

**UNIFORM RULES AND REGULATIONS  
TO COMPLEMENT INCOME TAX ORDINANCE NO  
2004-42**

**ARTICLE I**

Section of the ordinance deals only with the purposes for which the tax collected will be used.

**ARTICLE II**  
**DEFINITIONS**

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

ADJUSTED FEDERAL TAXABLE INCOME means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, Adjusted as follows:

1. 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;
2. Add an amount equal to five per cent (5%) of intangible income deducted under division (1.) 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;
3. 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.
4. (a) Except as provided in division (4.)(b) 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 IRC.  
(b) Division (4.)(a) 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 IRC.
5. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
6. 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 federal taxable ince;
7. If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable incomes as if the taxpayer were a C corporation, except:
8. (a) 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  
(b) 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 shall not be allowed as a deduction.

Nothing in division this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

Nothing in this chapter shall be construed as limiting or removing the ability of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax. (Effective 1/1/04)

ADMINISTRATOR means the individual designated by the ordinance, whether appointed or elected, to administer and enforce the provisions of the ordinance, regardless of the particular title assigned such individual.

ASSOCIATION means a partnership, cooperative, limited partnership, or any other form of unincorporated enterprises owned by one or more persons.

BOARD OF TAX APPEAL means the Board created by and constituted as provided in Section 183.09.

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

BUSINESS APPORTIONMENT as used in these regulations, means the portion of net profits to be apportioned to Mount Vernon, Ohio-hereinafter referred to as "this municipality", as having been made in (this municipality), either under separate accounting method, or under the three factor formula of property, payroll, and sales, provided for in Section 183.03 of the ordinance.

CITY means the City of Mount Vernon, Ohio.

CORPORATION means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency, but not including subchapter S corporations.

EMPLOYEE means one who works for wages, salary, commission or other types of compensation in the service of an employer. Any person upon whom an employer is required to withhold for either federal income or social security or on whose account payments are made under the Ohio Workmen's Compensation law shall prima facie be an employee.

EMPLOYER means an individual, partnership, association, and corporation (including a corporation not for profit), governmental agency, board, body, bureau, department, sub-division, or unit or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis whether or not such employer is engaged in business. It does not include a person who employs only domestic help for such person's private residence.

FISCAL YEAR means an accounting period of twelve (12) months or less ending on any day other than December 31st. Only fiscal years accepted by the Internal Revenue Service for federal income tax purposes may be used for Mount Vernon tax purposes.

GROSS RECEIPTS means total income from any source whatsoever.

NET PROFITS means a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary, reasonable and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes,

without deduction of taxes imposed by this ordinance, federal, state, and other taxes based on income exclusive of the amount of Ohio franchise taxes computed on the net worth basis; and in the case of an association, adjusted federal taxable income without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of the ordinance and shall be taxed as an entity on net profits before deduction of net operating loss or dividends paid to owners/members.

NONQUALIFIED DEFERRED COMPENSATION PLAN means a compensation plan described in section 3121 (v)(2)(C) of IRC (Section 718.021 Ohio Revised Code).

NON-RESIDENT means an individual domiciled outside this municipality.

NON-RESIDENT UNINCORPORATED BUSINESS ENTITY means an unincorporated business entity not having an office or place of business within this municipality.

ORGANIZATION means a corporation for profit or not for profit, a partnership, limited partnership, limited liability company, joint venture, unincorporated association, estate, trust or other commercial or legal entity organized as or by a governmental agency for the execution of a government program.

OWNER means a partner or member of a partnership, subchapter S corporation, limited liability company, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.

PASS-THROUGH ENTITY means a partnership, limited liability company, S corporation or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.

PERSON means every natural person, partnership, fiduciary, association, organization, corporation, or other entity. Whenever used in a clause prescribing or imposing a penalty, the term PERSON as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to a corporation, the officers thereof, and in the case of any unincorporated entity or corporation not having any partner, member or officer within this municipality, any employee or agent of such unincorporated entity or corporation who can be found within the corporate limits of this municipality.

PLACE OF BUSINESS means any BONA FIDE office (other than a mere statutory office), factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance.

QUALIFYING WAGES means wages as defined in section 3121 (a) of Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03 (A) of the Ohio Revised Code, ie.

1. Medicare Exempt Employees are subject to the requirements for "qualifying wages" in the Medicare Wage Box of the form W2 even though that box will remain blank;
2. 401(k), 457 and Supplemental Unemployment Compensation Benefits - These items should all be included in the Medicare Wage Box and are subject to withholding requirements;
3. Nonqualified Deferred Compensation Plan - Income from nonqualified plans is included in the definition of "qualifying wages" at the time the income is deferred and is subject to withholding requirements;
4. Stock Options - Income from the exercise of stock options is included in the definition of "qualifying wages" and is subject to withholding requirements;

5. Disqualifying Disposition of an Incentive Stock Option - Employer is not required to withhold, but the income is considered "qualifying wages" and the recipient is liable for the tax.
6. Cafeteria Plans - IRC Section 125 wages are NOT included in the definition of Medicare wages and do not need to be deducted from the Medicare Wage Box.

RESIDENT means an individual domiciled in this municipality.

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

TAXABLE INCOME means qualifying wages, salaries, and other compensation paid by an employer or employers for personal services, other income defined by statute as taxable, and/or the adjusted federal taxable income from the operation of a business, profession or otherwise enterprise or activity adjusted in accordance with the provisions of the ordinance and these regulations.

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

TAXPAYER means a person whether an individual, partnership, association, corporation, business, employer, or other entity required by the ordinance to file a return and/or to pay a tax.

