who has filed a notice of appeal shall be granted a hearing by the Board of Tax Appeals. At such hearing the appellant and the Superintendent shall be given opportunity to present evidence relating to the said final assessment. After the conclusion of such hearing, the Board of Tax Appeals shall

affirm, reverse or modify the said final assessment and shall furnish a copy of its decision in respect thereof to the appellant and the Superintendent. The appellant's copy of said decision shall be served upon him in the same manner as herein provided for the serving of assessments.

- c. When any taxpayer subject to the provisions of the Ordinance has filed a return indicating the amount of tax due and has failed to pay said tax to the Superintendent as required by the Ordinance, the Superintendent need not issue an Assessment but may proceed under the provisions of Sections 36.113 and 36.114 R.C.G.O.

2. Provisions Affecting Employers

- a. If the Superintendent determines that an Employer subject to the provisions of the Ordinance has failed to file a return for tax withheld and has failed to pay to the Superintendent the full amount of said taxes, the Superintendent shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may accrue thereon, and the provisions of paragraphs (D) (1) of Section 36.118 R.C.G.O. shall than apply.
- b. If the Superintendent determines that an employer subject to the provisions of the Ordinance has failed to withhold tax, the Superintendent shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon and the provisions of Paragraphs (D) (1) of Section 36.118 R. C. G. O. shall then apply.
- c. When an employer subject to the provisions of the Ordinance has filed a return indicating the amount of tax withheld and has failed to pay said tax to the Superintendent as required by the Ordinance, the Superintendent may proceed under the provisions of Sections 36.113 and 36.114 R.C.G.O. and need not issue an assessment as provided in Section 36.118 Divisions (F) and (G) R.C.G.O.

Article XXI

Savings Clause

- A. These Rules and Regulations shall not apply to any person, firm, corporation or income, as to whom, or as to which it is beyond the power of the City Commission to impose the tax provided for in the Ordinance.
- B. 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 article, or part of these

Rules and Regulations and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, parts of the Ordinance or these Rules and Regulations. It is hereby declared to be the intention of the City Commission 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 Adjudication and Board of Tax Appeals

A. Board of Adjudication

1. A Board of Adjudication, consisting of the City Manager or a person designated by him, the Director of Finance or a person designated by him, and the City Attorney or an Assistant City Attorney designated by him, is hereby created. The Board shall select, each year for a one (1) year term, one (1) of its members to serve as Chairman and one (1) to serve as Secretary. A majority of the members of the Board shall constitute a quorum.
2. The Board shall adopt its own procedural rules and shall keep a record of the proceedings. All hearings of the Board shall be conducted privately and the provisions of Section 36.119 R.C.G.O., with reference to the confidential character of information required to be disclosed by the Ordinance shall apply to such matters as may be presented to the Board of Adjudication.
3. The Board shall have the authority, upon request of the Superintendent, to modify in whole or in part, any assessment of tax, penalty and/or interest required to be made by the Ordinance. In addition, the Board may authorized the Superintendent to accept partial payments for a period in excess of the time authorized in Section 36.118 R.C.G.O.

B. Board of Tax Appeals

1. A Board of Tax Appeals, consisting of three (3) representative citizens of the City of Dayton, not otherwise employed by the City of Dayton, to be appointed by the City Commission for a term of one (1) year, is hereby created.
2. One (1) member of the Board shall be chosen by the members as Chairman of the Board and all may receive per diem compensation to be fixed by the City Commission. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its proceedings. All hearings by the Board may be conducted privately and the provisions of Section 36.119 R.C.G.O., with reference to the confidential character of information required to be disclosed by the Ordinance shall apply to such matters as may be heard on appeal before the Board.

3. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such assessment, ruling or decision, or any part thereof, made by the Superintendent from which an appeal has been filed as provided in Section 36.118 R.C.G.O.

Article XXIII

Special Rulings

ALIMONY

Alimony payments are not deductible from the gross income of the payer; also, the payments are not taxable to the recipient.

ANNEXATION

When an area is annexed during the year, new taxpayers may file either on a prorata 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.

AWARDS

Awards and other contest prizes are subject to the city income tax. (Legal Opinion May 24, 1972 and April 2, 1953. For lottery winnings - See Lottery).

