

The City of Ashtabula, Ohio

INCOME TAX RULES & REGULATIONS

Adopted under the Authority of Chapter 189  
Section 189.09, of the City of Ashtabula Code of Ordinances

**ARTICLE I**

**PURPOSE**

Section 189.02 of income tax Ordinance 2007-26, passed March 19, 2007, outlines the uses to which funds raised are to be put and the items on which the tax is to be applied. The effective period of the tax is specified in Sections 189.04 and 189.18.

**ARTICLE II**

**DEFINITIONS**

As used in these Rules & 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. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

“Adjusted federal taxable income” - A “C” corporation’s federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute “Adjusted Federal Taxable Income” as if the pass-through entity was a “C” corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

“Administrator” - The individual designated by the Ordinance, whether appointed or elected, to administer and enforce the provisions of the Ordinance.

“Association” - A partnership, limited partnership, limited liability company, Chapter S Corporations as defined in the federal tax code, 26 U.S.C. 1361, or any other form of unincorporated enterprise.

“Board of Review” - The Board created by and constituted as provided in Section 189.15.

“Business” - An enterprise, activity, profession, public utility, public service, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or other entity.

“City” - The City of Ashtabula, Ohio.

“Corporation” - A corporation (but not including a subchapter S corporation) or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory, or foreign country or dependency.

“Domicile” - The permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

“Employee” - An individual who works for income, wages, salary, commission or other type of compensation in the service of and under the control of an employer.

“Employer” - An individual, association, corporation, governmental body, or any other entity, whether or not organized for profit, that provides one or more persons a salary, wage, commission, other compensation or other income basis.

"Fiscal Year" - An accounting period of twelve months, ending on any day other than December 31.

“Generic form” - An electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or separate requests for refunds that contain all the information required on City of Ashtabula’s regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms without altering the City of Ashtabula’s procedures for processing forms.

"Gross Receipts" - The total revenue derived from sales, work done, or service rendered, before any deductions, exceptions, or credits are claimed.

“Income” - Shall include all monies derived from any source whatsoever, including but not limited to:

(1) All salaries, wages, commissions, other compensation and other income from whatever source received by residents of the City.

(2) All salaries, income, qualifying wages, commissions, other compensation from whatever source received by nonresidents for work done or services performed or rendered or activities conducted in the City of Ashtabula.

(3) The portion attributable to the City of Ashtabula of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in the City of Ashtabula. Such portion shall be determined as provided in Section 189.02 and in accordance with the regulations adopted by the Board of Review pursuant to Section 189.15.

“Net profits” - For tax years prior to 2004, the net gain from the operation of a business, profession or enterprise after provision for all cost and expense incurred in the conduct thereof, including reasonable allowance for depreciation, depletion, amortization and reasonable additions to reserve for bad debts, either paid or accrued in accordance with recognized principles of accounting applicable to the method of accounting regularly employed and without deduction of Federal Taxes based on income, and without deducting taxes imposed by this Ordinance. (For 2004 and later years See “adjusted federal taxable income”.)

“Nonresident” - An individual domiciled outside the City of Ashtabula.

"Nonresident Unincorporated Business Entity" - An unincorporated business entity not having any office or place of business within the City of Ashtabula.

"Other Entity" means any person or unincorporated body not previously named or defined and includes fiduciaries located in the City of Ashtabula.

“Pass Through Entity” - A partnership, S corporation, limited liability company (i.e., a limited liability company formed under Chapter 1705 of the Revised Code or under the laws of another state), or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code. For tax treatment purposes by the City of Ashtabula, pass-through entities shall be treated as associations unless otherwise specified.

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

“Qualifying wage” - Wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. “Qualifying wage” represents employees’ income from which municipal tax shall be deducted by the employer, and any wages not considered a part of “qualifying wage” shall not be taxed by the City of Ashtabula. This definition is effective January 1, 2004.

“Resident” - An individual domiciled in the City of Ashtabula.

"Resident Unincorporated Business Entity" - An unincorporated business entity having an office or place of business within the City of Ashtabula.

"Taxable Year" - The calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net profits are to be computed under the Chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

“Taxpayer” - A person, whether an individual, partnership, association, or any corporation or other entity, required hereunder to file a return or pay a tax. It does not include any person that is

a disregarded entity or a qualifying subchapter S (if the subchapter S is a subsidiary entity). The term "taxpayer" does include any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

### **ARTICLE III**

#### **IMPOSITION OF TAX**

##### **A. Bases.**

###### **1. Resident:**

a. In the case of residents of the City an annual tax at the rate of one and eight-tenths percent (1.8%) is imposed on and after January 1, 1992, on income, salaries, qualifying wages, commissions, and other compensation earned or received during the effective period of Chapter 189, whether such income is received or earned directly or through an agent and whether paid in cash or in property. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 189.02 of Chapter 189, 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. An individual may not claim federal Form 2106 deductions for City income tax purposes unless that individual has claimed the same deduction for federal income tax purposes and attaches to his annual return a copy of the federal Form 2106 with the Internal Revenue Service. Form 2106 expenses must be allocated proportionally as income related to the 2106 has been allocated. The expenses are subject to audit and approval by the City's Income Tax Office.

b. The following items are subject to the tax imposed by Section 189.02:

(1) Income, including but not limited to salaries, qualifying wages, bonuses and incentive payments earned by an individual, whether directly or through an agent, and whether in cash or in property for services rendered during the tax period as an officer, director or employee of a corporation (including charitable and other non-profit organizations), or association or any other entity or person; an officer or employee (whether elected, appointed, or commissioned) of the United States Government or any of its agencies or of the State of Ohio or any of its political sub-divisions or agencies thereof; or any foreign country or dependency.

(a) "Qualifying wages" means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

(1A) Deduct any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.

(2A) Add the following amounts:

(i) Any amount not included in wages solely because the employee was employed by the employer prior to April 1, 1986;

(ii) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. This sub-paragraph applies only to those amounts constituting ordinary income.

(iii) Any amount not included in wages if the amount is an amount described in section 401(k) or 457 of the Internal Revenue Code. This sub-paragraph applies only to employee contributions and employee deferrals.

(iv) Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.

(b) The definition for “qualifying wage” is effective for taxable years beginning after 2003.

(2) The employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued. However, if an incentive stock option is exercised as a disqualifying disposition, the income is then considered ordinary income (vs. capital gains) and therefore is subject to Medicare, and consequently subject to tax by the City.

(3)(a) An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by the City or, if the income is subject to Medicare withholding, by the employer's exemption from the requirement to withhold the tax.

(3)(b) The failure of an employer to remit to the City the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.

(4) Commissions earned by a taxpayer, whether directly or through an agent, and whether in cash or in property for services rendered during the effective period of Chapter 189, regardless of how computed or by whom or wheresoever paid.

(a) If amounts received as a drawing account exceed the commissions earned and the excess is not subject to the demand of the employer for repayment, the tax is payable on the amounts received as a drawing account.

(b) Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expenses or advances as such from his 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.

(c) If commissions are included in the net earnings of the trade, business, profession, enterprise or activity, carried on by an unincorporated entity or association of which the individual receiving such commission is owner or part owner and therefore subject to Article III A3 or A4 of the Rules & Regulations, they shall not be subject to Article A1 of the Rules & Regulations.

(5) Fees, unless such fees are properly includible as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity or association owned or partly owned by said individual and such net profits are subject to Article III A3 and/or A4 of the Rules & Regulations.

(6) For clarification, other compensation and income, as reported on W-2's or 1099's, includes but is not limited to tips, bonuses, lump sum distribution from qualified pension and profit sharing trusts not made pursuant to employees retirement, income from "non-competition" covenants, profit sharing, portions of stock options that are not considered capital gains by the City, and gifts of any type in connection with services rendered, compensation paid to casual employees and other types of employees, and compensation received by domestic servants.

(7) Payments made to an employee by an employer as sick leave, vacation pay, or any other types of payments made under a wage or salary continuation plan, including "sub" pay (such as pay received from unions by individuals in lieu of wages), during periods of absence from work are taxable when paid.