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

**ARTICLE III**  
**IMPOSITION OF TAX**

A. Bases

1. Resident Employee:

- a. In the case of residents of this municipality an annual tax of (1-1/2%) is imposed on all qualifying salaries, wages, commissions, and other compensation earned during the effective period of the ordinance. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 183.03, paragraph A-1 of the ordinance, the source of the earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings wherever earned or paid are taxable.
- b. The following are items which are subject to the tax imposed by Section 183.03, paragraph A-1 of the ordinance:
  - .1 Salaries, wages, bonuses and incentive payments earned by an individual whether directly or through an agent and whether in cash or in property for services rendered during the tax period as :
    - .01 An officer, director or employee of a corporation (including charitable and other non-profit organizations), joint stock association, or joint stock company;

.02 An employee (as distinguished from a partner or member) of a partnership, limited partnership, or any form of unincorporated enterprise owned by two or more persons;

.03 An employee (as distinguished from a proprietor) of a business, trade or profession conducted by an individual owner;

.04 An officer or employee (whether elected, appointed or commissioned) of the United States Government or a corporation created and owned or controlled by the United States Government, or any of its agencies; or of the State of Ohio or any of its political subdivisions or agencies thereof; or any foreign country or dependency except as provided in Section 3 of the ordinance;

.05 An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates; and whether paid by an individual, partnership, association, corporation (including charitable and other non-profit corporations), governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision section or unit, or any other entity.

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

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

.02 Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expenses or advances as such from his gross income for the purpose of determining his net profits taxable under federal law, and the employee is not required to include such receipts as income on his federal income tax return.

.03 If commissions are included in the net earnings of the trade, business, profession, enterprise, or activity, carried on by an unincorporated entity of which the individual receiving such compensation is owned or part owner and therefore subject to the tax under paragraphs A-4 or A-5 of Section 183.03 of the ordinance, they shall not be taxed under Section 183.03, paragraph A-1.

.3 Fees, unless such fees are properly includible as part of the net profits of a trade, business,

profession or enterprise regularly carried on by an unincorporated entity owned or partly owned by said individual and such net profits are subject to the tax under Section 183.03, paragraph A-4 of the ordinance.

.4 Other compensation, including tips, bonuses or gifts of any type, and including compensation paid to domestic servants, casual employees and other types of employees.

.5 Payments made to employees by an employer as vacation wages are taxable. Payments made to an employee by an employer under a wage continuation plan during periods of disability or sickness are taxable.

c. Where compensation is paid or received in property, its fair market value at the time of receipt, shall be subject to the tax and to withholding. Board, lodging and similar items received by an employee in lieu of additional cash compensation shall be included in earnings at their fair market value.

.1 In the case of domestics and other employees whose duties require them to live at their place of employment or assignment, board and lodging shall not be considered as wages or compensation earned.

2. Non-resident Employee:

a. In the case of individuals who are not residents (ministers) of this municipality, there is imposed under Section 183.03, paragraph A-2 of the ordinance, a tax of (1-1/2%) on all qualifying salaries, wages, commissions, and other compensation earned during the effective period of the ordinance for work done or services performed or rendered within this municipality whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place for which payment is made is immaterial.

b. The items subject to tax under Section 183.03, paragraph A-2 of the ordinance are the same as those listed and defined in Article III-A. For the methods of computing the extent of such work or services performed within this municipality, in cases involving compensation for person services partly within and partly without this municipality, see Article VI-A.7.

c. On and after January 1, 2001, compensation paid to an individual for personal services performed within this municipal corporation cannot be taxed by this municipality, if all of the following apply: (1) Individual does not reside in the municipal corporation, (2) Performs such personal services in the municipal corporation on twelve or fewer days in the calendar year, (3) Individual is an employee, the principal place of business of the individual's employer is located outside the municipal corporation. Any part of a day constitutes a day of work. This

section does not apply to professional entertainers or professional athletes or to promoters of professional entertainment or sports events and their employees, as reasonably defined by the municipal corporation.

3. a. Imposition of Tax on Net Profits of Resident Unincorporated Businesses:

- .1 In the case of resident unincorporated businesses, professions, enterprises, undertakings or other entities conducted, operated, engaged in, prosecuted or carried on, irrespective of whether such taxpayer has an office or place of business in this municipality, there is imposed an annual tax of (1-1/2%) on the net profits earned, accrued or received during the effective period of the ordinance attributable to this municipality, under the formula of separate accounting method provided for in Section 183.03 of the ordinance, derived from sales made, work done or services performed or rendered and business or other activities conducted in this municipality.
- .2 The tax imposed on resident associations or other unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof but the tax imposed on an unincorporated resident entity owned by one person is upon the individual owner. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III-A.3b).
- .3 The tax imposed by Section 183.03, paragraph A-3a of the ordinance is imposed on all resident unincorporated entities having net profits attributable to this municipality under the method of allocation provided for in the ordinance, regardless of where the owner or owners of such resident unincorporated business entity resides.
- .4 Resident unincorporated entities owned by two or more persons all of whom are residents of this municipality shall disregard the method of allocation provided for in the ordinance and pay the tax on their entire net profits thereof. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits; however, an additional return shall be required from any such owner or member having taxable income other than the distributive share of the net profits from the entity.

b. Imposition of Tax on Resident's Distributive Share of Profits of a Resident Unincorporated Business Entity, Not Attributable to this Municipality.

- .1 A resident individual who is sole owner of a resident unincorporated entity shall disregard the

business apportionment formula and pay the tax on the entire net profits of this resident unincorporated business entity by this municipality.

.2 In the case of a resident individual partner or part owner of a resident unincorporated entity, there is imposed an annual tax of (1-1/2%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the ordinance not attributable to this municipality, under the method of allocating provided for in Section 183.03 of the ordinance, and not taxed against the entity by this municipality.

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

.1 In the case of non-resident unincorporated businesses, professions, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of (1-1/2%) on the net profits earned, accrued or received during the effective period of the ordinance attributable to this municipality, under the formula or separate accounting method provided for in the ordinance.

