

# Income Tax Rules and Regulations

City of Fairfield, Ohio



Pertaining to Codified Ordinance  
Title Nine – Chapter 181.00  
Income Tax

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### Table of Contents

<b>Article I</b>	Purpose of Clause. . . . .	1
<b>Article II</b>	Definitions . . . . .	1
<b>Article III</b>	Imposition of Tax . . . . .	5
	Bases. . . . .	5
	Apportionment of Business Profits. . . . .	14
	Operating Loss Carry-forward. . . . .	18
	Consolidated Returns . . . . .	18
	Capital Gains . . . . .	20
	Exceptions . . . . .	20
<b>Article IV</b>	Effective Period of Tax. . . . .	22
<b>Article V</b>	Return and Payment of Tax . . . . .	22
	Date and Requirement for Filing. . . . .	22
	Information Required and Reconciliation with Federal Returns . . . . .	24
	Extensions. . . . .	25
	Payment with Return. . . . .	25
	Amended Returns. . . . .	26
<b>Article VI</b>	Collection of Tax at the Source . . . . .	26
	Duty of Withholding. . . . .	26
	Employer Deemed Trustee of Tax Withheld. . . . .	29
	Return and Payment of Tax Withheld and Status of Employers. . . . .	29
	Responsibility of Officers for Collecting Tax. . . . .	29
	Fractional Parts of Cent. . . . .	31
<b>Article VII</b>	Declarations . . . . .	31
	Requirement of filing. . . . .	31
	Date of Filing. . . . .	32
	Form for Filing. . . . .	32
	Dates of Payments. . . . .	32
	Final Returns Required. . . . .	33
<b>Article VIII</b>	Duties of the Administrator . . . . .	33
	Collection of Tax and Retention of Records. . . . .	33
	Enforcement Provisions. . . . .	33
	Estimation of Tax by Administrator. . . . .	34

	Compromise Authority . . . . .	34
<b>Article IX</b>	Examination of Books and Records . . . . .	34
	Investigations by Administrator. . . . .	34
	Subpoena of Records and Persons. . . . .	34
	Penalty of Non-compliance. . . . .	35
	Confidential Nature of Examination. . . . .	35
	Retention of Records. . . . .	35
<b>Article X</b>	Interest and Penalties . . . . .	35
	Interest . . . . .	35
	Penalties . . . . .	36
	Exceptions . . . . .	36
	Appeal from Assessment . . . . .	37
<b>Article XI</b>	Collection of Unpaid Taxes and Refund of Overpayments. . . . .	37
	Unpaid Sums . . . . .	38
	Refunds and Overpayments . . . . .	38
	Limitation . . . . .	38
<b>Article XII</b>	Violations and Penalties . . . . .	38
	Any person who shall. . . . .	38
	Penalties . . . . .	39
	Prosecutions . . . . .	39
	Failure to Receive Forms – Not a Defense. . . . .	39
	The Term “Person”. . . . .	39
<b>Article XIII</b>	Board of Review . . . . .	39
	Composition . . . . .	39
	Duties . . . . .	40
	Appeals . . . . .	40
<b>Article XIV</b>	Credit Allowed for Tax Paid in Another Municipality . . . . .	40
	Limitations . . . . .	40
	Credit to Residents. . . . .	40
	Method of Applying for Credit. . . . .	41
<b>Article XV</b>	Savings Clause . . . . .	41
<b>Article XVI</b>	Amendments and Supplements . . . . .	42

## **ARTICLE I - PURPOSE OF CLAUSE**

Section 181.01 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 herein, 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:

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;

Add an amount equal to five percent (5%) of intangible income deducted under this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property describe in Section 1221 of Internal Revenue Code;

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

Deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code; however, this section does not apply to the extent income or gain is described in section 1245 or 1250 of the Internal Revenue Code;

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

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

If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except 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, amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in 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.

“Administrator” means the individual designated by the Ordinance and having the direct responsibility to administer and enforce the provisions of the Ordinance, regardless of the particular title assigned such individual.

