

**CITY OF FAIRLAWN INCOME TAX**

**RULES AND REGULATIONS**

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## **RULES AND REGULATIONS**

### **ARTICLE I - PURPOSE**

Section 1 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.

**ADMINISTRATOR** means the individual designated by the Ordinance to administer and enforce the provisions of the Ordinance.

**ASSOCIATION** means a partnership, cooperative, limited partnership, Chapter S Corporation as defined in the Federal Tax Code, or any form of unincorporated enterprise owned by two or more persons.

**BOARD** means the Board of Tax Review provided for by Section 13 of the Ordinance.

**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.

**BUSINESS ALLOCATION** as used in these Regulations, means the portion of net profits to be allocated to the City of Fairlawn as having been made in Fairlawn, either under separate accounting method, or under the three factor formula of property, payroll, and sales, provided for in Section 3 of the Ordinance.

**CITY** means the City of Fairlawn.

**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 Chapter S Corporations (see "Association").

**DOMICILE** means a place of residence occupied by a taxpayer on such basis that, if otherwise qualified, the taxpayer may be registered as an elector of the City.

## Article II - Definitions

**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 Workman's Compensation law shall prima facie be an employee.

**EMPLOYER** means an individual, partnership, association, corporation (including a corporation not for profit), governmental agency, board body, bureau, department, subdivision, 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 31. Only fiscal years accepted by the Internal Revenue Service for Federal income tax purposes may be used for City of Fairlawn purposes.

**GROSS INCOME** means the total income from any source whatsoever.

**GROSS RECEIPTS** shall mean the total revenue derived from sales, work done, or services rendered, before any deductions, exceptions, or credits are claimed.

**NET PROFITS** means a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting systems used by the taxpayer for Federal income tax purposes, without deduction of taxes imposed by the Ordinance, Federal, state, and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of the Ordinance. Net Profits shall include any amount or value received, realized, or recognized in a sale or other disposition of tangible personal property or real property used in business, in excess of book value, to the extent of depreciation allowable after October 1, 1968.

**NON-RESIDENT** means an individual domiciled outside the City of Fairlawn.

**NON-RESIDENT UNINCORPORATED BUSINESS ENTITY** means one not having an office or place of business within the City of Fairlawn.

**THE ORDINANCE** means Ordinance No. 1968-89, as amended, enacted by the Council of the City of Fairlawn and any amendments and supplements thereto effective on and after October 1, 1968.

NOTE: Hereinafter this will be referred to as "effective period of Ordinance".

## Article II - Definitions

**PERMANENT PLACE OF BUSINESS** means a place of business maintained or intended to be maintained by a taxpayer for not less than twelve consecutive months.

**PERSON** means every natural person, partnership, fiduciary, association, 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 the City of Fairlawn, any employee or agent of such unincorporated entity or corporation who can be found within the corporate limits of the City of Fairlawn.

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

**RESIDENT** means an individual domiciled in the City of Fairlawn.

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

**TAXABLE INCOME** means wages, salaries and other compensation paid by an employer or employers before deductions of any kind, and/or the net profits from the operation of a business, profession or other 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.

**TAXING MUNICIPALITY** means any municipal corporation or joint economic development district levying an income tax on salaries, wages, commissions and other compensation earned by individuals, and on the net profits earned from the operation of a business, profession or other activity.

**TAXPAYER** means an individual, association, corporation 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 masculine shall include the feminine and neuter.

## ARTICLE III - IMPOSITION OF TAX

### A. Bases:

#### 1. Resident Taxpayer

- a. In the case of residents of Fairlawn, an annual tax of two percent (2%) is imposed on all salaries, wages, commissions, and other compensation earned (including earnings deposited by the employee into deferred compensation or medical coverage plans) during the effective period of the Ordinance. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 3 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 that are subject to the tax imposed by Section 3 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:
    - (a) An officer, director or employee of a corporation (including charitable and other non-profit organizations), joint stock association, or joint stock company;
    - (b) An employee (as distinguished from a partner or member) of a partnership, limited partnership, or any form of unincorporated enterprise owned by two or more persons;
    - (c) An employee (as distinguished from a proprietor) of a business, trade or profession conducted by an individual owner;
    - (d) An officer or employer (whether elected, appointed or commissioned) of the United States Government or of a corporation created and owned or controlled by the United States Government, or any of its agencies, or of the State of Ohio or any of its political sub-divisions or agencies thereof; or any foreign country or dependency except as provided in Section 3 of the Ordinance;
    - (e) 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, sub-division, 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 where paid.