.2 The tax imposed on non-resident unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity by this municipality. See Article III-A.4b

.3 Non-resident unincorporated entities owned by two or more persons all of whom are residents of this municipality may elect to disregard the method of allocation provided for in the ordinance and pay the tax on the entire net profits. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of the net profits; however, a return shall be required from such owner or member having taxable income other than the distributive share of the net profit from the entity by this municipality. See Article XIV for Credits.

b. Imposition of Tax on Resident's Share of Profits on a Non-Resident Unincorporated Business Entity Not Attributable to this Municipality. See Article XV for Credits.

.1 A resident individual who is sole owner of a non-resident unincorporated business entity shall disregard the business allocation formula and pay the tax on the entire net profits of this unincorporated entity by this municipality.

.2 In the case of a resident individual partner or part owner of a non-resident unincorporated entity, there is imposed an annual tax of (1-1/2%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the ordinance not attributable to the city under the method of allocation provided for in Section 183.03 of the ordinance and not taxed against the entity by this municipality.

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 this municipality, there is imposed an annual tax of (1-1/2%) on the net profits earned, received or accrued during the effective period of the ordinance attributable to this municipality under the formula or separate accounting method provided for in the ordinance.
- b. In determining whether a corporation is conducting a business or other activity in this municipality, the provisions of Article III-B of these regulations shall be applicable.
- c. Corporations which are required by the provisions of Section 5727.38 to 5727.41, inclusive, of the Revised Code of Ohio, to pay an excise tax in any taxable year as defined by the ordinance, may exclude that part of their gross receipts upon which the excise tax is paid. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to the tax imposed by the ordinance.

6. Amplification:

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

a. NET PROFITS.

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

b. GROSS RECEIPTS.

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

c. EXPENSES.

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

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

.02 Current amortization of emergency facilities under the provisions of the Internal Revenue Code, if recognized as such for federal income tax purposes, may be included as an expense deduction hereunder.

.03 Where depreciable property is voluntarily destroyed only the cost of such demolition and the undepreciated balance thereof will be allowed as an expense in the year of such demolition, to the extent allowable for federal income tax purposes.

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

.05 Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to

the tax, then taxes on and other expenses of said property are not deductible. In any event, the following taxes are not deductible from income: (1) the tax under the ordinance; (2) federal or other taxes based upon income [exclusive of the amount of Ohio franchise tax computed on the net worth basis]; (3) gift, estate or inheritance taxes; and (4) taxes for local benefits or improvements to property which tend to appreciate the value thereof.

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

.07 If the taxpayer reports income that is nontaxable under the ordinance and such amounts are deducted in order to reconcile the return with the taxpayer's federal income tax return, expenses attributable to this non-taxable income shall not be allowed. In the absence of records showing the actual expenses attributable to such nontaxable income, and upon approval of the Administrator, such amount shall be deemed to equal five percent of nontaxable income.

.08 Capital gains and losses from sale, exchange or other disposition of property shall not be taken into consideration in arriving at a net profit earned. Any amount received on a sale or other disposition of tangible personal property used in business, in excess of book value, shall be treated as taxable income under the ordinance to the extent of depreciation allowable (under the ordinance). The balance shall be treated as capital gain.

## 7. Rentals from Real Property.

- a. Rentals received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by the taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.
- b. Where the gross monthly rental of any real properties, regardless of number and value, aggregate in excess of \$200.00 per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to tax; provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts

or profits of the leases, whether or not such rental exceeds \$200.00 per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farm whether or not the gross income exceeds \$200.00 per month; and provided further that the person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds \$200.00 per month.

- c. In determining the amount of gross monthly rental of any real property, periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.
- d. Rentals received by a taxpayer engaged in business of buying and selling real estate shall be considered as part of business income.
- e. Real property, as the term is used in this regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.
- f. In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for federal income tax purposes.
- g. Residents of this municipality are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned.
- h. Non-residents of this municipality are subject to such taxation only if the real property is situated within this municipality. Non-residents, in determining whether gross monthly rentals exceed two hundred dollars (200.00) shall take into consideration only real estate situated within this municipality.
- i. Corporations owning or managing real estate are taxable only on that portion of income derived from property located in this municipality.

8. Patents and Copyrights:

- a. Income from patents and copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to the State \*intangible tax. Conversely, such a state intangible tax is not deductible in determining city tax. Such items shall be clearly disclosed on an attachment to be filed with the city tax return.

B. Apportionment of Business Profits.

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

1. Separate Accounting Method

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

2. Business Apportionment Percentage Method.

- a. STEP 1: Ascertain the percentage which the average original real cost of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within this municipality is of the average original cost of all real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.

.1 The percentage of taxpayer's real and tangible personal property within this municipality is determined by dividing the average original cost of such property within this municipality (without deduction of any encumbrances) by the average original cost of all such property within and without this municipality. In determining such percentage property rented to the taxpayer as well as real and tangible personal property owned by taxpayer must be considered.

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

.02 Gross rents means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or

possession of property and included:

.001 Any amount payable for the use 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;

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

b. STEP 2. Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within this municipality is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without this municipality 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 of the purpose of this computation.

.2 Wages, salaries, and other compensation shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.

.3 In the case of an employee who performs services both within and without this municipality the amount treated as compensation for services performed within the city shall be deemed to be:

.01 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 this municipality.

.02 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 this municipality bears to the value of all his services; and

.03 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 this municipality is of his total working time.

c. STEP 3: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made and services rendered in this municipality is of the total gross receipts wherever derived during the period covered by the return..

.1 The following sales shall be considered this municipality's sales:

.01 All sales made through retail stores located within this municipality to purchasers within or without this municipality except such of said sales to purchasers outside this municipality that are directly attributable to regular solicitations made outside this municipality personally by taxpayer's employees.

.02 All sales of tangible personal property delivered to purchasers within this municipality if shipped or delivered from an office, store, warehouse, factory, or place of storage located within this municipality.