(8) Payments made to an employee by an employer as separation or severance pay-outs (including but not limited to separation pay, termination pay, and early retirement incentives) and reportable as earned income (including, but not limited to, sick pay and vacation pay) are taxable when paid if applicable tax has not previously been paid. On-going retirement benefits, such as payments from pension plans, are exempt from City income tax.

(9) Moving expenses, to the extent they are reimbursed by employers for actual expenses incurred, are not taxable if deducted on the Federal return.

(10) Loss from the operation of a business, including rental losses, may not be used to offset the income on a taxpayer's W-2 form, nor offset the income on the W-2 form of the taxpayer's spouse.

(11) For an individual who has income required to be reported on federal schedules C, E, and/or F, the income shall be considered to be "net profits".

c. When compensation is paid or received in property, its fair market value at the time of receipt shall be subject to the tax and to withholding. Board, lodging and similar items received

by an employee in lieu of additional cash compensation shall be included in earnings at their fair market value, except in the case of domestics and other employees whose duties require them to live at their place of employment or assignment, board and lodging shall not be considered as wages or compensation earned.

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

## 2. Non-Resident Employee:

a. In the case of individuals who are not residents of the City, there is imposed under Section 189.02 of Chapter 189, a tax of one and eight-tenths percent (1.8%) is imposed on and after January 1, 1992, on all income, salaries, qualifying wages, commissions, and other compensation earned or received during the effective period of Chapter 189 for work done or services performed or rendered within the City, whether such income is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial. Tax shall not be levied on expenses reported in accordance with Federal guidelines for Federal Form 2106, subject to audit and approval by the City Income Tax Department. An employee who is permitted to deduct business expenses from income, qualifying wages, salaries, or commissions must file a return in order to claim such deductions even though all or part of such income, qualifying wages, salaries, or commissions are subject to withholding. An individual may not claim federal Form 2106 deductions for City income tax purposes unless that individual has claimed the same deduction for federal income tax purposes and attaches to her annual return a copy of the federal Form 2106 with the Internal Revenue Service. Form 2106 expenses must be allocated proportionally as income related to the 2106 has been allocated. The expenses are subject to audit and approval by the City's Income Tax Office.

b. The items subject to tax for non-residents are the same as those listed and defined in Article III A1 above, with the exception that Article III A1b(10) is excluded from tax on non-residents. For the methods of computing the extent of work or services performed within the City, in cases involving compensation for personal services partly within and partly without the City, see Article V A6 of these regulations.

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

### d. Occasional entrant.

(1) The City shall not tax the compensation paid to a non-resident individual for personal services or work performed by the individual in the City on twelve (12) or fewer days in

a calendar year (which hereby classifies the individual as an “occasional entrant”) unless one of the following applies:

(a) The individual is the employee of another person, the principal place of business in which the employee normally works is located in another municipal corporation in this state that imposes a tax applying to compensation paid to the individual for services performed on those days, and the individual is not liable to that other municipal corporation for tax on the compensation paid for such services.

(b) The individual is a professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the City.

(2) For purposes of the 12-day calculation, any portion of a day worked in the City shall be counted as one day worked in the City.

(3) Beginning with the thirteenth day, the employer of said individual shall begin withholding City income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the City in accordance with Section 189.06 of Chapter 189. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in the City by the individual for the first twelve (12) days. If the individual is self-employed or an independent contractor, it shall be the responsibility of the individual to remit the appropriate income tax to the City.

(4) Any tax withheld for the City under Article III A2d(1) is subject to being refunded only to the municipality in which the employer’s principal place of business is located, and only after the municipality has established that the employee has a liability to them.

### 3. Resident Unincorporated Businesses:

a. In the case of resident unincorporated businesses, associations, or other entities, there is imposed on and after January 1, 1992, an annual tax of one and eight-tenths percent (1.8%) on the net profits earned, accrued or received during the effective period of Chapter 189 attributable to the City under the formula or other method (see Article III C2) provided for in the paragraph following Section 189.02 I1c of Chapter 189, derived from work done or services performed or rendered and business or other activities conducted in the City. (See Article III A1e for tax on S corporation distributive shares.)

b. The tax imposed on resident associations or unincorporated entities owned by two or more persons is to be paid by the entities on behalf of the individual members or owners thereof, but the tax imposed on an unincorporated resident entity owned by one person is upon the individual owner. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III A3e and f below.



c. The tax imposed by Section 189.02 of Chapter 189 is imposed, on behalf of the members, on all resident unincorporated entities or associations having net profits attributable to the City under the method of allocation provided for in Chapter 189, regardless of where the owner or owners of such resident unincorporated business entities or associations reside.

d. Resident unincorporated entities or associations owned by two or more persons, all of whom are residents of the City, shall disregard the method of allocation provided for in Chapter 189 and pay the tax on their entire net profits thereof. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits; however, a return shall be required from any such owner or member having taxable income other than the distributive share of the net profits from the entity.

e. A resident individual who is sole owner of a resident unincorporated entity or association shall disregard the business allocation formula and pay the tax on the entire net profits of his resident unincorporated business entity or association.

f. In the case of a resident individual partner or part owner of a resident unincorporated entity or association, there is imposed an annual tax of one and eight-tenths percent (1.8%) on such individual's distributive share of net profits earned, accrued or received during the effective period of Chapter 189 not attributable to the City and not taxed against the entity.

#### 4. Non-resident Unincorporated Businesses or Associations:

a. In the case of resident unincorporated businesses, associations, or other entities, there is imposed an annual tax of one and eight-tenths percent (1.8%) on the net profits earned, accrued or received during the effective period of Chapter 189 attributable to the City, under the formula or other method (see Article III C2) provided for in the paragraph following Section 189.02 I1c of Chapter 189.

b. The tax imposed on non-resident unincorporated entities or associations owned by two or more persons are 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 other method (see Article III C2) and Article III A4d and e below.

c. Non-resident unincorporated entities or associations, owned by two or more persons all of whom are residents of the City, may elect to disregard the method of allocation provided for in Chapter 189 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.

d. A resident individual who is sole owner of a non-resident unincorporated business entity or association shall disregard the business allocation formula and pay the tax on the entire net profits of his unincorporated entity or association.

e. In the case of a resident individual partner or part owner of non-resident unincorporated entity or association, there is imposed an annual tax of one and eight-tenths percent (1.8%) on such individual's distributive share of net profits earned, accrued or received during the effective period of Chapter 189 not attributable to the City under the method of allocation provided for in Section 189.03 of Chapter 189 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, there is imposed an annual tax of one and eight-tenths percent (1.8%) on the net profits earned, received or accrued during the effective period of Chapter 189 attributable to the City under the formula or other method (see Article III C2) provided for in the paragraph following Section 189.02 I1c of Chapter 189.

b. In determining whether a corporation is conducting a business or other activity in the City, the provisions of Article III C of these regulations shall be applicable.

B. Clarification of taxation of net profits:

The following information is provided to clarify the calculations for net profits subject to taxation.

1. Net Profits (“adjusted federal taxable income”) means, for tax years 2004 and later, a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

a. Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

b. Add an amount equal to five per cent of intangible income deducted under division B1a of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

c. Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

d. (1) Except as provided in subparagraph B1d(2) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(2) Subparagraph B1d(1) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

e. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

f. In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

g. If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except:

(1) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and

(2) Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

2. For taxable years 2003 and prior, Article III B2 through B5 shall be substituted for the provisions of Article III B1:

a. Net Profits as used in Chapter 189 and these Rules & Regulations means net profits derived from any business, profession or other activity or undertaking carried on for profit or normally carried on for profit.

b. Net Profits as disclosed on any return filed pursuant to the provisions of Chapter 189 shall be computed by the same accounting method (i.e., either cash or accrual) used in reporting net income to the Federal Internal Revenue Service, providing such method does not conflict with any provisions of Chapter 189 or these Rules & Regulations, or the provisions of Ohio Revised Code Chapter 718.