“Association” means a partnership, cooperative, limited partnership, limited liability company, S corporation or any other form of unincorporated enterprise owned by one (1) or more persons.

“Board” means the Board of Review provided for by Section 181.02 of the Ordinance.

“Business” means an enterprise, 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, including but not limited to, the renting and leasing of property, real, personal or mixed. 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” means the portion of net profits to be apportioned to Fairfield as having been made in Fairfield under the three-factor formula of property, payroll and sales, provided for in Section 181.03 (b) of the Ordinance.

“City/Municipality” means the City of Fairfield.

“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.

“Domicile” means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A domicile once acquired is presumed to continue until it is shown to have been changed. Intention to change domicile will not effect such a change unless accompanied by actual removal. Where a change of domicile is alleged, the burden of proving it rests upon the person making the allegation.

“Employee” means one who works for wages, salary, commission or other type 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 whose account payments are made under the Ohio Workers' 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, branch, 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.

“Fiscal Year” means an accounting period of twelve (12) months or less ending on any day other than December 31st.

“Form 2106” means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Service Code.

“Generic Form” means an electronic or paper form designed for reporting estimated income taxes and annual municipal income tax liability that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation’s tax on income. The City shall accept for filing a generic form of such a return, report, or document if the generic form, once completed and filed contains all of the information required to be submitted with the City’s prescribed returns, reports, or documents.

“Gross Receipts” means total income without deductions of taxpayer from whatever source derived.

“Income from Pass-through Entity” means partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from a pass-through entity.

“Intangible Income” means income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, real estate investment trusts, regulated investment companies, and appreciation on deferred compensation. “Intangible Income” does not include prizes, awards, or other income associated does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.

“Internal Revenue Code” means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

“Internet” means the international computer network of both federal and non-federal interoperable packet switched data networks, including the graphical sub-network known as the World Wide Web.

“Joint Economic Development District or Zone (JEDD)” means a District or zone created under Ohio Revised Code Sections 715.70 and 715.71, as amended from time to time.

“Net Profits” for a taxpayer other than an individual means adjusted federal taxable income and “Net Profit” for a taxpayer who is an individual means the individual’s profit, other than amounts described in Section 181.03 (f) of the Ordinance, required to be reported on Schedule C, Schedule E, or Schedule F.

“Non-qualified Deferred Compensation” means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.

“Nonresident” means a person, whether an individual, association, corporation or other entity, domiciled outside the City of Fairfield.

“Nonresident Incorporated Business” means and incorporated business entity not having an office or place of business within the City.

“Nonresident Unincorporated Business” means an unincorporated business entity not having an office or place of business within the City.

“Ordinance” shall mean Chapter 181 of the Codified Ordinances of the City of Fairfield, Ohio.

“Other Activity” means any undertaking, not otherwise specially defined herein, which is normally entered into for profit, including, but not limited to, rental of real and personal property and a business conducted by a trust or guardianship estate.

“Other Payer” means any person, other than an individual’s employer or the employer’s agent that pays an individual any amount included in the federal gross income of the individual.

“Owner” means a partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.

“Owner’s Proportionate Share”, with respect to each owner of a pass-through entity, means a ratio of (a) the owner’s income from the pass-through entity that is subject to taxation by the City, to (b) the total income from that entity of all owners whose income from the entity is subject to taxation by the City.

“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” includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entities. Whenever used in any clause prescribing or imposing a penalty, the term person as applied to any association shall mean the partners or members thereof, and as applied to a corporation, the officers thereof.

“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 employees regularly in attendance.

“Qualifying Wages” means wages, as defined in Section 3121 of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with Section 718.03(A) of the Ohio Revised Code.

“Resident” means a person, whether an individual, association, corporation or other entity domiciled in the City of Fairfield.

“Resident Incorporated Business” means an incorporated business entity having an office or place of business within the City.

“Resident Unincorporated Business” means an unincorporated business entity having an office or place of business within the City.

“Return Preparer” means any person other than the taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document on behalf of the taxpayer.

“Schedule C” means Internal Revenue Service Schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

“Schedule E” means Internal Revenue Service Schedule E filed by a taxpayer pursuant to the Internal Revenue Code.