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

.04 All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within this municipality to purchasers outside this municipality if the taxpayer is not, through it's own employees regularly engaged in the solicitation or promotion of sales at the places of delivery.

.05 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 subparagraphs a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale; and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside this municipality by mail or phone from an office, or place of business within this municipality shall not be considered a solicitation of sales outside this municipality.

d. STEP 4: Add the percentages determined in accordance with Steps 1, 2 and 3 or such of the aforesaid

percentages as may be applicable to the particular taxpayer's business and divide the total so obtained by the number of percentages used in ascertaining said total. The result so obtained is the business apportioned percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be apportioned entirely outside this municipality. A factor is excluded only when it does not exist anywhere.

- e. STEP 5: The business apportionment 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 this municipality.

3. Substitute Method:

- a. In the event a just and equitable result cannot be obtained under the formula, upon application of the taxpayer, the Administrator may substitute other factors in the formula or prescribe other methods of apportioning net income calculated to effect a fair and proper apportionment.
- b. Application to the Administrator to substitute other factors in the formula or to use a different method to apportion net profits must be made in writing before the end of the taxable year and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. A copy thereof shall be served at the time of filing upon the taxpayer or Administrator as the case may be. 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. Operating Loss.

1. Net losses incurred during any taxable period, in a business or other activity subject to the Ordinance, are deductible from all taxable net profits, for the same period, included in the taxpayer's return. Losses are deductible only in the taxable period in which they are incurred. Ordinance No 1990-42 Section 183.03(C)(1) effective January 1, 1991.
2. A short fiscal year (a fiscal year of less than twelve (12) months in cases where there has been a change in accounting period, where a new taxpayer selects a short fiscal year, or where a new taxpayer operates in this municipality for less than his full accounting period, shall be considered as a full taxable fiscal year.
3. In any return in which a net operating loss is claimed, a schedule should be attached showing:
  - a. Year in which net operating loss was sustained.

- b. Method of accounting and apportionment used to determine portion of net operating loss allocable to this municipality.
4. The net operating loss of a business which loses its identity through merger, consolidation, etc., shall not be allowed as a carry-forward loss deduction to the surviving business entity.
5. In the case of a net operating loss in the filing of consolidated returns, see Article III, paragraph D.

D. Consolidated Returns:

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

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

4. In determining the apportionment fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property fraction (Step 1 of the formula) shall be determined on the basis of the average original cost of the property during the period such corporation was a member of the group. The rental portion of the fraction, however, shall be computed a 8 times the annual rent. The gross receipts and wage fractions 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 will be the parent corporation.
6. In consolidating the net income, the taxable income of each corporation shall be computed in accordance with the provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of the affiliated group.
7. In determining expenses that are not allowable because they are allocable to non-taxable income, such calculations shall be based on the consolidated net income. As an example, inter-company dividends which are eliminated in the consolidation will not be taken into consideration in determining non-taxable income.

E. EXCEPTIONS

The following shall not be considered taxable.

1. Poor relief, unemployment, insurance benefits, old age pensions or similar payments received from local, state or federal governments or charitable or religious organizations.
2. Proceeds of insurance, annuities, workman's compensation insurance, social security benefits, pensions, compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits.
3. Alimony
4. The tax provided for herein, shall not be levied on the personal earnings of any natural person under 18 years of age.
5. Interest and dividends from intangible property.
6. Military pay and allowances received as a member of the armed forces of the United States.

7. Any charitable, educational, fraternal or other type of non-profit association or organization enumerated in Section 718.01 of the Revised Code of Ohio, which is imposed by the ordinance.
8. Any association or organization falling in the category listed in the preceding paragraph not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the taxes levied under the ordinance on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.
9. Where such non-profit association or organization conducts income producing business both within and without the corporate limits, it shall calculate its profits allocable to this municipality under the method or methods provided above.
10. Compensation for damage to property by way of insurance or otherwise.
11. In the case of a minister of the gospel, qualifying income does not include the rental value of a home furnished as part of his compensation, or the rental allowance paid to him, as part of his compensation to the extent used by him to rent or provide a home (Ord. 2002-35 Passed 12-30-02)
12. Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars may be subjected to taxation. The payer of such compensation is not required to withhold Municipal tax from that compensation.
13. An S corporation shareholder's distributive share of net profits or losses of an S corporation.

#### **ARTICLE IV**

##### **EFFECTIVE PERIOD OF TAX**

- A. The tax imposed by Section 183.03, paragraphs A-1 and A-2 of the Ordinance shall be levied, collected and paid with respect to qualifying salaries, wages, bonuses, incentive payments, commissions, fees, and other compensation earned on and after January 1, 2004.
- B. The tax imposed by Section 183.03, paragraphs A-3, A-4 and A-5 of the ordinance, with respect to net profits of trades, businesses, professions, enterprises, undertakings and other activities is on the net profits earned on and after July 1, 1966.

#### **ARTICLE V**

##### **RETURN AND PAYMENT OF THE TAX**

- A. Date and Requirement For Filing:

1. Each taxpayer shall, whether or not a tax be due thereon, make and file a return on or before April 15th of the year following the effective date of the Ordinance, and on or before April 15th or each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on the 15<sup>th</sup> day within four months of the end of such fiscal year or period. However, where such non-resident's sole tax is deducted by the employer and paid to the Income Tax Administrator, then the non-resident is not required to file a return for that year. Effective 1/1/05.
2. If the return is made for a fiscal year or any period less than a year. Said return shall be made by the 15<sup>th</sup> of the fourth month within four (4) months from the end of each fiscal year or other period.
3. Every person subject to the provisions of Section 183.03 of the ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, wages, commissions and other personal service compensation, net profits from business or other activities, including the rental from use of real and personal property, and other income taxable under the ordinance, received for the period covered by the return and such other pertinent facts and information in detail as the Administrator may require.
4. Where an employee's entire earnings for the tax period are paid by an employer or employers, and the (one and one half) percent tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire earnings of such employee-taxpayer, and where the employer of such employee has filed a return or return in which such employee has no taxable income other than such earnings and tax so withheld has been paid to the Administrator. The Administrator is hereby authorized to accept such report or returns provided by the employer, unless otherwise specified, as the return required of any such employee.
5. An employee who is permitted to deduct business expenses from gross wages, salaries, or commissions must file a return in order to claim such deductions even though all or part of such wages, salaries, or commissions is subject to withholding. (i.e. 2106)(Submit copy of Form 2106, Sch A, and front page 1040)
6. Any taxpayer who received taxable income not subject to withholding under the ordinance must file a return.
7. Any taxpayer having income, wages, or other compensation for which a return must be filed, and also having net profits from a business covering the same or a different period, is required to file only one return.
8. Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof.
9. Except as provided for herein, the tax is on the