3. Gross Receipts:

a. Gross receipts shall include, but not be limited to, income in the form of commissions, fees, rentals from real and tangible personal property and other compensation, for work done or services performed or rendered as well as income from sales of stock in trade.

b. From gross receipts there shall be deducted allowable expenses to arrive at the net profit subject to tax.

4. Expenses:

a. All ordinary and necessary expenses of doing business shall be allowed but no deduction may be claimed for salary or withdrawal of a proprietor or of the partners, members, or other owners of an unincorporated business, enterprise, or association.

(1) If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated for by insurance or otherwise, of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the Federal income tax. Provided, however, that loss on the sale, exchange or other disposition of depreciable property or real estate used in the taxpayer's business shall not be allowed as a deductible expense.

(2) 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.

(3) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Administrator (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.

(4) Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax then taxes on, and other expenses of, said property are not deductible. In any event, the following taxes are not deductible from income; (1) the tax under Chapter 189; (2) Federal or other taxes based upon income; (3) gift, estate or inheritance taxes; and (4) taxes for local benefits or improvements to property which tend to appreciate the value thereof.

#### 5. Other Income or Losses:

a. Capital gains and losses (capital or other) from sale, exchange or other disposition of property used in the trade or business shall not be taken into consideration in arriving at net profits earned. However, any amount or value received, realized or recognized on a sale or other disposition of tangible personal property or real property used in business, in excess of original book value, shall be treated as taxable income under Chapter 189 to the extent of depreciation previously taken as a deduction. The method of calculating the depreciation deduction shall not be considered when recovering the depreciation as a result of the sale, exchange or other disposition of property. The balance in excess of the amount of depreciation recovered shall be treated as a capital gain.

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

(a) Property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year;

(b) Property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or

(c) A copyright, a literary, musical, or artistic composition, or similar property held by the taxpayer.

b. In general, non-taxable income (and expense incurred in connection therewith) are not to be considered in determining net profits. Income from intangibles, by way of dividends, interest and the like, shall not be included if such income is subject to taxation under the intangible personal property laws of the State of Ohio or is specifically exempt from taxation under said laws.

c. Income derived from the operation of oil and/or gas wells shall be taxable, and expenses incurred in connection therewith shall be considered in determining net profits.

d. Expenses attributable to non-taxable income shall be considered to be five percent (5%) of non-taxable income.

6. Rentals from real property received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by taxpayer individually or thorough agents or other representative) constitutes a business activity of the taxpayer in whole or in part. The net profits will be allocated in accordance with the 3-factor formula, unless approval is given by the Administrator to use a substitute method (see Art III C2d). Net profits not constituting a business activity remain taxable, and shall be taxed using the books and records method.

a. Where the gross monthly rental of any real properties, regardless of number and value, aggregates in excess of \$250.00 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:

(1) 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 \$250.00 per month.

(2) 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 income exceeds \$250.00 per month.

(3) Provided further that the person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the income exceeds \$250.00 per month.

b. In determining the amount of gross rental of any real property periods during which (by reason of vacancy or any other cause) rentals that are not received shall not be taken into consideration by the taxpayer.

c. Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.

d. Real property, as the term is used in this Article, shall include commercial property, residential property, farm property, and any and all other types of real estate.

e. In determining the taxable income from rentals, the deductible expenses therefrom shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for Federal income tax purposes.

f. 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.

g. 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 \$250.00, shall take into consideration only real estate situated within the City.

h. To be considered non-taxable as ground rents, the property must be under a perpetual leasehold by the term of which the lesser performs no services of any type, including the payment of taxes on the property.

i. Corporations owning or managing real estate are taxable only on that portion of income derived from property located in the City.

j. Rental losses on properties can offset rental net profits of other rental properties, but not net profits of non-rental business. In the case of non-residents of the City only those rental properties within the City shall be considered when computing loss or net profit on rentals for the City.

7. Income from patents or copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to taxation under the intangible personal property laws of the State. Income in the form of royalties is taxable if the taxpayer's activities produced the publication or other product, the sale of which produces the royalties.

8. A taxpayer who incurs a combination of losses and profits from the operation of two or more resident businesses, including rental, during the same tax year, may offset the business losses against the business profits to compute the taxpayer's taxable City income.

9. If a resident of the City operates a business or businesses, including rental, in another taxing municipality in Ohio and the business or businesses incur a loss, the amount of the loss is deemed primarily subject to the taxing jurisdiction of the other taxing municipality and may not be used to reduce the taxpayer's City tax base.

10. Net operating losses may not be carried forward or backward.

11. In determining income subject to taxation, losses from the operation of a business or profession cannot be used to reduce wages from employment or other employment compensation.

C. Allocation of Business Profits (Section 189.02 I):

1. Business Allocation Percentage Method:

a. STEP 1: Calculate the percentage allocable to the City of the average original cost of total real and tangible personal property (including lease-hold improvements), wherever situated, owned or used in the business during the period covered by the return.

(1) The percentage of taxpayer's real and tangible personal property within the City is determined by dividing the average original cost of such property within the City by the average original cost 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.

(a) The original cost of real and tangible personal property rented by the taxpayer shall be determined by multiplying gross annual rents payable by eight (8).

(b) Gross rent means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or possession of property and includes:

(1) Any amount payable for the use or possession of real and tangible personal property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;

(2) Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs or other amounts required to be paid by the terms of a lease or other arrangement.

b. STEP 2: Calculate the percentage allocable to the City of the total qualifying wages, salaries, commissions, other compensation and other income of employees, within and without the City, during the period covered by the return.

(1) Salaries and reasonable compensation paid owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purpose of this computation.

(2) Qualifying wages, salaries, and other compensation shall be computed on the cash or accrual basis in accordance within the method of accounting used for income tax purposes.

(3) In the case of an employee who performs services both within and without the City the amount treated as compensation for services performed within the City shall deemed to be:

(a) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the City;

(b) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services within the City bears to the value of all his services; and

(c) In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the City is of his total working time.

c. STEP 3: Calculate the percentage allocable to the City of the total gross receipts of the taxpayer derived from sales made, work done and services rendered, wherever derived, during the period covered by the return.

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

(a) All sales made through retail stores located within the City to purchasers within or without the City except such of said sales to purchasers outside the City that are directly attributable to regular solicitations made outside the City personally by the taxpayer or his employees.

(b) All sales of tangible personal property delivered to purchasers within the City if shipped or delivered from an office, store, warehouse, factory or place of storage located within the City.

(c) All sales of tangible personal property delivered to purchasers within the City even though transported from a point outside the City of the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sale is directly or indirectly the result of such solicitation.



(d) All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within the City to purchasers outside the City if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place of delivery.

(e) Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.

(2) In the application of the foregoing sub-paragraphs, a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale; and the place at which orders are accepted or contracts legally consummated shall be immaterial.

(3) All solicitation of customers outside of the City by mail, telephone, fax, electronic mail or other media from an office or place of business within the City shall be considered a solicitation of sales within the City.

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

e. STEP 5: The business allocation percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits allocable to the City.

## 2. Substitute Method:

a. In the event a just and equitable result cannot be obtained under the formula the Administrator, upon application of the taxpayer, may substitute other factors in the formula or prescribe other methods of allocating net income calculated to effect a fair and proper allocation.

b. Application to the Administrator to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing before the end of the taxable year. The application shall state the specific grounds on which the substitution of factors or use of different method is requested and the relief sought to be obtained. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the Administrator.

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

d. If the Administrator approves the use of books and records as a substitute method, the following shall apply:

(1) 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 only 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.

(2) If the books and records of the taxpayer are used as the basis for apportioning net profits, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Administrator to determine whether the net profits attributable to the City are apportioned with reasonable accuracy.

(3) 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.