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

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

(c) If commissions are included in the net earnings of the trade, business, profession, enterprise, or activity, carried on by an unincorporated entity of which the individual receiving such commission is owner or part owner and therefore subject to the tax under Paragraphs (4) or (5) of Section 3 of the Ordinance, they shall not be taxed under Paragraph (1) of such Section.

(3) Fees, unless such fees are properly included 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 3, Paragraph (3) of the Ordinance.

(4) Other compensation and income, as reported on W-2's or 1099's, including but not limited to tips, bonuses, salary reduction plans, stock options that are not considered capital gains, or gifts of any type in connection with services rendered, 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, including "sub" pay, during periods of absence from work are taxable when paid.

(6) Payments made to an employee by an employer as separation payouts and reportable as earned income (including, but not limited to, sick pay, severance pay and vacation pay) are taxable when paid. Payments from a qualified retirement plan and / or IRA's are exempt from Fairlawn income tax. Non-qualified deferred compensation plans are treated as a wage continuation and are considered earned income at the time paid.

(7) Moving expenses are not taxable to the extent deducted on the Federal return, as per Form 3903.

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

a. In the case of individuals who are not residents of Fairlawn, there is imposed under Section 3, Paragraph (2) of the Ordinance, a tax of two percent (2%) on all salaries, wages, commissions and other compensation earned (including earnings deposited by the employee into deferred compensation or medical coverage plans under salary reduction arrangements) during the effective period of the Ordinance by those individuals who are employed by, or perform services for or work on behalf of a business entity whose office or business is located within the City whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial. Tax shall not be levied on expenses reported in accordance with guidelines for Federal Form 2106; subject to audit and approval by the City Division of Taxation.

b. The items subject to tax under Section 3, Paragraph (2) of the Ordinance are the same as those listed and defined in Article III-A.

c. When a resident or non-resident receives compensation for services for sales of real estate or insurance from an employer whose situs is the City of Fairlawn, that total compensation is taxable at Fairlawn's tax rate and is payable to the City of Fairlawn. The site of the property sold or



residence of the purchaser of insurance has no bearing on the taxing of the compensation.

**3. Resident Associations and UNINCORPORATED Businesses:**

- a. In the case of resident associations, unincorporated businesses, professions, enterprises, undertakings or other activities conducted, operated, engaged in, prosecuted or carried on, irrespective of whether such taxpayer has an office or place of business in Fairlawn, there is imposed an annual tax of two percent (2%) on the net profits earned, accrued or received during the effective period of the Ordinance attributable to Fairlawn, under the formula or separate accounting method provided for in Section 3 of the Ordinance, derived from sales made, work done or services performed or rendered and business or other activities conducted in the City of Fairlawn.
- b. 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.3 f below).
- c. The tax imposed by Section 3, Paragraph a-3 of the Ordinance is imposed on all resident associations and unincorporated entities having net profits attributable to the City of Fairlawn under the method of allocation provided for in the Ordinance, regardless of where the owner or owners of such resident unincorporated business entities or associations reside.
- d. Resident unincorporated entities or associations owned by two or more persons, all of whom are residents of Fairlawn, shall disregard the method of allocation provided for in the Ordinance and pay the tax on their entire net profits thereof. In such cases, 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.
- e. A resident individual who is sole owner of a resident unincorporated entity or association shall disregard the business allocation formula and pay the tax on the entire net profits of his resident unincorporated business entity.

f. In the case of a resident individual partner or part owner of a resident unincorporated entity or association, there is imposed an annual tax of two percent (2%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the Ordinance not attributable to Fairlawn under the method of allocation provided for in Section 3 of the Ordinance and not taxed against the entity.