partnership or association as an entity whether resident or non-resident and a return is required disclosing the net profits allocable to this municipality and the tax paid thereon.

10. A husband and wife may, in any tax year, elect to file separate or joint returns.
11. Operating losses from business or professional activities, may not be offset against salaries, wages, commissions and other personal service compensation.

B. Information Required and Reconciliation With Federal Returns.

1. In returns filed hereunder, there shall be set forth the aggregate amount of qualifying salaries, wages, bonuses, incentive payments, commissions, fees and other compensation less reasonable allowable expenses incurred subject to the tax earned from each employer, taxable net profits and other pertinent information as the Administrator may require.
2. Where figures of total income, total deductions, and net profits are included, as shown by a federal return, any items of income as are not subject to this municipality's tax and unallowable expenses shall be eliminated in determining net income subject to this municipality's tax. In the absence of records showing the actual unallowable expenses, such expenses shall be determined in accordance with Article III A-6.c.1.08 of these regulations. The fact that any taxpayer is not required to file a federal tax return does not relieve him from filing this municipality's tax return.
3. If a change in federal income tax liability, made by the Federal Internal Revenue Service, or by a judicial decision, results in an additional amount of tax payable to this municipality, a report of such change shall be filed by the taxpayer with three (3) months after receipt of the final notice from the Federal Internal Revenue Service or final Court decision, See Article XI-B-2.
4. If a change in federal income tax liability results in a reduction of taxes owed and paid to this municipality a claim for refund shall be filed with the Administrator as prescribed in Section 183.11 of the ordinance and Article XI-C of these regulations.

C. Extensions.

1. Upon written request of the taxpayer made on or before the date for filing the return, and for good cause shown, or upon receipt of a copy of the Federal Internal Revenue Service extension granted the Taxpayer, the Administrator may extend the time for filing such return for a period of not to exceed six (6) months, or to one (1) month beyond any extension requested of or granted by the Federal Internal Revenue Service. Whenever he deems such necessary, the Administrator may require a tentative return accompanied by payment of the estimate tax. No penalty will be assessed in those cases in which the

return is filed, however, the amount by which the actual tax found to be due exceeds the payment submitted with the extension or paid declaration shall bear interest from the original due date, pursuant to the provisions of Section 183.11

An extension may be denied by the Administrator if the taxpayer fails to timely file the request, fails to file a copy of the request for the federal extension, owes on any delinquent income tax or any penalty, interest, assessment, or other charge for the late payment or nonpayment of income tax, or has failed to file any required income tax return, report, or other related document for any prior tax period. (Ord. 2002-35.)

2. Information returns, schedules and statements needed to support tax returns are to be filed within the time limits set forth for filing the tax returns.

D. 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 shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 183.06 of the ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 183.07 of the ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 813.15 hereof, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.
2. A taxpayer who has overpaid the amount of tax to which this municipality is entitled under the provisions of the ordinance may have such overpayment applied against any subsequent liability hereunder or, at this election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

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 Section 183.12 and 183.13. Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.
2. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's Mount Vernon, Ohio tax liability, such taxpayer shall make and file an amended Mount Vernon, Ohio return showing income subject to this municipality's tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

**ARTICLE VI**  
**COLLECTION OF TAX AT THE SOURCE**

A. Duty of Withholding.

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within this municipality, who employs one or more persons whether as an employee, officer, director or otherwise, to deduct each time any compensation is paid the tax of one and one half (1-1/2%) from;
  - a. The all qualifying salaries, wages, bonuses, incentive payments, fees, commissions or other forms of compensation paid to residents of this municipality, regardless of the place where the services are rendered; and
  - b. All compensation paid non-residents for services rendered, work performed or other activities engaged in within this municipality.
2. All employers within or doing business within this municipality are required to make the collections and deductions specified in this article, regardless of the fact that the services on account of which any particular deduction is required, as to residents of this municipality, were performed outside this municipality.
3. Employers who do not maintain a permanent office or place of business in this municipality, but who are subject to tax on net profits attributable to this municipality, under the method of apportionment provided for in the ordinance, are considered to be employers within this municipality and subject to the requirement of withholding.
4. Such employer, in collecting said tax, shall be deemed to hold the same until payment is made such employer to this municipality, as a Trustee for the benefit of this municipality, and any such tax collected by such employer from his/her employees shall, until the same is paid to this municipality, be deemed a Trust Fund in the hands of such employer.
5. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation paid. If the employer has withheld the tax and failed to pay the tax withheld to the Administrator, the employee is not liable for the tax so withheld.
6. Commissions and fees paid to professional men, brokers and others who are independent contractors, and not employees of the payer, are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and return and pay the tax pursuant to the provisions of the ordinance and Articles V and VII of the regulations.