“Schedule F” means Internal Revenue Service Schedule F filed by a taxpayer pursuant to the Internal Revenue Code.

“Taxable Income” means qualifying wages, including but not limited to, severance pay, sick pay, vacation pay and supplemental unemployment benefits paid by an employer or employers, commissions, compensation of personal services, other income as defined by statute as taxable, and/or the net profits from operation of business, profession, or other provisions of Section 181 of the Ordinance and these regulations.

“Taxable Year” means the period of time corresponding to the tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

“Taxing Municipality” means a municipality levying a tax on income earned by nonresidents working within such municipality and on income earned by its residents.

“Taxpayer” means a person subject to a tax on income levied by the City. Taxpayer does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but “taxpayer” includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

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, an annual tax of one and one-half percent (1.5%) is imposed on all taxable income. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 181.03 (a)(1) of the Ordinance, the sources of the earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings, whenever earned or paid, are taxable.

b. The following items which are subject to the tax imposed by Section 181.03 (a)(1) of the Ordinance:

1. Qualifying wages, bonuses, incentive payments and any other compensation 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 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 181.03;

.05 An employee of any other entity or person, whether based upon hourly, daily, weekly, bi-weekly, semi-monthly, monthly, annually, 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 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 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 deduct 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 tax return.

.03 If commissions are included in the net earnings of the trade, business, profession, enterprise or activity, carried on by an unincorporated entity of which the individual receiving such commission is owner or part owner and therefore subject to the tax under Ordinance Section 181.03 (a)(3) or (a)(4), they shall not be taxed under Section 181.03 (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 181.03 (a)(3).

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 and under a wage continuation plan during periods of disability or sickness are taxable. Payments made by third parties (insurance companies) to an employee for sick or disability pay are taxable if the amount appears on a W-2 form and the employee has paid the premium for this insurance coverage.

6. Losses from the operation of a business or profession are not deductible from employee earnings but may be carried forward as provided in Article III (C).

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. Rentals given to clergymen are not to be considered as income.

2. Nonresident Employee:

a. In the case of individuals who are not residents, there is imposed under Section 181.03 (a)(2) of the Ordinance, a tax of one and one-half percent (1.5%) on all taxable income earned for work done or services performed or rendered within the City of Fairfield or for the City of Fairfield, 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.

b. The items subject to tax under Section 181.03 (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 Fairfield, in cases involving compensation for personal services partly within and partly without Fairfield, see Article VI (A)(6).

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, there is imposed an annual tax of 1.5% on the net profits attributable to Fairfield, under the formula provided for in Section 181.03 (b) of the Ordinance, derived from sales made work done or services performed or rendered and business or other activities conducted in Fairfield.

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)(3)(b).

3. The tax imposed by Section 181.03 (a)(3)(A) of the Ordinance is imposed on all resident unincorporated entities having net profits attributable to Fairfield under the apportionment provided for in the Ordinance, regardless of where the owner or owners of such resident unincorporated business entity reside.

4. Resident associations owned by two or more persons all of whom are residents of Fairfield shall disregard the business apportionment percentage formula 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. See Article XIV for credits.

5. The tax imposed shall not apply to income derived within the City of Fairfield by any person from interstate commerce if the only business activities within the State of Ohio by or on behalf such person, are either, or both the following:

.01 Solicitation of orders by such person, or his representative, in the State of Ohio for sales of intangible personal property, which orders are sent outside of the State of Ohio for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State of Ohio; and

.02 The solicitation of orders by such person, or his representative in the State of Ohio, in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitations are orders described in Paragraph .01 above provided, however, that the provisions of this subsection shall not apply to any corporation which is incorporated under the laws of the State of Ohio or any individual who is domiciled in or a resident of the State of Ohio. For the purpose of this subsection, a person shall not be considered to have engaged in a business activity within the State of Ohio during any taxable year merely by reason of sales within the State of Ohio, or the solicitation of orders for sales within the State of

Ohio, of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance of an office within the State of Ohio by one or more independent contractors whose activities on behalf such person in the State of Ohio consist solely of making sales or soliciting orders for sales of tangible personal property. For the purpose of this subsection, the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for sales of tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities. For the purpose of this subsection, the term "representative" does not include an independent contractor.