**4. Non-Resident Associations and UNINCORPORATED Businesses:**

a. In the case of non-resident unincorporated businesses, associations, professions, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of two percent (2%) on the net profits earned, accrued or received during the effective period of the Ordinance attributable to Fairlawn, under the formula or separate accounting method provided for in Article III-B.

b. The tax imposed on associations and non-resident unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owner's therefore. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III-A-5 below.)

c. Non-resident unincorporated entities or associations owned by two or more persons, all of whom are residents of Fairlawn, 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.

**5. Imposition of Tax on Resident's Share of Profits of an Association or Non-Resident UNINCORPORATED Business Entity Not Attributable to Fairlawn:**

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

b. In the case of a resident individual partner or part owner of a nonresident unincorporated entity or association, there is imposed an annual tax of two percent (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 Article III-B and not taxed against the entity.

## **6. 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 Fairlawn, there is imposed an annual tax of two percent (2%) on the net profits earned, received or accrued during the effective period of the Ordinance attributable to Fairlawn under the formula or separate accounting method provided for in the Article III-B.
- b. In determining whether a corporation is conducting a business or other activity in Fairlawn, 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.

## **7. Amplification:**

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

### a. Net Profits:

- (1) Net profits as used in the Ordinance and these Regulations means net profits derived from any business, profession or other activity or undertaking carried on for profit or normally carried on for profit.
- (2) Net profits, as disclosed on any return filed pursuant to the provisions of the Ordinance, shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service, providing such method does not conflict with any provisions of the Ordinance. Net profits, as 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 are not 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 and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed, but no deduction may be claimed for salary withdrawal, or distribution, of a proprietor or of the partners, members or other owners of an unincorporated business or enterprise or of an association.

(a) If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated 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.

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

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

(d) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off or 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.

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

(f) In general, non-taxable income and expenses incurred in connection therewith are not to be considered in determining net profits. 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.

(g) If the taxpayer reports income that is nontaxable under the Ordinance and such amounts are deducted in order to reconcile the Fairlawn return with the taxpayer's Federal income tax return, expenses attributable to this non-taxable income shall not be allowed. In the absence of records showing the actual expenses attributable to such non-taxable income and upon approval of the Administrator, such amount shall be deemed to equal five percent (5%) of such non-taxable income.

(h) Capital gains and losses from sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned. Any amount received on a sale or other disposition of tangible personal property used in business, in excess of book value, shall be treated as taxable income under the Ordinance to the extent of depreciation allowable after October 1, 1968. The balance shall be treated as a capital gain.

## **8. 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 representative) 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 \$125.00 per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to tax; provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$125.00 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 \$125.00 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 \$125.00 per month.
- c. In determining the amount of gross monthly rental of any real property, periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.
- d. Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- e. Real property, as the term is used in this regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.
- f. In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for Federal income tax purposes.
- g. Residents of Fairlawn 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 Fairlawn are subject to such taxation only if the real property is situated within the City of Fairlawn. Non-residents, in determining whether gross monthly rentals exceed \$125.00, shall take into consideration only real estate situated within Fairlawn.

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

## **9. Patents and Copyrights:**

a. Income from patents or copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to 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. Allocation of Business Profits:**

### **1. Separate Accounting Method:**

a. The net profits allocable to Fairlawn from business, professional, or other activities conducted in Fairlawn by corporations, unincorporated entities, or associations (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 in the City of Fairlawn.

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

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

### **2. Business Allocation Percentage Method:**

**a. STEP 1:** Ascertain the percentage which the average net book value of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within Fairlawn is of the average net book value of all real and tangible

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

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

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

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

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

(02) 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 gross receipts of the taxpayer derived from sales made and services rendered in Fairlawn is of the total gross receipts wherever derived during the period covered by the return.

(1) The following sales shall be considered Fairlawn sales:

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

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



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

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

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

(2) In the application of the foregoing 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 Fairlawn by phone or mail from an office, or place of business within Fairlawn shall not be considered a solicitation of sales outside the City of Fairlawn.

c. **STEP 3:** Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within Fairlawn is of the total wages, salaries, commissions and other compensation of all the taxpayers' employees within and without Fairlawn during the period covered by the return.