7. Where a non-resident receives compensation for personal services rendered or performed partly within and partly without this municipality, the withholding employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within this municipality 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 the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within this municipality bears to the total volume of business transacted by him within and outside this municipality.
  - 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 this municipality 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 this municipality on a seven-day per week basis. The percentage of time worked in this municipality 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. The occasional entry into this municipality of a non-resident employee who performs the duties for which he is employed primarily outside the city, shall not be deemed to take such employee out of the class of those rendering their services entirely outside this municipality.
8. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions.
9. 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 regulations.
10. An employer whose records show that an employee is a non-resident of this municipality and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside this municipality by such employee, provided,

however, that such employer must withhold the tax on all personal service compensation paid such employee after the Administrator notifies said employer in writing that such employee is a resident of this municipality. All employees are required to notify the employer of any change of residence and the date thereof.

11. A Mount Vernon, Ohio employer required to withhold the tax from a Mount Vernon, Ohio resident for work done or services performed in another municipality, and who does so withhold and remit to such other municipality, shall be relieved from the requirement of withholding the Mount Vernon, Ohio tax from such Mount Vernon, Ohio resident, except where the rate of tax for such other municipality is less than the rate of tax imposed by this ordinance. In such case the employer shall withhold and remit the difference to this municipality.
12. No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed exclusively in or about such person's residence, but such employee shall be subject to all of the requirements of the ordinance.

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

1. The deductions from salaries, wages, and other compensation required to be made by employers is to begin with the compensation earned on and after the effective date of the ordinance.

The employer (in addition to any return required to be filed with respect to his own earnings or net profits) shall, on or before the last day of the month next following each quarterly period, make a return and pay to the Administrator the full amount of the tax so deducted or withheld with respect to compensation paid all of his employees subject to the tax under the ordinance. Provided, however, the Administrator may require an employer to remit withholding taxes at more frequent intervals.

The return required to be filed under this article shall be made on a form furnished by or obtainable on request from the Administrator.

2. If more than the amount of tax required to be deducted by the ordinance is withheld from an employee's pay, such excess may be refunded by the employer or the Administrator, depending upon the circumstances and the time when the over-withholding is determined as follows:

a. Current employees:

- .1 If the over-withholding is discovered in the same period the employer shall make the necessary adjustment directly with the employee and the amount to be reported on the return as withheld shall be the corrected amount.

- .2 If the over-withholding is discovered in a

subsequent period of the same calendar year the employer may make proper adjustment with the employee. In such case the return for the period in which the adjustment is made shall indicate the total amount actually withheld, the amount of the adjustment deducted therefrom, and the corrected amount reported on the return;

- .3 If the over-withholding is discovered in the following year, the employer should notify the Administrator of such over-withholding and the circumstances thereof. Upon proper verification the Administrator shall refund to the employee the amount of such excess withholding;

b. Former Employees:

- .1 In case too much has been withheld from an employee who is no longer employed by the employer, the employer shall notify the Administrator of the amount and circumstances of such over-withholding and the Administrator shall then refund to the employee the amount of such excess withholding; or
- .2 If the error is discovered by the employee shall file a claim with the Administrator and, upon verification thereof by the employer, the Administrator shall refund to the employee the amount of such excess withholding;

c. Non-Residents Employed Outside the City:

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

d. Insufficient Withholding:

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

3. Every employer is deemed to be a trustee for this municipality in collecting and holding the tax required under the ordinance to be withheld and the funds so collected by such withholding are deemed to be trust funds.

4. Every such employer required to deduct and withhold the

tax at the source is liable directly to this municipality for payment of such tax whether actually collected from such employee or not.

5. On or before the last 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 this municipality's income tax has been withheld, showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of this municipality's income tax withheld from such employee.
  6. The gross compensation to be reported for each employee shall be for the full twelve (12) calendar months of the year or such portion thereof as the employee reported on was employed.
  7. All payments not subject to withholding shall be reported on forms as required by the Administrator.
  8. In addition to such information returns, and at the time the same are filed, such employer shall file with the Administrator a form to enable the Administrator to reconcile the sum total of compensation paid and taxes withheld as disclosed by information return W-2, or list of employees, and prior returns and remittances made pursuant to the ordinance.
- C. Fractional Parts of Cent: In deducting and withholding the tax at the source and in payment of any tax due under the ordinance, a fractional part of a cent shall be disregarded unless it amounts to one-half cent (1/2) or more in which case it shall be increased to one-cent (1).

#### **ARTICLE VII** **DECLARATIONS**

- A. Requirement of Filing.
1. A declaration of estimated tax shall be filed by every taxpayer who may reasonably be expected to have taxable income of One Hundred Dollars (\$100.00) or more, the tax on which is not or will not be withheld by an employer or employers. Where required such declaration shall be filed within four (4) months after the beginning of the taxable year.
  2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith.
  3. A declaration of estimated tax, which is less than 90% of the tax as shown on the final return shall not be considered filed in good faith.

B. Date of Filing:

1. A person or other entity conducting a business not previously subject to the tax, or whose employer does not withhold the tax, shall file a declaration within four (4) months after the date he becomes subject to the tax.
2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration on or before the 15<sup>th</sup> day of the fourth (4h) month after the beginning of taxpayers taxable year or period.

C. Form for Filing:

1. Such declaration shall be filed upon a form or forms furnished by, or obtainable from the Administrator. Provided, however, credit shall be taken for this municipality's tax to be withheld from any portion of such income. In accordance with the provisions of Section 183.15 of the ordinance, credit may be taken for tax to be withheld and remitted to another taxing municipality.
2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any quarterly payment date as set forth in Article VII-D.1. Such amendment may be made on the regular declaration form.

D. Dates of Payments:

1. For taxpayers who are individuals such estimated tax may be paid in full with the declaration or in equal installments on or before April 15<sup>th</sup>, and on or before the 31<sup>st</sup> day of the seventh, tenth, and thirteenth month after the beginning to the taxable year.
2. For taxpayers who are not individuals such estimated tax may be paid in full with the declaration or in equal installments on or before the 15<sup>th</sup> day of the fourth, sixth, ninth, and twelfth month after the beginning of taxable year.
3. The declaration must be accompanied by at least 22-1/2 percent of the estimated tax for the first quarter, 45 percent by the 2<sup>nd</sup> quarter, 67-1/2 percent by the 3<sup>rd</sup> quarter, and 90 percent by the 4<sup>th</sup> quarter.
3. In the event an amended declaration has been filed the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.
4. Failure to file or pay a declaration of estimated tax by the due date, a Ten Dollar (\$10.00) penalty payment will be due.