3.b. Imposition of Tax on Resident's Distributive Share of Profits of a Resident Unincorporated Entity, not attributable to the City of Fairfield:

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 his resident unincorporated business entity. See Article XIV.

2. In the case of a resident individual partner or part owner of a resident unincorporated entity, there is imposed an annual tax of one and one-half percent (1.5%) on such individual's distributive share of net profits earned during the effective period of the Ordinance not attributable to the City of Fairfield, under the method apportionment provided for in Section 181.03 of the Ordinance, and not taxed against the entity. See Article XIV.

4.a. Imposition of Tax on Net Profits of Nonresident Unincorporated Business:

1. In the case of nonresident unincorporated businesses, professions, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on whether or not they have an office or any place of business in Fairfield, there is imposed an annual tax of one and one-half percent (1.5%) on the net profits earned, accrued or received during the effective period of the Ordinance, that are attributable to the City of Fairfield, under the business apportionment formula provided for in the Ordinance.

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

3. The tax imposed by Section 181.03 (a)(3)(a) of the Ordinance is imposed on all nonresident associations and other nonresident unincorporated entities having net profits attributable to the City under the method of apportionment provided for in the Ordinance, regardless of where the owner or owners of such nonresident unincorporated business or resident associations, etc., reside.

4. Nonresident unincorporated entities owned by two or more persons all of whom are residents of Fairfield shall disregard the method of apportionment provided for in the Ordinance and pay the tax on their 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. See Article XIV.

4.b. Imposition of Tax on Resident's Share of Profits of a Nonresident Unincorporated Business Entity Not Attributable to Fairfield. See Article XIV.

1. A resident individual who is sole owner of a nonresident unincorporated business entity shall disregard the business apportionment formula and pay the tax on the entire net profits of his unincorporated entity.

2. In the case of a resident individual partner or part owner of a nonresident unincorporated entity, there is imposed an annual tax of one and one-half percent (1.5%) on such individual's distributive share of net profits not attributable to the City under the method of apportionment provided for in Section 181.03 of the Ordinance and not taxed against the entity.

5. Imposition of Tax on Net Profits of Corporations.

a. In the case of corporations, including S corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the City of Fairfield, there is imposed an annual tax of one and one-half percent (1.5%) on the net profits attributable to Fairfield under the formula provided for in the Ordinance.

b. In determining whether a corporation is conducting a business or other activity in Fairfield, 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 Ohio Revised Code, 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 cases, 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.

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

6. Amplification:

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

a. Net Profits

1. Net Profits for a taxpayer other than an individual means adjusted federal taxable income and "Net Profit" for a taxpayer who is an individual means the individual's profit, other than amounts described in Section 181.03 (f) of the Ordinance, required to be reported on Schedule C, Schedule E, or Schedule F.

2. Adjusted federal taxable income means a C corporation's federal taxable income before net operation losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

.01 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,

.02 Add an amount equal to five percent (5%) of intangible income deducted under 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,

.03 Add 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; however, this section does not apply to the extent income or gain is described in section 1245 or 1250 of the Internal Revenue Code,

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

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

.06 If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except 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, amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in 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.

b. Gross Receipts

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

2. Gross receipts shall include the ordinary income from Form 4797.

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, guaranteed payment or withdrawal of a proprietor or of the partners, members, or other owners of an unincorporated business or enterprise.

2. 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.

3. 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.

4. Where depreciation 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.  
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5. 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 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.

6. 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; (3) gift, estate or inheritance taxes; (4) taxes for local benefit or improvements to property which tend to appreciate the value thereof; and (5) self-employment taxes for unincorporated businesses or other entities, including credit for employment taxes as allowed for federal tax purposes.

7. Expenses attributable to non-taxable income shall not be allowed. Where no record of such expenses is kept, 5% of the non-taxable income will be considered as applicable expenses.