(1) Salaries and reasonable compensation paid owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purposes 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 to determine net income for income tax purposes.

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

(a) In the case of an employee whose compensation depends directly on the volume of business secured by him,

such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within Fairlawn.

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

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

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 allocation percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely outside Fairlawn. A factor is excluded only when it does not exist anywhere.

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

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

### 3. Substitute Method:

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

b. Application to the Board to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing before the end of the taxable year 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 Board.

### **C. Operating Loss Carry Forward:**

1. The portion of a net operating loss, based on income taxable under the Ordinance, sustained in any taxable year subsequent to October 1, 1968, allocable to Fairlawn may be applied against the portion of the profit of succeeding years allocable to Fairlawn, until exhausted but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.
2. In the event net profits are allocated both within and without Fairlawn, the portion of a net operating loss sustained shall be allocable to Fairlawn in the same manner as provided herein for allocating net profits to Fairlawn. The portion of a net operating loss is sustained, on the basis of the allocation factors applicable to that year. The same method of accounting and allocation must be used in the year to which the operating loss was sustained.
3. In the case of fiscal years beginning prior to the effective date of the Ordinance, the net operating loss deduction will be that portion of the operating loss that the number of months of the fiscal year after the effective date of the Ordinance bears to the total number of months in such fiscal year.
4. 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 Fairlawn for less than his full accounting period, shall be considered as a full taxable fiscal year.
5. In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:
  - a. Year in which net operating loss was sustained.
  - b. Method of accounting and allocation used to determine portion of net operating loss allocable to Fairlawn.
6. 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.

### **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.
- 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 subsidiaries 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 a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one (1) month.

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

4. In determining the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property fraction (Step 1 of the formula) shall be determined on the basis of the average net book value of the property during the period such corporation was a member of the group.

The rental portion of the fraction, however, shall be computed at 8 times the annual rent. The gross receipts and wage fraction 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 allocated 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.

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

#### **E. Exceptions:**

The following shall not be considered taxable:

1. Interest, dividends, alimony, capital gains; except capital gains on disposition of business property to the extent of depreciation allowable after October 1, 1968; the balance shall be treated as a capital gain.
2. Military pay or allowances of members of the Armed Forces of the United States, or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.
3. Poor relief, unemployment insurance benefits, supplemental old age pensions or similar payments including disability benefits received from local, State or Federal governments or charitable, religious or educational organizations.
4. Proceeds of insurance paid by reason of the death of the insured; Social Security benefits, pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.

5. Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona tide charitable, religious or educational organizations and associations.
6. Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio from which the City of Fairlawn is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business).
7. Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from interstate commerce.
8. Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City of Fairlawn to impose net income taxes.
9. The income of individuals under 18 years of age. The year in which an individual turns 18 shall be considered as a fully taxable year.

#### **ARTICLE IV**

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

- A. The tax imposed by Section 3a, Paragraphs (1) and (2) of the Ordinance shall be levied, collected and paid with respect to salaries, wages, bonuses, incentive payments, commissions, fees and other compensation earned during the effective period of the Ordinance.
- B. The tax imposed by Section 3a, Paragraphs (3), (4), (5), (6) and (7) of the Ordinance, with respect to net profits of trades, businesses, professions, enterprises, undertakings and other activities is on the net profits earned during the effective period of the Ordinance.

#### **ARTICLE V**

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

- A. Date and Requirement for Filing:
  1. On or before April 30th of the year following the effective date of the Ordinance and each year thereafter, every person subject to other provisions of Section 3 a, Paragraphs (1) through (7) inclusive, of the Ordinance shall, except as hereinafter provided, make and file with the Administrator, a return

on a form prescribed by and obtainable upon request from the Administrator, whether or not a tax be due. The fact that a taxpayer is not required to file a Federal tax return does not relieve him from filing a Fairlawn tax return.

2. If the return is made for a fiscal year or any period less than a year, said return shall be made within four (4) months from the end of each fiscal year or other period.