E. Final Returns Required:

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

must be filed to obtain a refund of any overpayment of over one dollar (\$1.00).

**ARTICLE VIII**  
**DUTIES OF THE ADMINISTRATOR**

A. Collection of Tax and Retention of Records:

1. It shall be the duty of the Administrator to receive the tax imposed by the ordinance in the manner prescribed herein from the taxpayers; to keep an accurate record thereof, and to report all monies so received.
2. It shall be the duty of the Administrator to enforce payment of all taxes owing this municipality, to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

B Enforcement Provisions:

1. The Administrator is charged with the administration and enforcement of the provisions of the ordinance and is, empowered to adopt, promulgate, and enforce rules and regulations or any amendment thereof relating to any matter or thing pertaining to the administration and enforcement of the ordinance. The Administrator has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the ordinance.
2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the ordinance or these rules and regulations, should submit to the Administrator in writing all the facts involved and the ruling sought.
3. These regulations, together with all amendments and supplements hereto and all changes herein, will be on file at the office of the Administrator, 3 North Gay Street, Mount Vernon, Ohio, and/or on the web site [www.mountvernonohio.org](http://www.mountvernonohio.org), and will be open to public inspection.
4. The Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owned by him under the ordinance.
5. Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Section 183.11 and 813.12 of the ordinance shall apply.

C. Estimation of Tax by Administrator:

1. Whenever the Administrator has been unable to secure

information from the taxpayer as to his taxable income for any year, he may determine the amount of tax appearing to be due and assess the taxpayer upon the basis of such determination, together with the interest and penalties as prescribed in Section 183.11 of the ordinance.

2. Such determination of tax may be adjusted upon submission by the taxpayer of actual records from which his tax may be computed.
- D. The Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 183.11 and 183.08 (d) of the ordinance.

**ARTICLE IX**  
**BOARD OF APPEALS**

As used in this section, "Tax Administrator" means the individual charged with direct responsibility for administration of a tax levied by a municipal corporation on income.

- A. Whenever a Tax Administrator issues a decision regarding a municipal income tax obligation that is subject to appeal as provided in this section or in an Ordinance or regulation of the municipal corporation, the Tax Administrator shall notify the taxpayer at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.
- B. Any person who is aggrieved by a decision by the Tax Administrator and who has filed with the municipal corporation the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Appeals created pursuant to this section by filing a request with the board. The request shall be in writing, shall state why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Tax Administrator issues the decision complained of to the Tax Administrator.
- C. Administrator must notify the Board within five (5) days of receipt of written appeal.
- D. The Board shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an Attorney at Law, Certified Public Accountant, or other representative.
- E. The Board may affirm, reverse, or modify the Tax Administrator's decision or any part of that decision. The Board shall issue a final decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send a copy of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision.
- F. The taxpayer or tax administrator may appeal the board's decision as provided in Section 5717.011 [5717.01.1] and (718.11) Ohio Revised Code. Rather than the decision of the local income Board of Appeals being subsequently appealed by either party to a court, the portion will now exist to instead make the appeal to the State Board of Tax Appeals. An appeal from that Board can then either be made to the Supreme Court of Ohio, or to the court of appeals for the county in which the municipality

involved in the appeal is situated [Section 7a8.119 second to last paragraph], 5717.011 (A-D), and 5713 (I)].

- G. Each Board of Appeal created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transaction. Such records are not public records available for inspection under Section 149.43 of the Revised Code. Hearings requested by a taxpayer before a Board of Appeal created pursuant to this section are not meetings of a public body subject to Section 121.22 of the created pursuant to this section are not meetings of a public body subject to Section 121.22 of the Revised Code.
- H. The Board of Tax Appeals is hereby created, which shall consist of three members to be appointed by the Mayor with the approval of Council. The term of all members shall be four years, except that the terms of two of the members of the first commission so appointed shall have terms of four years and the third member of the first commission so appointed shall have a term of two years. Reference Ordinance No. 2000-44. Members of the Board of Appeals shall not hold any other office or employment with the City.
- I. The Board to Tax Appeals may adopt rules and regulations governing the conduct of its affairs that are consistent with Ordinance 2000-44. (Ord. 2001-08).

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

A. Investigations by Administrator:

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

B. Subpoena of Records and Persons:

- 1. The Administrator, or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The Administrator may compel the production of books, papers and records and the attendance of all persons before him whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.
- 2. The Administrator's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at

the office of the Administrator.

3. The Administrator may order the appearance before him or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Administrator is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
4. Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show the time and place of the hearing and what books, papers or records the witness is to make available at such hearing.
5. The notice shall be served by the Administrator, or his duly authorized agent, by delivering it to the person named personally, or by leaving the notice at his usual place of business or residence, or by mailing it to the person by registered mail, return receipt requested, addressed to his usual place of business or residence.

C. Penalty for Non-Compliance:

Refusal by any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Administrator or his duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 183.13 of the ordinance.

D. Confidential Nature of Examinations:

Any information gained as a result of any returns, investigations, verifications or hearings before the Administrator, required by the ordinance or authorized by these rules and regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of Five Hundred Dollars (\$500.00) or imprisonment for not more than six (6) months, or both.