#### D. Exemptions from tax:

The tax provided for in Section 189.03 of Chapter 189 shall not be levied on:

1. The military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the National Guard.
2. The income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt tangible or intangible property, or tax-exempt activities (i.e., only to the extent that said income is exempt from federal income tax).
3. Intangible income.
4. Compensation paid under Sections 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars (\$1,000.00) annually. Such compensation in excess of one thousand dollars (\$1,000.00) shall be subject to taxation under this Ordinance.
5. Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306 of the Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the City, or the headquarters of the authority or commission is located within the City.
6. The income of a public utility when that public utility is subject to the tax levied under Sections 5727.24 or 5727.30 or the Revised Code, except starting January 1, 2002, the income of

an electric company or combined company, as defined in Section 5727.01 of the Revised Code, may be taxed by a municipal corporation, subject to Chapter 5745 of the Revised Code.

7. Effective January 1, 2003, items excluded from federal gross income pursuant to Section 107 of the Internal Revenue Code. This provision of the Internal Revenue Code relates to housing allowances for clergy, and provides that the allowances on non-taxable to the extent that the allowance is used to provide for a home. Clergy eligible for this exemption clergy must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and must have authority to perform all sacraments of the church.

8. Compensation paid to an individual for personal services performed within the City, if the individual does not reside in the City, performs such personal services in the City on twelve (12) or fewer days in the calendar year and, if the individual is an employee, the principal place of business of the individual's employer is located outside of the City. This exemption does not apply to professional entertainers or professional athletes or to promoters of professional entertainment or sports events and their employees (see Art. III A2d).

9. Loss of income assistance, such as welfare benefits, including permanent disability benefits received from local, state or federal governments, or charitable, religious or educational organizations.

10. Pensions, disability benefits, annuities or gratuities from whatever source derived.

11. Dues, contributions and similar payments received by charitable, religious or education organizations, or labor unions, trade associations or lodges.

12. Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from casual sales and seasonal or causal entertainment, amusements and sport events (such as gambling and lottery winnings) and health and welfare activities conducted by bona fide charitable, religious or educational organizations.

13. Personal earnings of all individuals under eighteen (18) years of age. The individual shall be subject to tax beginning from the birth-date in the year in which the individual becomes eighteen.

14. Income, qualifying 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.

15. Salaries, wages, commissions, income, 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 subdivision to impose net income taxes of income derived from interstate commerce.

#### **ARTICLE IV**

## **RETURN AND PAYMENT OF TAX**

### **A. Date and Requirement for Filing.**

1. a. On or before April 15th of each year, each taxpayer, eighteen (18) years of age or older if an individual, who was a resident of the City at any time during the taxable year and who received any income for that taxable year subject to the provisions of Section 189.02 of Chapter 189 shall, except as hereinafter provided, make and file with the Administrator a return on a form prescribed by and obtainable, upon request, from the Administrator, or on generic forms deemed acceptable by the Administrator, whether or not a tax be due thereon.

b. The fact that a taxpayer is not required to file a Federal tax return does not relieve the taxpayer from filing the City tax return.

c. Notwithstanding any other provision of Chapter 189, the deadline for filing any return or paying any tax, when said deadline would otherwise fall on a day which is determined by this Code to be a holiday, a weekend, or a day wherein, because of weather or other conditions, the City offices are closed, at least part of the day, the deadline for filing a return or paying a tax shall be the close of business on the next day which is not a holiday, weekend day or a day in which the offices are closed. Any return or payment mailed postage prepaid and U.S. postmarked on such extended day, shall be considered filed or paid in a timely fashion.

d. The Tax Return is considered received, if mailed, on the date postmarked by the United States Post Office Postal Service or on the date delivered without mailing to the City Tax Office.

2. If the return is made for a fiscal year or any period less than a year, said return shall be made on or before the fifteenth day of the fourth (4th) month from the end of the fiscal year or other period.

3. Any taxpayer who received taxable income not subject to withholding under Chapter 189 must file a return.

4. Any taxpayer having income, wages, other compensation or other income for which a return must be filed, and also having net profits from a business covering the same or a different period, is required to file only one return if self-employed.

5. Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof.

6. Except as provided for herein, the tax is to be paid by the resident associations, and a return is required disclosing the net profits allocable to the City and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity or association is required to make

a return and pay the tax in accordance with Article III A3f of these regulations. For exceptions for S corporations, see Article III A1e.

**B. Information Required and Reconciliation with Federal Returns:**

1. Every person subject to the provisions of Section 189.02 of Chapter 189 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 Chapter 189, received for the period covered by the return and such other pertinent facts and information in detail as the Administrator may require.

2. The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from such Administrator or on other forms deemed acceptable by the Administrator, setting forth:

a. The aggregate amounts of income, qualifying wages, commissions and other compensation earned or received and gross receipts from the business, profession or other activity, less expenses allowable in the calculation of Adjusted Federal Taxable Income for tax years 2004 and later.

b. The amount of the tax imposed by the Chapter on such earnings and profits.

c. Such other pertinent statements, information returns or other information as the Administrator may require, including but not limited to copies of all W-2 forms, 1099 Miscellaneous Income Forms, page one of form 1040 (income on Form 1040 not subject to the City income tax may be deleted), Page One and Two of Form 1120, 1120S (including (K-1), 2106, 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, schedule F and any other Federal Schedules if applicable.

3. An individual may not claim federal Form 2106 deductions for City income tax purposes unless that individual has claimed the same deduction for federal income tax purposes and attaches to her annual return a copy of the federal Form 2106 with the Internal Revenue Service.

4. Any individual, partnership, person, corporation, association, business or other entity that pays to any other individual, partnership, person, corporation, association, business or other entity any compensation that is required by federal law to be reported on a federal form 1099 or other federal miscellaneous income forms, or any resident of the City who receives a federal form 1099, shall forward to the City along with their income tax forms copies of the 1099 form or other miscellaneous income forms.

5. Every taxpayer shall retain all records necessary to compute his tax liability for a period of six (6) years from the date his return is filed, or the withholding taxes are paid.

**C. Extensions (Section 189.13 C and D).**

1. Any taxpayer that has requested an extension for filing a Federal income tax return may request an extension for the filing of a City income tax return. The taxpayer shall make the request by filing a copy of the taxpayer's request for Federal filing extension with the Administrator.
2. Any taxpayer not required to file a Federal income tax return may request an extension in writing for filing the City tax return.
3. The request for an extension shall be filed not later than the last day for filing the City tax return for calendar and fiscal year filers as prescribed by the Chapter.
4. A valid extension request for individuals and for businesses not filing through the Ohio Business Gateway extends the due date for filing a return to the last day of the month following the month to which the due date of the federal income tax return has been extended. If the extension request has been filed through the Ohio Business Gateway, the extended due date shall be the last day of the month to which the due date of the federal income tax return has been extended.
5. The Administrator may deny a taxpayer's request for extension if the taxpayer:
  - a. Fails to file a copy of the Federal extension (if applicable) by the original due date for the annual return.
  - b. Owes the City any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or nonpayment of income tax.
  - c. Has failed to file any required income tax return, report, or other related document for a prior tax period.
6. The granting of an extension for filing the City income tax return does not extend the last date for payment of the tax; therefore, interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended, and penalty and interest shall be assessed if not filed and paid within the period as extended.
7. If a taxpayer wishes to extend the time for filing the City tax return to a date beyond that provided above, the taxpayer must file such a request in writing to the Administrator prior to the due date of the automatic extension.

#### D. Consolidated Returns:

1. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership provided such group files consolidated returns for Federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

2. Once a consolidated return has been filed for any taxable year the consolidated group must continue to file consolidated returns in subsequent years unless:

a. Permission in writing is granted by the Administrator to file separate returns.

b. A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year.

c. A corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.

3. a. If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income from the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group, but separate returns must be filed for the period after it ceases to be a member. If a corporation has been a member of the affiliated group for less than one month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one month.

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

4. In determining the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property factor (Step 1 of the formula) shall be determined on the basis of the average original cost of the property during the period such corporation was a member of the group. The rental portion of the factor, however, shall be computed at 8 times the annual rent. The gross receipts and wage factors shall be based on the actual figures.

5. All subsidiary corporations must agree in writing to the filing of the consolidated return as they will be liable for the tax as well as the parent corporation.

6. In consolidating the net income, the taxable income of each corporation shall be computed in accordance with the provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of the affiliated group.