3. Every person subject to the provisions of Section 3 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. An employee who is permitted to deduct business expenses from gross wages, salaries or commissions must file a return in order to claim such deductions, even though all or part of such wages, salaries or commissions are subject to withholding.

5. Any person who received taxable income not subject to withholding under the Ordinance must file a return.

6. Any person 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.

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

8. 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 Fairlawn and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity is required to make a return and pay the tax.

9. A husband and wife may, in any tax year, elect to file separate or joint returns.

10. Any person having proceeds from gas and oil well profits after Federal depreciation is allowed must file a return.

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

1. Every person subject to the provisions of Section 880.03 of the chapter shall, except as hereinafter provided, file a return setting forth the aggregate

amount of salaries, wages, commissions and other personal service compensations, net profits from business or other activities, including the rental from real and personal property, and other income taxable under the chapter, received for the period covered by the return and such other pertinent facts and information in detail 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 which are not subject to the City of Fairlawn tax and unallowable expenses shall be eliminated in determining net income subject to the City of Fairlawn tax. Deductions for retirement plans, i.e., tax sheltered annuities, deferred compensation, Keogh, IRA, 401K, SEP. etc., are not allowable deductions.

3. Where space on the return is inadequate to clearly indicate how taxable income was determined, additional schedules should be attached. The Tax Administrator may require additional information at any time he deems necessary to verify the accuracy of any return.

#### C. Extensions:

1. Upon written request of the taxpayer made on or before the date for filing the return, and for good cause shown, the administrator may extend the time for filing such return for a period not to exceed 30 days beyond any extension granted by the Federal Internal Revenue Service. The Administrator may require a tentative return accompanied by payment of the estimated tax whenever the estimate exceeds \$200.00. No penalty or interest will be assessed in those cases in which the return is filed and the tax paid within the period as extended, provided all other filing and payment requirements of the Ordinance have been met.

2. Information returns, schedules and statements needed to support tax returns are to be filed within the time limits set forth for filing 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 is due shall have been deducted at the source pursuant to the provisions of Section 6 of the Ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 7 of the Ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Article XV hereof shall be deducted from the amount shown to be due, and only the balance, if any, shall be due and payable at the time of filing said return.



2. A taxpayer who has overpaid the amount of tax to which the City of Fairlawn is entitled under the provisions of the Ordinance may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

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 II of the Ordinance. Such amended return shall be on a form obtainable upon 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 effecting the taxpayer's Fairlawn tax liability, such taxpayer shall make and file an amended Fairlawn return showing income subject to the City of Fairlawn 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 Fairlawn 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 two percent (2%) from:

a. The gross amount of all salaries, wages, bonuses, incentive payments, sub-pay, jury duty pay, severance pay, sick pay, commissions or other forms of compensation paid to residents of Fairlawn, regardless of the place where the services are rendered; and

b. All compensation paid non-residents who are employed by, or perform services for or work on behalf of a business entity whose office or business is located within the City.

2. All employers within or doing business within Fairlawn 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 Fairlawn, were performed outside Fairlawn.

3. Employers who do not maintain a permanent office or place of business in Fairlawn, but who are subject to tax on net profits attributable to Fairlawn under the method of allocation provided for in the Ordinance, are considered to be employers within Fairlawn and subject to the requirement of withholding.

4. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation paid. If the employer has withheld the tax and failed to pay the tax withheld to the Administrator, the employee is not liable for the tax so withheld.

5. Commissions and fees paid to professional persons, brokers, agents 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 persons 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 these Regulations. It is the responsibility of the payer to provide copies to the City of Federal Form 1099, or such other form used to report commissions and fees paid to non-employees.

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

7. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided such expenses are incurred in earning compensation, including commissions and are not deducted as a business expense by the employee under Article III of these Regulations.

8. An employer whose records show that an employee is a non-resident of Fairlawn 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 Fairlawn 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 Fairlawn. All employees are required to notify the employer of any change of residence and the date thereof.