In addition to the above penalty, any employee of this municipality who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

E. Retention of Records:

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

**ARTICLE XI**

## INTEREST AND PENALTIES

### A. Interest and Penalties:

All taxes imposed by this ordinance and remaining unpaid after they become due shall bear interest, in addition to the amount of the unpaid tax, at the rate of twelve (12) per cent per annum, and the taxpayers upon whom said taxes are imposed by this ordinance shall be liable, in addition thereto, to a penalty of ten (10) per cent of the amount of the unpaid tax, or penalty of twenty-five (\$25) dollars, whichever is greater, whether or not taxes are owed.

### B. Exceptions:

1. No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within the prescribed time.
2. In the absence of fraud neither penalty nor interest shall be assessed on any additional taxes resulting from a federal audit for federal income tax purposes provided an amended return is filed and the additional tax paid within three (3) months after final determination of the federal tax liability.
3. A taxpayer or employer shall have thirty (30) days after receipt of notice of any proposed imposition of interest and penalties within which to file a written protest or explanation with the Administrator. If no protest or explanation is filed within the prescribed time, the proposed imposition of interest and penalties shall become and be the final assessment. Upon filing of a written protest or explanation, the Administrator shall withdraw the assessment or he shall adjust or reaffirm the assessment and it shall become final.

## ARTICLE XII

### COLLECTION OF UNPAID TAXES AND FUND OF OVERPAYMENTS

#### A. Unpaid Sums - Civil Suit:

1. In addition to any criminal penalties which may be imposed pursuant to Section 183.13 (11) of the ordinance, all taxes imposed by Section 183.03 of the ordinance and not paid when due, shall be collectible, together with any interest and penalties thereon, by civil suit. Employers who are required, under Section 183.06 of the ordinance, to withhold and remit the taxes required to be withheld at the source, and who fail to withhold and/or remit, become liable to the municipality in a civil suit to enforce the payment of the deficiency 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 no period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure

to report 25% or more of income required to be reported shall be considered a substantial omission.

3. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations, the period within which an assessment may be made by the Administrator is extended to one (1) year from the time of final determination of federal tax liability.

B. Refunds and Overpayment:

1. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date the tax was due or the return was filed, or three (3) months after the determination of the federal income tax liability, whichever is later.
2. No refund shall be made to any taxpayer until he has complied with all provisions of the ordinance and has furnished all information required by the Administrator.
3. Overpayments will be either refunded or credited to the taxpayer's current year's liability at his option. Where no election has been made by the taxpayer overpayments of any year's taxes shall be applied as follows:
  - a. To taxes owed for any previous years in the order in which such taxes become due.
  - b. To his current estimated tax liability.

C. Limitation:

Where the total amount due or refund claimed for a tax year is less than one dollar (\$1.00) such amount shall not be collected or refunded.

**ARTICLE XIII**  
**VIOLATIONS, PENALTIES**

A. Any person who shall:

1. Fail, neglect or refuse to make any return or declaration required by the ordinance; or
2. Make any incomplete, false or fraudulent return; or
3. Willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this ordinance; or
4. Willfully fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
5. Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
6. Fail to appear before the Administrator and to produce his books, records, papers or federal income tax returns

relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or

7. Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
8. Fail to comply with the provisions of the ordinance or any order or subpoena of the Administrator authorized hereby; or
9. Give to an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
10. Fail to use ordinary diligence in maintaining proper records of employee's residence addresses, total wages paid and this municipality's income tax withheld, or to knowingly give the Administrator false information; or
11. Attempt to do anything whatever to avoid payment of the whole or any part of the tax, penalties or interest imposed by the ordinance.

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.

B. Prosecutions:

Prosecutions for an offense made punishable under this Section or any other provision of this ordinance shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.

C. Failure to Receive Forms - Not a Defense:

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

**ARTICLE XIV**  
**USE OF FUNDS**

NO REGULATION ON THIS SECTION AS IT IS A POLICY MATTER FOR COUNCIL.

**ARTICLE XV**  
**CREDIT ALLOWED FOR TAX PAID IN ANOTHER MUNICIPALITY**

A. Credit for Tax Paid to Another Municipality:

Every individual taxpayer who resides in the City but who received net profits, salaries, wages, commissions or other compensation for work done or services performed or rendered outside of the city, if it be made to appear that he has paid a municipal income tax or excise tax based on income, on such net profits, salaries, wages, commissions or compensation in another

municipality, shall be allowed a credit of up to one percent (1%) against the tax imposed by the ordinance on the amount so paid by him or in his/her behalf to such other municipality. This credit shall not exceed one percent (1%) on such income earned in such other municipality or municipalities where such tax is paid. (Effective 1/1/05) Ordinance 2004-30.

B. Method of Applying for Credit:

1. No credit will be given unless the taxpayer claims such on his final return or other form prescribed by the Administrator, and presents such evidence of the payment of a similar tax to another municipality, as the Administrator may require. Proof of payment to another municipality shall be submitted either in the form of a copy of canceled check (both sides) or receipt from any other taxing municipality. For withholding on wages, a W2 showing each municipality, wages, and amount of tax withheld.
2. A statement satisfactory to the Administrator from the taxing authority of the municipality to which the taxes are paid that a Mount Vernon, Ohio resident or his employer is paying the tax shall be considered as fulfilling the requirement of this article.

**ARTICLE XVI**  
**SAVING CLAUSE**

NO REGULATION AS THIS SECTION PERTAINS TO THE LEGALITY OF THE ORDINANCE AND NOT TO ITS ADMINISTRATION.

**ARTICLE XVII**  
**COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE**

- A. This ordinance shall continue effective insofar as the levy of taxes is concerned until repealed and insofar as the collection of taxes levied hereunder the actions or proceedings for collecting any tax so levied or enforcing any provisions of this ordinance are concerned, it shall continue effective until all said taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this ordinance shall have been fully terminated, subject to the limitations contained in Sections 183.11, 183.12, 183.13 hereof.
- B. Annual returns due for all or any part of the last effective year of this ordinance shall be due on the date provided in Sections 183.05 and 183.06 of the ordinance as though the same were continuing.

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