BANKRUPTCY

- A. Taxes due are not cancelled by a discharge in bankruptcy and any balance due may be collected in Civil Suit.
- B. Interest and penalties accruing after the filing of a petition in bankruptcy are recoverable. (Bruning vs 192 Federal Supplement 826).

BANKS

- A. State banks cannot be taxed on their income from intangibles, but are taxable on other income in the same as other corporations. (Ohio Finance vs City of Toledo).
- B. Expenses incurred in securing non-taxable income may not be considered in calculating the net profits from taxable income. (Art. III, A.6,C,07.)
- C. Banks cannot be required to file separate returns for their banking and real estate activities.

BROKERS

- A. Taxable on following types of income:
 1. Commission earned
 2. Profits from trading accounts
 3. Floor brokerage fees from City Exchange
- B. Not taxable on income from:
 1. Capital Gains
 2. Dividends

3. Floor brokerage fees, other than City exchange
4. Interest
5. Life Insurance Proceeds
6. Settlement of damage suit. Partners and officers must file except on income which the partnership reports.

BUILDING AND LOAN COMPANIES

Only their income from intangibles and capital gains is exempt from taxation. (Ohio Finance vs Toledo)

BUS TERMINALS

Rentals from bus terminals are not taxable if owned by a motor carrier. (Ohio Revised Code 4921.18 and Doctrine of Preemption.)

CAPITAL GAINS

1. Capital gains from the sale or exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned.
2. Any amount received on a sale or other disposition of tangible personal property used in trade or business in excess of book value, 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.
3. Ordinary gain realized from the disposition of real property (held more than six (6) months) used in trade or business shall be treated as taxable income in the same amount as computed for Federal purposes in accordance with existing Internal Revenue Codes.
4. 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 such business.

CAPITAL LOSSES

Not deductible

CARRIERS

Carriers operating under a certificate issued by the P.U.C.O. are immune under the Ohio Revised Code exemption of motor carriers, from City income tax even though the certificate under which they are operating is held by someone else.

CARRY-OVER LOSSES

May not be carried backward or forward. CHURCHES

Income from property owned by churches and not incidental to its 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.) (Section 3,E 1).

CREDITING OF PAYMENTS

1. Payments to be applied first to settlement of assessment of oldest year unless taxpayer specifies the payment is for taxes of a particular year.
2. A tax payment submitted for one year cannot be credited to an assessment for a prior year without notifying the taxpayers.

DIVISION OF FUNDS

The Superintendent 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.

EMPLOYEE

1. The questions 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:

- A. Wages withheld for federal income tax purposes
- B. Withholding for Social Security
- C. Payment of Workmen's Compensation by an employer for his/her benefit.

If none of these are done, the individual is not an employee.

2. When required to travel, an employee may deduct travel expenses when not reimbursed for same.
3. Employee is to be considered as reporting on a cash basis.
4. 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.
5. Schedule A - Expenses are personal deductions of a wage earner; not deductible for City income tax purposes unless they relate directly to the production of income.

ESTATES

1. 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.
2. Amounts paid to a widow of a former employee by an employer are, from a strict legal point of view, not earned income, as the widow has performed no services for the employer. _However, from a practical point of view, it may be well to follow the Federal statutory provisions which provide that "Such payments in the amount of \$5,000.00 or less are excluded from gross income.") In other words, it may be well to consider the amounts paid in excess of \$5,000.00 to be subject to municipal income tax.

EXEMPTION

Burden of proof is on the prospective taxpayer.

EXPENSES

1. Judgements of personal injuries taken against an owner of real property used in business are a deductible expense.
2. Attorneys fees that are related to taxable activities are deductible expenses.

3. Unless the taxpayer can present definite records of actual costs, a formula of 5% of unearned income will be considered as the applicable expense incurred in the production of non-taxable income. The ratio of non-taxable income to total income will often be a more equitable percentage.
4. The 5% add back rule applies only to the net profits on business and professions, not to persons whose only taxable income is from wages.