9. A Fairlawn employer required to withhold the tax from a Fairlawn resident for work done or services performed in another municipality, and who does not withhold and remit to such other municipality, shall be relieved from the

requirement of withholding the Fairlawn tax from such Fairlawn resident, except where the rate of tax for such other municipality is less than the rate of tax imposed by the Ordinance. In such case, the employer shall withhold and remit the difference to Fairlawn.

10. 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 Withhold and Status of Employers:**

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

The employer (in addition to any return required to be filed with respect to his own earnings or net profits) shall, on or before the last day of 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. All employers whose withholding is \$100 or more per month shall remit such withholding no later than the fifteenth day of the succeeding calendar month.

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 chapter is withheld from any employee's pay, such excess may be refunded by the employer or the Administrator. In those cases in which too much has been withheld by the employer from an employee and remitted to the Administrator and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain a refund by application to the Administrator, except that refunds will not be made unless claimed within three (3) years after the year for which the tax was withheld. If less than the amount of tax required to be deducted is deducted and withheld by the employer in any period or pay periods, the deficiency shall be deducted in subsequent pay periods.

3. Every employer is deemed to be a trustee for the City of Fairlawn in collecting and withholding 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 Fairlawn for payment of such tax whether actually collected from such employee or not.

5. On or before the 31st day of January, following any calendar year in which such deductions have, been made by an employer, such employer shall file with the Administrator, in the form prescribed by the Administrator, an information return for each employee for whom Fairlawn 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 Fairlawn income tax withheld from such employee.

6. In addition to such informational returns, and at the time the same are filed, such employer shall file with the Administrator, a Reconciliation of Income Tax Withheld from Wages, reconciling the total of compensation paid and taxes withheld as disclosed by informational returns, or list of employees 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 (1/2) cent or more, in which case it shall be increased to one (1) cent.

## **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, the tax on which is not or will not be withheld by an employer or employers. Where required, such declaration shall be filed within four (4) months after the beginning of the taxable year.

2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith.

B. Date of Filing:

1. A person or other entity conducting a business not previously subject to the tax, or whose employer does not withhold the tax, shall file a declaration within four (4) months after the date he becomes subject to the tax.

2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration within four (4) months after the start of each fiscal year or period.

C. Form for Filing:

1. Such declaration shall be filed upon a form or forms furnished by, or obtainable from the Administrator. Provided, however, credit shall be taken for any tax to be withheld from any portion of such income.

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 or on the back of any quarterly notice.

D. Dates of Payments:

1. The estimated tax may be paid in full with the declaration or in equal installments to be paid quarterly.

2. The declaration must be accompanied by at least one fourth (1/4) of the estimated tax shown due thereon.

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

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 of Fairlawn, Ohio 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 Fairlawn, 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 payment thereof.

B. Enforcement Provisions:

1. The Administrator is charged with the administration and enforcement of the provisions of the Ordinance and is, subject to the approval of the Tax Review Board, empowered to adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the Ordinance. The Administrator has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the Ordinance.

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 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 the taxpayer files proper returns for all amounts owed 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 Sections 11 and 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 10 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. Subject to the consent of the Tax Review Board or pursuant to regulation approved by said Board, the Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 10 of the Ordinance.

## **ARTICLE IX**

### **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 Administrator or the taxpayer.
3. The Administrator may order the appearance before him, or his duly authorized agent, of any party whom he believes to have knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered 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 bearing. 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, or certified mail, return receipt requested, addressed to his usual place of business or residence.

C. Penalty for Non-Compliance:

Refusal by an 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 the Ordinance.

D. Confidential Nature of Examination:

Any information gained as a result of any returns, investigations, verifications or hearings before the Administrator or the Board, required by the Ordinance or authorized by these Rules and Regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court 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 the City of Fairlawn who violates the provisions of this Article 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 X**

### **INTEREST AND PENALTIES**

A. Interest:

1. Except as provided in Paragraph C of this Article (below), all taxes imposed on all monies withheld, or required to be withheld, by employers under the provisions of the Ordinance and remaining unpaid after they have



become due, shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of 1.5% per month or fraction thereof.