#### E. Amended Returns.

1. Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 189.06 and 189.08 of Chapter 189. Such amended return shall be on a form obtainable, upon request, from the Administrator. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the due date for filing the original return.

2. Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the tax based upon such final determination of Federal tax liability, and pay any additional tax shown thereon or make claim for refund of any overpayment.

F. Information returns, schedules and statements and/or other documents required to support tax returns, which are incomplete without such information, shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements and/or other documents shall be deemed to be a violation of the Chapter. Provided, however, that the taxpayer shall have ten days after notification by the Administrator, or his authorized representative, to file the items required by this subsection.

G. Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of the ordinance and these Rules & Regulations.

#### H. Payment With Return.

1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes due; provided, however, that where any portion of the tax so due has been withheld or where any portion of such tax has been paid through estimated payments or where an income tax is required to be paid to another municipality, credit for the amount so paid in accordance with Sections 189.06, 189.07, and 189.08 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 the return.

2. A taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of the Chapter may have such overpayment applied against any liability hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded.

3. The officers and/or employees of such employer having control or supervision or charged with the responsibility of filing the return and making the payment, shall be personally liable for failure to file the return or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to file a return or pay taxes, penalties, or interest due.



4. Tax assessments or refunds in an amount of one dollar (\$1.00) or less will not be collected or refunded.

## **ARTICLE V**

### **COLLECTION AT SOURCE**

#### **A. Duty of Withholding.**

1. Except as otherwise provided herein, each employer within or doing business within the City shall deduct, at the time of payment, the City income tax of one and eight-tenths percent (1.8%) from all income, salaries, qualifying wages, bonuses, incentive payments, fees, commissions or other forms of compensation earned or received by employees for service rendered, work performed or other activities engaged in within the City.

2. Employers who do not maintain a permanent office or place of business in the City, but who are subject to tax on net profits attributable to the City under the method of allocation provided for in the Chapter and these Rules & Regulations, are considered to be employers within the City and subject to the requirements of withholding.

3. 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 in accordance with Article IV. The officer(s) and/or employee(s) of such employer having control or supervision or charged with the responsibility of withholding the tax shall be personally liable for failure to withhold the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer's and/or employee's liability for a prior failure of such business to withhold and/or pay the taxes, penalties, or interest due. If the employer has withheld the tax and failed to pay the tax withheld to the Administrator, the employee is not liable for the tax so withheld.

4. Commissions and fees paid to independent contractors are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and return and pay the tax pursuant to the provisions of Chapter 189 and Articles IV and VI of these Rules & Regulations.

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

a. If the non-resident is a salesman, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within the City bears to the total volume

of business transacted by him, except as clarified in Article III. However, for real estate and insurance sales the allocation shall be in accordance with Article III A2c.

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 is of the total number of working hours.

c. The fact that non-resident employees are subject to call at any time does not permit the allocation of pay for time worked within the City on a seven-day per week basis. The percentage of time worked in the City will be computed on the basis of a forty-hour week unless the employer notifies the Administrator that a greater or lesser number of hours per week is worked.

d. Wage continuation plans paid by the employer for purpose of health, rest, recuperation or other reward are deemed to have the same tax situs as the primary job assignment or job location of the employee and are taxable on the same ratio as the normal earnings of such employee for his primary job assignment.

6. An employer shall withhold the tax on the full amount of any advances made to any employee on account of commissions.

7. 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 a business expense by the employee under Article III of these Rules & Regulations.

8. Every employer shall retain all records necessary to compute withholding taxes due the City for a period of six years from the date the Reconciliation form, W-2 Forms, and 1099 forms are filed.

9. All returns and forms required to be filed by an employer are considered received on the date postmarked by the United States Postal Service or on the date delivered without mailing by the taxpayer to the City's Income Tax Office.

10. The failure of any employer to receive or procure a return, or other required form shall not excuse the employer from preparing any information return, withholding tax returns or from filing such forms or from paying the tax due.

11. Payments received for withholding taxes due shall be applied first to penalties due, then to interest due, and then to taxes due.

12. No person shall be required to withhold the tax on the wages or other compensation paid domestic employees employed exclusively in or about such person's residence, but such

employee shall be subject to all of the requirements of the chapter, including making quarterly estimated payments.

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

1. Each employer within or doing business within the City who employs one or more persons on an income, salary, qualifying wage, commission or other compensation or other income basis shall, at the time of the payment thereof, deduct the tax of one and eight-tenths percent (1.8%) from the gross salaries, qualifying wages, commissions or other compensation or other income due by the employer to the employees for the salaries, qualifying wages, commissions or other compensation or other income earned within the City.

2. The employer shall, on or before the last day of each month, make a return and pay to the Administrator the tax withheld during the preceding month if taxes withheld for the preceding tax year averaged \$100 per month or more. Provided, however, the Administrator shall have the authority to approve the filing of returns and payment of the tax withheld on a quarterly basis.

a. The Administrator may authorize any employer to file returns and remit the tax withheld on a quarterly basis provided that such authorization does not jeopardize the interest of the City. Quarterly payments will normally be approved for employers whose annual the City income tax return shows that taxes withheld for the City averaged less than \$100 per month in the preceding tax year.

b. Any employer who normally withholds \$100 or more per month for the City, and who wishes to file and remit on a quarterly basis, may request the authority for quarterly filing from the Administrator. Such request must be in writing, stating the name and the City Withholding Account Number of the employer, the address to which tax documents 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 Chapter 189.

c. In considering such a request, the Administrator will base his decision on the facts so that the best interests of the City are served. He shall refuse such authority if he has reason to believe that the employer is a below average credit risk, engaging in seasonal or transitory business in fact or as to location, or for any other reason known to him which might place a burden upon the City or where such request is contrary to the policy of the City. The Administrator 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 quarters ending March 31, June 30, September 30, and December 31, make a return and pay to the Administrator the tax withheld during the preceding calendar quarter. Once this approval is granted, the employer may continue on such basis unless notified in writing by the Administrator that approval to file quarterly is withdrawn.

e. The Administrator shall have the authority to deny quarterly payments if the employer is not in full compliance with all the City income tax laws, or the conditions for granting such authorization have changed, were judged incorrectly, and/or were not met. 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. In such case, the employer must begin to file monthly.

3. Every employer is deemed to be a trustee for the City in collecting and withholding the tax required to be withheld and the funds so collected by such withholding are deemed to be trust funds in the hands of the employer.

4. Every such employer required to deduct and withhold the tax at the source is liable directly to the City for payment of such tax whether or not the tax was actually collected from such employee.

5. a. On or before the 28th day of February, following any calendar year in which such deductions have been made by any employer, such employer shall file with the Administrator in the form prescribed by the Administrator, an information return for each employee from whom the City's municipal income tax has been withheld, or should have been withheld, clearly showing the name, address, and social security number of the employee, the total Medicare (i.e., qualifying) wage paid during the year and the amount of the City income tax withheld from such employee.

b. On or before February 28 of each year all individuals, businesses, employers, brokers or other who engage persons, either on a fee or commission basis or as independent contractors and not employees (those who are not subject to withholding) must provide the City Income Tax Department with copies of all 1099 Miscellaneous Income Forms and/or a list of names, addresses, Social Security numbers and a total amount of earnings, payments, bonuses, commissions and/or fees paid to each person. In lieu of copies of 1099 Miscellaneous Income Forms, a list containing the same information as required by IRS on the 1099's on or before the due date for such forms 1099's as established by IRS may be submitted.

6. The information return referred to in paragraph 5a above shall consist of W-2's copies that are complete (including all information required in paragraph 5 above) and fully legible. However, if approved by the Administrator, the information return may be submitted in one of two other ways, as follows:

a. Employers may submit the tax information using an alphabetized employee list, as long as employee's full names, addresses, social security numbers, Medicare wages, and the City withheld taxes are accurately reported.

b. Reporting annual wage and tax data through the use of electronic media by employers if the Administrator has provided, by uniform rule or regulation, for electronic transmissions.

7. In addition to the Withholding Statements, and at the time they are filed, each employer shall file with the Administrator a reconciliation of income tax withheld, comparing the returns of

income tax withheld to the total amount of taxes withheld as disclosed by the Withholding Statements.