8. An employee who is paid on a commission or other compensation basis and who pays his business expense from his commissions or other compensation, without reimbursement from his employer, may deduct from his gross commissions, or other compensations, business expenses only as allowed by the Internal Revenue Service for federal income tax purposes and only to the

extent said expenses are incurred in earning commissions or other compensations subject to the tax imposed by the Ordinance. Business expenses allowed shall be those expenses allowed to be claimed on the federal Form "2106, Business Expenses" and upon the request of the Administrator, verifiable with supporting schedules and/or receipts. No expenses claimed on federal Form "Schedule A, Itemized Deductions" shall be allowed and failure to produce the supporting schedules and/or receipts upon request by the Administrator shall result in disallowance of the expenses in question.

9. Expenses incurred while attending educational courses may not be deducted from wages.

10. Moving expenses included in gross earnings shall be an allowance as a deductible expense. No deduction will be allowed if the taxpayer does not provide the Federal Form 3903, "Employee Moving Expenses Information", for his moving deductions. Only moving expenses incurred, as part of income included in gross earnings will be allowed.

11. No deduction shall be allowed for self-employed health insurance against income as allowed for federal or state tax purposes for unincorporated entities or the like.

7. Rentals From Real Property.

a. Rentals received by the taxpayers are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from 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 \$ 100.00 per month, it shall be prime 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, receipt or profits of the lessee, whether or not such rental exceeds \$ 100.00 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 \$ 100.00 per month; and provided further that the person who operates a rooming house (of five or more rooms) shall be considered in business whether or not the gross income exceeds \$100.00 per month.

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

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



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

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

g. Residents of the City of Fairfield are subject to taxation upon the net income from rentals (to the extent specified above), regardless of the location of the real property owned.

h. Nonresidents of the City of Fairfield are subject to such taxation only if the real property is situated within the City of Fairfield.

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

j. Reports Required on Tenants and Lessees:

1. The owner, manager, or any person in control who rents leases to other persons, real estate for any purpose in the city must make a report within thirty (30) days after a new tenant occupies rental property of any kind within Fairfield, all owners of rental property who rent to tenants of apartment, rooms and other rental accommodations shall file with the Administrator a report showing the name, address and telephone number, if available, of each tenant who occupies an apartment, room or other rental property within Fairfield.

2. Within thirty (30) days after a tenant vacates an apartment, room or other rental property location within Fairfield, the owner of such vacated rental property shall file with the Administrator a report showing the date of vacation from the rental property and a forwarding address, if available.

3. If it is determined that such reporting in item (1.) above is inadequate, the administrator may require a complete listing of all tenants, lessees, or other occupants.

4. Any owner, manager, or person in control of the real estate who fails to make the report of lessees, tenants, or occupants of premises under their control as required shall be fined up to a maximum of one hundred dollars (\$100.00).

8. Income in the form of royalties is taxable if taxpayer's activities produced the publication or other product, the sale of which produces the royalties.

#### B. Apportionment of Business Profits

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

1. Business Apportionment Percentage Method.

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

1. The percentage of taxpayer's real and tangible personal property within Fairfield is determined by dividing the original cost of all such property within and without Fairfield. In determining such percentage property rented to the taxpayer as well as real and tangible personal property owned by taxpayer must be considered.

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

3. 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.

4. A residence may not be considered an office unless a portion thereof is used exclusively for business purposes and is reached by a separate entrance in an exterior wall, which does not serve as the entrance to the balance of the building.

b. STEP 2: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made and services rendered in Fairfield is of the total gross receipts wherever derived during the period covered by the return.

1. The following sales shall be considered Fairfield Sales:

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

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

.03 All sales of tangible personal property delivered to purchasers within Fairfield even though transported from a point outside of Fairfield if the taxpayer is regularly engaged through its own employees in the solicitation or

promotion of sales within Fairfield 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 Fairfield to purchasers outside Fairfield if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place 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 sub-paragraphs a carrier shall be considered the agent of the seller, regardless of the FOB point or other conditions of the sale, and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside of Fairfield by mail or phone from an office or place of business within Fairfield shall not be considered a solicitation of sales outside Fairfield.