2. Any payment plan for taxes due as approved by the Tax Administrator should bear interest at the rate of 1.5% per month on any unpaid balance.

#### B. Penalties:

In addition to interest as provided in Paragraph A hereof, penalties are hereby imposed as follows:

1. For failure to pay taxes due, other than taxes withheld: 1.5% per month or fraction thereof, not to exceed 100% of the tax due.

2. For failure to remit taxes withheld from employees: 10% per month, or fraction thereof, not to exceed 100% of the tax due.

3. For failure to file tax returns when due: \$50.00 for the first offense and \$100.00 for each subsequent offense in addition to any other penalties assessed on unpaid taxes.

#### C. Exceptions:

1. No penalty shall be assessed on additional taxes found per 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 determine the assessment, which may or may not be the same as the proposed assessment.

#### D. Appeal of Assessment:

1. Upon recommendation of the Administrator, the Tax Review Board may abate penalty or interest, or both, or upon appeal from the refusal of the Administrator to recommend abatement of penalty and interest, the Board may nevertheless abate penalty and interest, or both.

## **ARTICLE XI**

### **COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS**

#### **A. Unpaid Sums - A Civil Debt:**

1. All taxes imposed by the Ordinance and not paid when due, become, together with interest and penalties thereon, a debt due the City of Fairlawn from the taxpayer and are recoverable as are other debts by civil Suit. Employers who are required, under Section 6 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 City in a civil action to enforce the payment of the debt created by such failure.
2. No additional assessment shall be made by the Administrator after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be no period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report 25% or more of gross income shall be considered a substantial omission.

#### **B. Refunds and Overpayments:**

1. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made, or the return was due, or three (3) months after the determination of the Federal income tax liability, whichever is later.
2. No' refund shall be made to any taxpayer until he has complied with all provisions of the Ordinance and has furnished all information required by the 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. No taxes owed for any previous years in the order in which such taxes become due.
  - b. To his current estimated tax liability.
4. Any non-resident who is employed in the City of Fairlawn and is required under the terms and conditions of his employment to travel outside the State of Ohio for overnight or longer shall receive a refund of City income tax attributable to that period of time the employee is required to be outside of the State. Proof of such travel shall be supplied by the employer. Any

employee required by his employer, located in the City of Fairlawn, to travel from the City to a point within the State of Ohio shall not receive a refund of income tax nor will refunds be issued for paid vacation, sick, holiday or compensatory time.

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 XII**

### **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. Fail, neglect or refuse to pay the tax, penalties or interest imposed by the Ordinance; or
4. Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
5. Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and Federal income tax returns relating to the income or net profits of a taxpayer; or
6. Fail to appear before the Administrator and to produce his books, records, papers and 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 the date thereof, or

10. Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and Fairlawn tax withheld or to knowingly give the Administrator false information; or

11. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by 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 sixty (60) days or both, for each offense.

**B. Prosecutions:**

Prosecutions under the Ordinance must be commenced within five (5) years from the time of the offense except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution must be commenced shall be ten (10) years from the date the return was due or the date the false or fraudulent return was filed.

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

## **ARTICLE XIII**

### **BOARD OF TAX REVIEW**

**A. Composition:**

A Tax Review Board, consisting of a chairman and two other individuals to be appointed by the chief executive officer of the City, is hereby created. The first three members of the Board shall be appointed in the following manner:

One to serve for a term of one (1) year.

One to serve for a term of two (2) years.

One to serve for a term of three (3) years.

At the expiration of each term of office set forth above, the succeeding member shall be appointed for a term of three (3) years. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 9 with reference to the confidential character of information required to be disclosed by the Ordinance shall apply to such matters as may be heard before the Board on appeal.

**B. Duties:**

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

**C. Appeals:**

1. An appeal from a ruling of the Administrator by a taxpayer or employer is effected by filing a written notice of appeal with the Tax Review Board in a sealed envelope plainly marked "Appeal to Tax Review Board" and mailed or delivered to the Administrator who shall within five (5) days after receipt thereof, deliver such appeal to the Chairman of the Board, if the Chairman is not available, to the Vice-Chairman.
2. The Board, by a majority vote, may affirm, modify or reverse, in whole or in part, any such ruling or decision of the Administrator.
3. Hearings before the Board shall be private unless the taxpayer requests a public hearing.