8. It is the responsibility of any entity or individual to provide copies of Federal Form 1099 to the City, or such other form used to report commissions, fees, and other compensation paid to non-employees.

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

D. Every contractor performing work for the City shall comply with the requirements of the Chapter and these Rules & Regulations. If the contractor employs subcontractors for work performed in the City, the names, addresses, and Federal Identification Numbers of those subcontractors shall be provided to the City by the contractor prior to commencement of the work. The subcontractors must likewise comply with the requirements of Chapter 189 and these Rules & Regulations.

E. Employers for limited engagements, who make payment for services at said engagement, as set forth below, shall, for the purposes of the collection of the income tax, be required to withhold, report, and pay over to the Administrator the municipal income tax at the current rate on the gross amount so paid on completion of the engagement, said reports to be on forms approved by the Tax Commissioner. Employers for limited engagements include, but is not limited to:

1. Any person who employs or contracts for the services of any entertainer, entertainment act, sports event, promotional booth, special event, band, orchestra, rock group, or theatrical performance; or
2. Any person who, acting as a promoter, booking agent, or employer, engages the services of, or arranges the appearance of any entertainer, entertainment act, sports event participant, band, orchestra, rock group, or theatrical performance.

## **ARTICLE VI**

### **DECLARATIONS - ESTIMATED TAX PAYMENTS**

A. Requirements 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 in full by an employer or employers in accordance with the requirements of Section 189.07. Except as

provided in this Article, and unless the taxpayer anticipates that such tax will be fully withheld within the City, every person may file a declaration setting forth taxable income, including distributive shares of net profits of unincorporated business entities, estimated to be earned by such person during the current tax year, together with the estimated tax due thereon, less the tax withheld within the City and less the tax credits allowed in Section 189.08.

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. No penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the City on the first day of January of the year in which they first became subject to estimated payments, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period, or for estimated payments that equal at least 90% of the final liability for the current tax year completed for which estimated payments have been made.

**B. Form For Filing:**

1. Such declaration shall be filed upon a form or forms furnished by, or obtainable upon request from, the Administrator, or on generic forms deemed acceptable by the Administrator.

2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration at any time. Such amendment may be made on the regular declaration form or a form furnished by and obtainable from the. A declaration of estimated tax may be amended at any time, provided, however, that the unpaid balance due must be paid in equal installments on or before the remaining payment dates for the applicable tax year. Interest and penalty amounts may be assessed against estimated payments that result in being less than 100% of the prior tax year, or 90% of income taxable to the City for the current year, or on any resident taxpayer who was domiciled in the City on the first day of January in the year in which they became subject to estimated payments.

**C. Dates of Filing and Payment:**

1. A declaration shall be filed on or before April 15th of each year during the life of the Chapter, except as specifically exempted in paragraph A.2 above.

2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration on or before the fifteenth day of the fourth (4<sup>th</sup>) month after the start of each fiscal year or period.

3. In the case of individuals, at least twenty-two and one-half percent (22 1/2%) of the taxpayer's estimated tax for the applicable tax year must be paid by April 15<sup>th</sup> of the tax year, at least forty-five (45%) by July 31<sup>st</sup>, at least sixty-seven and one-half percent (67.5%) by October 31<sup>st</sup>, and at least ninety percent (90%) by January 31<sup>st</sup> in the year following the tax year for which estimated payments are being made.

4. In the case of businesses, at least twenty-two and one-half percent (22 1/2%) of the taxpayer's estimated tax for the applicable tax year must be paid by 15<sup>th</sup> day of the fourth month after the beginning of the applicable tax year, at least forty-five (45%) by 15<sup>th</sup> day of the sixth month, at least sixty-seven and one-half percent (67.5%) by 15<sup>th</sup> day of the ninth month, and at least ninety percent (90%) by 15<sup>th</sup> day of the twelfth month.

5. The declaration must be accompanied by at least one installment of the estimated tax shown due thereon.

6. In the event an amended declaration has been filed the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

D. 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 and any balance which may be due the City shall be paid therewith in accordance with the provisions of Article IV.

## **ARTICLE VII**

### **ADMINISTRATION; DUTIES OF THE CITY AUDITOR AND THE CITY TREASURER.**

A. Collection of Tax and Retention of Records:

1. It shall be the duty of the City Auditor to receive the tax imposed by Chapter 189 in the manner prescribed therein from the taxpayers; to keep an accurate record thereof and to report all monies so received to the City Treasurer and shall give daily accountings to the City Treasurer.

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

B. Enforcement Provisions:

1. The City Auditor, or duly authorized agent or employee, is charged with the administration and enforcement of the provisions of Chapter 189 and the Rules & Regulations approved by the City Council. Taxpayers must comply with these Rules & Regulations as required by Chapter 189.09(c). The City Auditor, or duly authorized agent or employee, has the authority to examine and audit any return, and correct or adjust any return submitted when a correction or adjustment is necessary to accomplish the intent of Chapter 189.

2. The City Auditor, or duly authorized agent or employee, is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due, and has submitted a written application for installment payments to the Administrator. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the Chapter.

3. Failure to make any installment payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 189.11, 189.12, and 189.99 of Chapter 189 shall apply.

4. Payments received shall first be applied to delinquent penalties and interest, and then to taxes.

C. Assessment by the City Auditor, or duly authorized agent or employee:

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 City Auditor or duly authorized agent or employee, may assess the amount of tax appearing to be due, together with interest and penalties thereon, if any, in the following manner:

1. If the City Auditor or duly authorized agent or employee determines that any taxpayer subject to the provisions of Chapter 189 has a tax liability for which he has filed no return, or has filed an incorrect return and/or has failed to pay the full amount of tax due, the City Auditor or duly authorized agent or employee shall issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.

a. Such a proposed assessment shall be served upon the taxpayer in person or by certified 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.

b. A taxpayer may, within thirty (30) days after the date the proposed assessment was served or mailed, file a written protest with the City Auditor or duly authorized agent or employee. Within thirty (30) days after receipt of the protest the City Auditor or duly authorized agent or employee shall give the protestant an opportunity to be heard; provided further that the City Auditor or duly authorized agent or employee may extend the date of hearing for good cause shown. After the hearing the City Auditor or duly authorized agent or employee shall withdraw the assessment or shall adjust or reaffirm the assessment and it shall then become final upon the signature of the City Auditor. If no protest is filed as herein provided, such proposed assessment shall become final thirty (30) days after being served. Any taxpayer or employer who does not file a notice of appeal to the Board of Review from a final assessment issued against him shall pay the amount thereof within thirty days after service of such final assessment.

c. 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. The taxpayer may then appeal to the Board of Review as provided for in Section 189.15 of Chapter 189.



2. The City Auditor or duly authorized agent or employee may execute supplemental tax returns and may issue supplemental assessments whenever the City Auditor or duly authorized agent or employee has knowledge derived from any source including the taxpayer's financial data that any executed tax return or assessment is imperfect or incomplete in any material respect.

3. Neither the City Auditor's or duly authorized agent or employee's execution of a return nor the City Auditor's or duly authorized agent or employee's assessment of a taxpayer shall start the running of the period of limitations on prosecutions set forth elsewhere in the Chapter.

4. When any taxpayer subject to the provisions of Chapter 189 has filed a return indicating the amount of tax due and has failed to pay said tax to the City as required by Chapter 189, the City Auditor or duly authorized agent or employee need not issue an assessment but may proceed under the provisions of Section 189.12 of Chapter 189.

5. Provisions Affecting Employers:

a. If the City Auditor or duly authorized agent or employee determines that an employer subject to the provisions of Chapter 189 has failed to file a return for tax withheld and has failed to pay to the City the full amount of said taxes, the City Auditor or duly authorized agent or employee shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon.

b. If the City Auditor or duly authorized agent or employee determines that an employer subject to the provisions of Chapter 189 has failed to withhold tax the City Auditor or duly authorized agent or employee shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon.

c. When an employer subject to the provisions of Chapter 189 has filed a return indicating the amount of tax withheld and has failed to pay said tax to the City as required by Chapter 189, the City Auditor or duly authorized agent or employee may proceed under the provisions of Section 189.12 and need not issue an assessment.