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

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

2. 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 Fairfield, 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 Fairfield.

.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 Fairfield bears to the value of all his services; and

.03 In the case of an employee compensated on a timely basis, the proportion of the total amount received by him which his working time within Fairfield is of his total working time.

.04 Provided, however, all employees regularly connected with or working out of a place of business maintained by the taxpayer in the City who

perform 90% or more of their services within the City shall be considered employees within the City.

4. Nonresident professional persons shall use the factor of days spent within Fairfield to total working days.

All employees regularly connected with or working out of a place of business maintained by the taxpayer outside the City who perform 10% or less of their services within the City shall be considered employees outside the City. The provisions of this sub-paragraph are not applicable in determining the tax liability of a nonresident who works in and outside the City.

d. STEP 4: Add the percentage determined in accordance with Steps 1, 2 and 3 or such of the aforesaid percentages as may be applicable to the particular taxpayer's business and divide the total so obtained by the number of percentages used in ascertaining said total. The result so obtained is the business apportionment percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be apportioned entirely in or outside Fairfield. 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 apportioned to Fairfield.

3. Substitute Method:

a. In the event a just and equitable result cannot be obtained under the formula, the Board, upon application of the taxpayer or 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 allocate net profits must be in writing 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. The decision of the Administrator on subsections 3 (a) and (b) hereof may be appealed by the taxpayer to the Board of Review, which shall have the power to adjust, modify or overrule such decision of the Administrator.

4. In case of professional people and other furnishing personal services, if their only place of business is within the City of Fairfield, all their net profit shall prima facie be attributable to Fairfield.

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, 1959, apportioned to Fairfield may be applied against the portion of the profit of succeeding years apportioned to Fairfield until exhausted, but in no event for more than the three (3) years immediately following the year in which the loss was sustained. No portion of a net operating loss shall be carried back against net profits of any prior year.

a. Losses from the operation of business, profession or any other type of unincorporated entity are not deductible against employee earnings (as reported on W-2 or 1099-Misc), but may be carried forward as set forth herein. However, if a taxpayer is engaged in two or more taxable business activities to be included in the same return, the net loss of one unincorporated business activity (except any portion of a loss separately reportable for municipal tax purposes to another taxing entity) may be used to offset the profits of another for purposes of arriving at overall net profits.

b. Losses recognized shall be the actual loss sustained in a given year. No passive losses as allowed for federal tax purposes will be recognized for city purposes.

2. In the event net profits are apportioned both within and without Fairfield, the portion of net operating loss sustained shall be apportioned to Fairfield in the same manner as provided herein for apportioning net profits to Fairfield. The portion of a net operating loss to be carried forward shall be determined in the year the net operating loss is sustained on the basis of the apportionment factors applicable to that year.

The same method of accounting and apportionment must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained.

3. A short fiscal year (a fiscal year of less than twelve [12] months) brought about by a change in accounting period, a new taxpayer selecting a short fiscal year, or a taxpayer operating in Fairfield for less than his full accounting period, shall be considered as a full taxable fiscal year for purposes of loss carry-forward.

4. 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 sustained.

b. Method of accounting and apportionment used to determine portion of net operating loss apportioned to Fairfield.

c. Amount of net operating loss used as a deduction in prior years.

d. Amount of net operating loss claimed as a deduction in current year.

5. The net operating loss of a taxpayer that loses its identity through merger, consolidation, etc., shall not be allowed as a carry-forward loss deduction to the surviving business entity.

6. In the case of a net operating loss sustained by taxpayers filing a Consolidated Return, see Article III (D).

7. Losses sustained in a given year must be filed and reported in the same given year in order to be carried forward to offset future net profits.

#### D. Consolidated Returns

1. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership provided such group files consolidated returns for federal income tax purposes. For a 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 that 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 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 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 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 at eight (8) times the annual rent. The gross receipts and wage fractions shall be based on 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 apportioned to non-taxable income, such calculations shall be based on the consolidated net income. As an example, inter-company dividends that are eliminated in the consolidation will not be taken into consideration in determining non-taxable income.