**ARTICLE XIV**

**ALLOCATION OF FUNDS**

The funds collected under the provisions of this chapter shall be applied for the following purposes:

A. Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this chapter and the cost of administering and enforcing the provisions thereof shall be applied for such purpose.

B. All funds collected by the City as a result of the increase in the rate of tax approved by the electors at the August 8, 1989, special election shall be set

aside and used for capital improvements approved by Council or, at the discretion of Council, any part or all of such funds may be used for the payment of principal of and interest on debt incurred for capital improvement purposes, effective January 1, 1990.

C. After providing for the allocation of funds set forth in subsections (A) and (B) hereof, not less than ten percent of the funds collected shall be set aside and used for capital improvements approved by Council or, at the discretion of Council, any part or all of such funds may be used for the payment of principal of and interest on debt incurred for capital improvement purposes,

D. The balance remaining after providing for the allocations set forth in subsection (A), (B) and (C) hereof shall be used for any purpose that may be determined by ordinance of Council.

## **ARTICLE XV**

### **CREDIT ALLOWED FOR TAX PAID IN ANOTHER MUNICIPALITY**

#### **A. Limitation:**

Where a resident of the City of Fairlawn is subject to a municipal income tax in another municipality, he shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.

#### **B. Credits to Residents:**

Resident individuals of the City of Fairlawn who are required to pay and do pay a tax to another municipality on salaries, income, wages, commissions or other compensation for work done or services performed in such other municipality, or on net profits from businesses, professions or other activities conducted in such other municipality, may claim a credit of the amount of tax paid by them or on their behalf to such other municipality but only to the extent of the tax imposed by this chapter on such compensation or net profits.

#### **C. Method of Applying for Credit:**

1. No credit will be given unless the taxpayer claims such credit 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.

2. A statement satisfactory to the Administrator, from the taxing authority of the municipality to which the taxes are paid, that a City of Fairlawn resident or

his employer is paying the tax, shall be considered as fulfilling the requirements of this article.

## **ARTICLE XVI**

### **SAVINGS CLAUSE**

A. These rules and regulations shall not apply to any person, firm, corporation, or income, as to whom, or as to which it is beyond the power of the City Council to impose the tax provided for in the chapter.

B. If any sentence, clause, section or part of the chapter, or any article or part of these rules and regulations, or any tax against any individual, or any of the several groups specified in the chapter or rules and regulations, is found to be unconstitutional, illegal, or invalid, such sentence, clause, section or part of the chapter or article, or part of these rules and regulations shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the chapter or these rules and regulations. It is hereby declared to be the intention of the City Council and/or the Tax Review Board that these rules and regulations would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section, article or part thereof not been included therein or herein.

## **ARTICLE XVII**

### **COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE**

A. Authority to Collect After Termination of Ordinance:

The Ordinance shall continue effective insofar as the levy of taxes is concerned until repealed.

B. Payment of Taxes:

1. Taxes due and unpaid on account of compensation paid or received and on any account of profits earned in the last effective year of the Ordinance or any part thereof which remain unpaid, are payable in full on or before the dates specified in Sections 5 and 6 of the Ordinance and Articles V and VI of these Regulations, and all final returns and withholding reports must be filed on or before that date, unless extended by the Administrator.

2. For purposes of collection of delinquent or unpaid taxes, actions or proceedings for such collection and/or the collection of interest and penalties thereon, or enforcing any provisions of the Ordinance (including prosecutions under the criminal sections of the Ordinance and including appeals before the Tax Review Board), the Ordinance remains in full force and effect until such time as all taxes accruing during the term of the Ordinance shall have been fully paid, and all actions, suits, prosecutions, appeals and other judicial or

administration proceedings relative to the collection or payment of such taxes, have been finally terminated.

## **ARTICLE XVIII**

### **AMENDMENTS & SUPPLEMENTS**

A. From time to time amendments and supplements to these Regulations may be issued by the Administrator.



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