6. Subject to the consent of the Board of Review or pursuant to regulations approved by the Board, the City Auditor shall have the power to compromise any interest or penalty, or both, imposed by Chapter 189.

7. Department of Taxation:

a. A department of taxation is hereby created within the office of the City Auditor of the City of Ashtabula. Such department of taxation shall have such deputies, clerks and other employees as may be from time to time determined by the Council of the City of Ashtabula, and shall receive such salary as may be determined by the City Council.

b. The City Auditor shall make all appointments of personnel and purchase all equipment, supplies and material for the department of taxation. The department of taxation shall be charged with the administration and operation of Chapter 189 and these Rules & Regulations, under the direction of the City Auditor. The City Auditor or duly authorized agent or employee shall prescribe the form and method of accounts and reports for said department, as well as the forms for taxpayers' returns and declarations, and shall be charged with the internal examination and audit all such accounts, and shall exhibit accurate records showing the amount received from each taxpayer, and the date of said receipt. The City Auditor shall also make written report to Council annually of all monies collected hereunder during the preceding year.

## **ARTICLE VIII**

### **INVESTIGATIVE POWERS OF THE CITY AUDITOR**

A. The City Auditor or duly authorized agent or employee, is hereby authorized to examine the books, papers, records, and federal and State income tax returns of any employer, or of any taxpayer or person subject to the tax, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish to the City Auditor or duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations as are hereby authorized.

#### B. Subpoena of Records and Persons:

1. The City Auditor, or duly authorized agent or employee, is hereby authorized to examine any person, employer or employee under oath, concerning any income which was or should have been returned for taxation, and for this purpose may compel the production of books, papers, records, and federal and State income tax returns and the attendance of all persons, whether as parties or witnesses, wherever it is believed such persons have knowledge of such income.

2. The City Auditor, or duly authorized agent or employee, 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 City Auditor, or duly authorized agent or employee, is specifically authorized to order the appearance of the local manager or representative of any taxpayer.

#### C. Penalty for Non-Compliance.

The refusal to produce such books, papers, records or Federal Income Tax returns or State of Ohio income tax returns, or the refusal to submit to such examination by an employer, employee or person subject or presumed to be subject to the tax shall be deemed a violation of Chapter 189, punishable as provided in Section 189.14.

#### D. Confidential Nature of Examinations.

Any information gained as a result of any returns, investigations, audits, verifications or hearings before the Administrator required by Chapter 189 or authorized by these Rules & Regulations shall be confidential and no disclosure thereof shall be made except for official tax purposes, or as ordered by a court of competent jurisdiction, or upon receipt of a waiver signed by the individual who has submitted the return. Any person divulging such information shall upon conviction thereof be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than five hundred dollars (\$500.00) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense. In addition to the above penalties, any employee of the City who violates the provisions of this section relative to disclosures of confidential information shall be immediately dismissed from the service of the City.

#### E. Retention of Records.

Every taxpayer is required to retain all records necessary to compute his tax liability for a period of six (6) years from the date his return is filed, or the withholding taxes are paid.

#### F. Assessments.

In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the City Auditor may determine the amount of the tax appearing to be due this municipality from the taxpayer and shall send to such taxpayer a written statement showing the amount of the tax so determined, together with interest and penalties thereon, if any. Such assessment shall be collected in accordance with the Rules and Regulations (see Article VII C).

## **ARTICLE IX**

### **INTEREST AND PENALTIES**

A. All taxes imposed, including estimated taxes, and all monies withheld or required to be withheld by employers under the provisions of the Chapter and remaining unpaid after they become due shall bear interest at the rate of one percent (1%) per month.

B. In addition to interest as provided in Section 189.11A and Article IX A, penalties are hereby imposed and shall be assessed as follow:

1. For failure to pay taxes due: ten percent (10%) of unpaid tax, but not less than fifty dollars (\$50.00).
2. For failure to make and file any return as required by Sections 189.05 and/or 189.06, fifty dollars (\$50.00).

C. A penalty shall not be assessed on an additional tax assessment made by the City Auditor when a return has been filed in good faith and the tax paid thereon within the time prescribed by the City Auditor. In the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within 3 months after final determination of the federal tax liability.

D. On the recommendation of the City Auditor, the Board of Review may abate penalty or interest or both, or on an appeal from the refusal of the City Auditor to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest or both.

E. Any person required to withhold the tax who knowingly fails to withhold the tax or pay over the tax, or knowingly attempts in any manner to evade or defeat the 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, not withheld, or not paid over. No other penalty under this section shall be applied to any offense to which this penalty is applied.

## **ARTICLE X**

### **COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENTS**

#### **A. Unpaid Taxes, Penalties, and Interest:**

1. All taxes imposed by Chapter 189 and not paid when due become, together with interest and penalties thereon, are a debt due the City from the taxpayer and are recoverable as are other debts by suit. Employers who are required under Section 189.06 of Chapter 189, to withhold and remit the taxes, and who fail to withhold and/or remit such taxes, become liable to the City in a suit to enforce the payment of the debt created by such failure.

2. No additional assessment shall be made by the Administrator after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be a six (6) year period of limitation on such additional assessments in the case of a return that omits a substantial portion of income (failure to report 25% or more of income shall be considered a substantial omission), or filing a false or fraudulent return to evade payment of the tax, or failure to file a return.

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 Administrator is extended to one (1) year from the time of final determination of the Federal tax liability.

4. Those officers or employees having control or supervision of, or charged with, the responsibility withholding tax, of filing the return, and making payments for a corporation or association shall be personally liable for failure to file the return or pay the taxes due as required.

The dissolution, bankruptcy, or reorganization of any employer does not discharge the officers' or employees' liability for a prior failure of such business to file a return or pay the taxes due.

**B. Refunds and Overpayments (Section 189.13 A):**

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. In the case of refunds due against tax paid on income from non-qualified deferred compensation plans, the following provisions shall apply:

a. (1) Except as provided in paragraph B2a(2) of this section, "qualifying loss" means the excess, if any, of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan over the total amount of income the taxpayer has recognized for federal income tax purposes for all taxable years on a cumulative basis as compensation with respect to the taxpayer's receipt of money and property attributable to distributions in connection with the nonqualified deferred compensation plan.

(2) If, for one or more taxable years, the taxpayer has not paid to one or more municipal corporations income tax imposed on the entire amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan, then the "qualifying loss" is the product of the amount resulting from the calculation described in division B2a(1) of this section computed without regard to division B2a(2) of this section and a fraction the numerator of which is the portion of such compensation on which the taxpayer has paid income tax to one or more municipal corporations and the denominator of which is the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

(3) With respect to a nonqualified deferred compensation plan, the taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.

b. "Qualifying tax rate" means the applicable tax rate for the taxable year for the which the taxpayer paid income tax to a municipal corporation with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan. If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the municipal corporation each year with respect to the nonqualified deferred compensation plan.

c. (1) Except as provided in division B2d of this section, a refundable credit shall be allowed against the income tax imposed by a municipal corporation for each qualifying loss sustained by a taxpayer during the taxable year. The amount of the credit shall be equal to the product of the qualifying loss and the qualifying tax rate.

(2) A taxpayer shall claim the credit allowed under this section from each municipal corporation to which the taxpayer paid municipal income tax with respect to the nonqualified deferred compensation plan in one or more taxable years.

(3) If a taxpayer has paid tax to more than one municipal corporation with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.

(4) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to a municipal corporation for all taxable years with respect to the nonqualified deferred compensation plan.

c. (1) For purposes of this section, municipal corporation income tax that has been withheld with respect to a nonqualified deferred compensation plan shall be considered to have been paid by the taxpayer with respect to the nonqualified deferred compensation plan.