FEDERAL EMPLOYEES

1. Taxable by City on the same basis as any privately employed person. (Buck Act 1940 - 4 U.S.C. Section 105-100), Ohio (forges vs Schiele, Hamilton County Court Common Pleas, #A-164981, 9/9/59) Springfield vs Saunders, Clark County Court of Appeals (1962) 179 N/E 2nd 370.)
2. Non-residents are taxable even though working in an area within the City exclusively under the jurisdiction of the United States. (Thompson vs Philadelphia (1958) 258 F. 2d 320, Ort, den. 358 U.S. 931, 79 S ct 317, 43h. den. 2/24/59).

FEES

Fees paid a realtor for arranging a loan are taxable. FELLOWSHIP GRANTS
Fellowship grants are not taxable to the extent of tuition, room and board. Stipends received for work done and services performed are taxable.

FORMULA

1. Required where the parent corporation sells its product to its local offices at a profit.
2. Geographic location of mobile equipment governs its tax liability both when in use and at rest. (Legal opinion - June 14, 1957.)
3. 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 Dayton.

FRANCHISE FEES

Royalty income from foreign (outside the United States) subsidiaries is not taxable.

GENERAL CODE

1. The following sub-sections of Section 5728 of the Revised Code of Ohio exempt the types of companies listed below from paying municipal income tax by reason of paying excise taxes to the State.
38 - Electric light, gas, intra-state toll bridges, messenger, natural gas, telephone, union depot, and water transportation.
39 - Express and Telegraph
40 - Railroads and interburban, street and suburban railroad
41 - Pipe Lines
First \$25,000.00 of gross receipts exempted from such excise taxes.
2. 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.

5725.18 Domestic Insurance Companies 5729.03 Foreign Insurance Companies 4923.11
Private Motor Carriers

GROUND RENTS

1. 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.
2. To be earned income, it must be the result of labor, management or supervision of real estate (Murray vs Philadelphia 363Pa524); and since ground rents are the same as receipts from intangibles, they are not taxable.

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. (Code Sec. 79).

INCOME

Payments for suggestions for improving a business are taxable. INDEPENDENT CONTRACTORS

Lists of independent contractors must be furnished by brokers and insurance contractors even though payment is on a commission basis.

INFORMATION

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 Superintendent.

INSURANCE

1. When a domestic insurance company has filed a certificate that is so classified, it need not file a declaration or final return. (5725.18 Revised Code.)
2. With respect to non-resident 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.
3. 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.

INSURANCE AGENTS

Commissions received by heirs, after the death of the agent, are not earned income and non-taxable.

INTANGIBLE INCOME

1. Though the intangible tax has been repealed by the State of Ohio, cities are still preempted from taxing intangible income.

2. A merchantile company retaining its notes cannot claim these as intangible income.

INVESTMENT INTEREST EXPENSE

Investment interest expense is deductible only to the extent that it is a result of a taxable operation.

JOINT RETURNS

Husband and wife may file whether in same or separate business and may deduct losses from salaries.

LOANS

By professional persons to clients are not deductible.

LOSSES

1. Audit: On the basis of municipal, not Federal regulations.
2. Business losses only will be permitted.
3. May not be carried backward or forward.
4. Applicable schedules must all be completed before an operating loss is allowed.

LOTTERY

Winnings from the State Lottery are not taxable. (Legal Opinion June 20, 1975).

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 formula by the taxpayer selling to such independent contractor.

MOVING EXPENSES

All reimbursements and other payments to both old and new employees for moving expenses are to be included in gross income. (I.R.S. Code Section 82; 1.82-1 (2) (2) and (3). For allowable expenses refer to Section 217 I.R.S. Code.

NON-RESIDENT

1. 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.
2. Non-resident employers doing business in a municipality must withhold on their employees.
3. A non-resident is taxable in entire pay until substantiation from employer is submitted.

PAY

1. Severance pay is taxable.

2. Sick and vacation pay is taxable on the same ratio as normal earnings. (Legal Opinion Nov. 11, 1954.)

PSEUDO CORPORATION (11205 SMALL BUSINESS CORPORATION)

A legal corporation is taxable as a separate entity for municipal tax purposes and distributions to shareholders are considered as non-taxable income to the shareholders. The losses are not deductible by individual stockholders.