(2) Any municipal income tax that has been refunded or otherwise credited for the benefit of the taxpayer with respect to a nonqualified deferred compensation plan shall not be considered to have been paid to the municipal corporation by the taxpayer.

d. The credit allowed under this section is allowed only to the extent the taxpayer's qualifying loss is attributable to:

(1) The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or

(2) The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

3. No refund shall be made to any taxpayer until he has complied with all provisions of Chapter 189 and these Rules & Regulations, and has furnished all information required by the Administrator.

4. Items included on Federal Form 2106 are eligible as deductions, subject to review and approval by the Administrator, and subject to limitations imposed by the Federal government. To qualify for the deduction, expenses shown on the 2106 must exceed 2% of the income taxable to the City.

5. Overpayments will be either refunded, or credited to the taxpayer's current year's liability, at his option. Where no election has been made, overpayments of any year's taxes shall be applied as follows:

- a. To unpaid penalty and interest assessments in the order in which they were assessed.
- b. To the taxes owed for any previous year in the order in which such taxes became due.
- c. To his current estimated tax liability.

6. Refunds for days worked out of the City are available only to non-residents. Refunds shall be computed by dividing total wages by total days worked in order to determine an average daily wage. The work year shall be considered two hundred sixty (260) days. Saturdays and Sundays shall not normally be considered work days. Wage continuation plans of any type (including, but not limited to, vacation days, holidays, personal days, and sick days) are deemed to be days spent in the City for purposes of the refund calculation. Refunds shall be approved only after receipt, by the Administrator, of all documents necessary to verify the completeness and accuracy of the refund request. Additions, deletions, or other changes to the method for calculating refunds shall be at the discretion of the Administrator.

7. Income tax that has been deposited with the City of Ashtabula, but should have been deposited with another municipality, is allowable by the City of Ashtabula as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with the City of Ashtabula, but was deposited with another municipality, shall be subject to recovery by the City of Ashtabula. The City of Ashtabula will allow a non-refundable credit for any amount owed the City of Ashtabula that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than the City of Ashtabula's tax rate. If the City of Ashtabula's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the City of Ashtabula.

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

## **ARTICLE XI**

### **VIOLATIONS; PENALTY**

A. It shall be a violation of Chapter 189 for any person to:

1. Fail, neglect or refuse to make any return or declaration required by the Chapter; or
2. Make any incomplete, false or fraudulent return; or
3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by the Chapter; or
4. Fail, neglect or refuse to withhold the tax from such persons' employees or remit such withholdings to the City Treasurer; or

5. Refuse to permit the City Treasurer or any duly authorized agent or employee to examine the books, records, papers and federal and State income tax returns relating to the income or net profits of a taxpayer; or

6. Fail to appear before the City Auditor or duly authorized agent or employee and to produce the books, records, papers or federal and State income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or

7. Refuse to disclose to the City Auditor or duly authorized agent or employee any information with respect to the income or net profit of a taxpayer; or

8. Fail to comply with the provisions of the Chapter or any order or subpoena of the City Auditor authorized hereby; or

9. Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by the Chapter.

B. Any person who violates any of the provisions of Section 189.14A above shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six (6) months, or both, for each offense.

C. Prosecutions for an offense made punishable under this Article or any other provisions of Chapter 189 shall be commenced within three years after the commission of the offense, provided that, in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.

D. Failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him or her from filing any information return, tax return or declaration of estimated tax, or from paying any tax due.

## **ARTICLE XII**

### **BOARD OF REVIEW**

A. A Board of Review, consisting of three (3) electors of the City, one to be appointed by the City Manager, one to be appointed by the City Treasurer, and the third to be selected by the two so appointed, is hereby created. No member shall be appointed to the Board of Review who holds other public office or appointment. The members of the Board of Review shall serve without pay.

B. All Rules & Regulations and amendments or changes thereto, which are adopted by the Chapter under the authority conferred by the Chapter, must be approved by the City Council



before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the City Auditor and, at the request of the taxpayer or the City Auditor, is empowered to substitute alternate methods of allocation.

#### C. Appeals by Taxpayers.

1. Any person dissatisfied with any ruling or decision of the City Auditor, which is made under the authority conferred by the Chapter, may appeal therefrom to the Board within thirty (30) days from the announcement of such ruling or decision by the City Auditor, provided the taxpayer making the appeal has filed with the City the required return or other documents concerning the obligation at issue. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any ruling or decision or any part thereof. Such hearing shall be scheduled within forty-five (45) days from the date of appeal, unless the taxpayer waives a hearing. The Board's ruling must be made within ninety (90) days from the date of the closing of the record, shall be in writing and filed with the City Auditor, and within fifteen (15) days of its decision shall send notice of its decision by ordinary mail to the taxpayer making the appeal.

2. A taxpayer dissatisfied with a decision or filing by the Board of Review may appeal therefrom to a court of competent jurisdiction within thirty (30) days from the date of filing of the ruling or decision to which exception is taken. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

3. The taxpayer may appear before the Board at the hearing, and/or be represented by an attorney at law, certified public accountant, or other representative.

#### D. Organizational Procedures.

1. A majority of members present at any hearing or meeting shall constitute a quorum.

2. The Board of Review shall adopt its own procedural rules and keep records of all proceedings accordingly.

3. All hearings upon appeal by the Board shall be conducted privately, unless a public hearing is requested by the taxpayer, and the provisions of Section 189.09 of Chapter 189 with reference to the confidential character of information required to be disclosed by Chapter 189 shall apply to such matters as may be heard before the Board of Review.

4. The Board, as created, shall serve during the life of the Chapter.

### **ARTICLE XIII**

### **ALLOCATION OF FUNDS**

A. Ninety percent (90%) of the funds collected under the provisions of Chapter 189 shall be deposited in the General Fund of the City and said funds shall be disbursed for the effective period.

B. Ten percent (10%) of the funds collected under the provisions of Chapter 189 shall be deposited in the Permanent Improvement Fund of the City, and said funds shall be disbursed for the effective period.

#### **ARTICLE XIV**

##### **CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY**

A. In accordance with the provisions of Section 189.08, every individual taxpayer who resides in the City but who receives net profits, income, salaries, qualifying wages, commissions or other personal service compensation for work done or services performed or rendered outside of the City, if it is made to appear that he or she has paid a municipal income tax on such net profits, income, salaries, qualifying wages, commissions or other compensation to another municipality, shall be allowed a credit against the tax imposed by this chapter on the amount so paid by him or her or in his or her behalf to such other municipality. The credit shall not exceed fifty per cent (50%) of the tax assessed by Chapter 189 on such net profit, income, qualifying wages, commission or compensation earned in such other municipality or municipalities where such tax is paid.

B. No credit will be given to taxpayers for school district taxes.

#### **ARTICLE XV**

##### **SAVINGS CLAUSE**

Chapter 189 and these Rules & Regulations shall not apply to any person, firm, corporation or income as to whom, or as to which it is beyond the power of Council to impose the tax herein provided for. If any sentence, clause, section or part of Chapter 189 and these Rules & Regulations, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of Chapter 189 and these Rules & Regulations and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of the Chapter. It is hereby declared to be the intention of Council that Chapter 189 would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

#### **ARTICLE XV**

**EFFECTIVE PERIOD; COLLECTION OF TAX AFTER TERMINATION  
OF ORDINANCE**

A. Chapter 189 (see Section 189.18) and these Rules & Regulations shall continue effective insofar as the levy of taxes is concerned until amended or repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this ordinance are concerned, they shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this ordinance shall have been fully terminated, subject to the limitations contained in Sections 189.10 through 189.11, as though the same were continuing.

B. Annual returns due for all or any part of the last effective year of Chapter 189 shall be due on the date provided in Sections 189.05., 189.06, and 189.07 as though the same were continuing.

**ARTICLE XVI**

**AUTHORITY OF COUNCIL**

During the effective period of Chapter 189, should the State of Ohio and/or the federal government enact amendments to their respective codes affecting municipal income tax laws, and should those laws require changes to local municipal income tax code, the City Council shall have the authority to amend Chapter 189 to the extent necessary to bring it in to compliance with those changes made by the State of Ohio and/or the federal government.