RECORDS

1. Refunds may be withheld from an employee until the employer has filed withholding statements.
2. All forms required, including current declarations, completed schedules, and the furnishings of any information requested by an auditor, are to be filed before a refund is processed.
3. Where an employee also has outside income upon which he has filed and paid, substantiation of the amount withheld will be required by the employer.
4. Statute of limitations runs from due date of the final return.
5. Refunds will not be made to an individual or business moving from the City until a return for the portion of the year involved has been filed and audited.
6. 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, and the resulting percentage applied to the total annual income from 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.

RENTALS

1. Received by a corporation from property outside the corporate limits are not taxable, even though the stockholders may be residents.
2. Fair rental value of a parsonage is not considered as income. RESIDENCE

RESIDENCE

1. An individual retaining his domicile within the City is liable for the tax on his wages even though said wages are received for work done or on a part time or temporary basis outside the city.
2. The term "resident" means an individual domiciled in the City of Dayton, Ohio. "Domicile" means a place where a person has his true fixed permanent home to which, whenever absent therefrom, he intends to return.

RETIREMENT PLANS

1. 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 Cor. (I.C.M.A.)
- E. Tax Shelter Annuities

Income tax notice was effective January 1, 1975. (Law Dept. Opinion 7/21/77)

2. 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.

RETURNS

- 1. Any firm engaged in business in the City must file until declared non-taxable.
- 2. Returns are required even where the tax liability is the same as the amount declared or almost entirely from non-taxable sources.
- 3. Where a corporation owning other companies has reported on a consolidated basis, they must continue to do so and where the taxpayer has been reporting for each of its companies, it must continue such separate system until change is authorize# by the Superintendent.
- 4. Formula
Expenses of a national organization filing under separate accounting may not be disallowed merely because they pertain to the national office.
- 5. Preparation by Tax Office
Returns will be made out only for the taxpayer or a member of the immediate family, although specific questions may be answered for an agent of the taxpayer.
- 6. Trustees
Trustees are required to file returns on the trust even though the tax is paid by the recipient and the said return must give the names and addresses of the beneficiaries of the trust.
- 7. Married persons may file joint returns.

ROYALTIES

Royalties are taxable if not taxed by the State as productive intangible investments such as income from patents and copyrights. Royalties derived from land leases (mineral rights, oil, gravel, etc.) are taxable.

SCHOOL DISTRICT INCOME TAXES

Credit cannot be taken for taxes paid to a school district on the same income taxed by the City of Dayton.

SOLICITATION

1. Soliciting within the corporate limits on a regular basis is a taxable activity regardless of where the sale is consummated.
2. Telephone orders given as a result of telephone solicitation made outside the corporate limits with no other solicitation are not taxable.

STATE INCOME TAXES

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

STOCK OPTIONS EXERCISED

Qualified: When stock acquired under a qualified stock option is sold or exchanged before it is held 3 years, there may be ordinary income (difference between option price and market value on date of exercise) plus capital gain for any amount received above the market value on date of exercise. That portion considered to be ordinary income is subject to municipal tax. That portion considered capital gain is not taxable.

Non-Qualified: Based on I.R.S. Code Section 421, the employee will realize income at the time when the option is exercised and the spread between the option price and fair market value of the stock will be compensation taxable as ordinary income at the time of exercise.

TRUSTEE

The Primary liability for reporting and paying taxes on income taxable under the Ordinance is on the Trustee. However, this does not relieve the beneficiary when the trustee does not report and pay.

VOW OF POVERTY

Salaries and wages are not considered received by the individual member but by the order of organization. Section 501d of the I.R.S. code prohibit taxation of apostolic associations or organizations. (Legal Opinion May 9, 1975.)

WITHHOLDING

1. Non-resident employers not required to withhold but doing so voluntarily will be assessed for late filing of withholding taxes.
2. Not required of a wholly owned subsidiary of a local company when said authority is located outside the City.

Article XXIV

Relationship with Rules and Regulations Adopted Pursuant to Ordinance

- A. The effectiveness of these Rules and Regulations and the Regulations issued under Section 36.118 R.C.G.O. are to be considered consecutive.
- B. From time to time, amendments and supplements to these Regulations may be issued by the Superintendent subject to the approval of the City Commission.