E. Capital gains from the sale of depreciable property shall be taxable to the extent of the aggregate amount of depreciation taken on such property for City of Fairfield income tax purposes. The taxable amount shall be the ordinary portion recognized on Federal Form 4797, "Sales of Business Property". Only losses sustained in prior years on such property shall apply against any gain.

#### F. Exceptions

The following shall not be considered taxable:

1. Proceeds from welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.

2. Proceeds of insurance, annuities, workers' compensation insurance, permanent disability benefits, compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits or wages.

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

4. Gain from involuntary conversion, cancellation of indebtedness, interest on federal obligations and income of decedent's estate during the period of administration (except such income from the operation of a business).

5. Alimony.
6. Compensation for damage to property by way of insurance or otherwise.
7. Income from intangibles by way of dividends, interest and the like if such income is subject to taxation under the intangible personal property laws of the State of Ohio, when in effect, are specifically exempt from municipal taxation under said law.
8. Military pay and allowances received as a member of the Armed Forces of the United States.
9. Any charitable, educational, fraternal or other type of non-profit association or organization enumerated in Section 718.01 of the Ohio Revised Code and/or recognized under the Internal Revenue Code Section 501(C) which is exempt from payment of real estate taxes is exempt from payment of the tax imposed by this Ordinance, but only to the extent enumerated in said section.
10. Any association or organization listed in the preceding paragraph is required to file declaration and final returns and remit the taxes levied under the ordinance on all net profits from activities the income from which is not specifically exempt from taxation in Section 718.01 of the Ohio Revised Code.
11. Where such non-profit association or organization conducts income-producing business both within and without the corporate limits, it shall calculate its profits not exempt from taxation in Section 718.01 of the Ohio Revised Code apportioned to Fairfield under the method or methods provided above.
12. If exempt for federal income tax purposes, fellowship and scholarship grants also are exempt from the city tax.
13. Compensation paid to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand (\$1,000.00) annually, such compensation in excess of one thousand (\$1,000.00) shall be subject to taxation. The payer of such compensation is not required to withhold city tax from that compensation.
14. Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through Fairfield, unless the bus or vehicle is operated on a regular schedule, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation.
15. Any compensation arising from the grant, sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange or other disposition of stock purchased under a stock option.



16. The income of a public utility when that public utility is subject to the tax levied under Section 5727.24 or 5727.30 of the Ohio Revised Code, except starting January 1, 2002, the income of an electric company or combined company, and the income of a telephone company or combined company, as defined in Section 5727.01 of the Ohio Revised Code, shall be taxed by a municipal corporation subject to Chapter 5745 of the Ohio Revised Code.

17. The compensation of a nonresident individual if the compensation is paid for personal services performed by the individual in the City on twelve (12) or fewer days during the calendar year, and, in the case of an individual who is an individual who is an employee, the principal place of business of the individual's employer is located outside of the City and the individual pays tax on compensation described above, to the City, if any, in which the employer's principal place of business is located, and no portion of the tax is refunded to the individual. The individual is not a professional entertainer or professional athlete, the promoter of entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the City. For purposes of the twelve (12) -day calculation, "Day" means any part of a twenty-four (24) hour calendar day where compensation is earned in Fairfield. Beginning with the thirteenth (13<sup>th</sup>) day, the individual shall no longer be considered an occasional entrant and is liable for taxes on income earned for the first twelve (12) days.

18. The rental value of a home furnished to a minister of the gospel as part of his compensation, or the rental allowance paid to a minister of the gospel as part of his compensation, to the extent used by him to rent or provide a home pursuant to Section 107 of the Internal Revenue Code.

19. Generally the above noted items in this section are the only forms of income not subject to tax. Any other income, benefits or other forms of compensation shall be taxable.

#### **ARTICLE IV - EFFECTIVE PERIOD OF TAX**

The tax imposed by the Ordinance is levied, collected and paid with respect to income and net profits, subject to the tax, earned on and after January 1, 1963.

#### **ARTICLE V - RETURN AND PAYMENT OF TAX**

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

1. On or before April 30 of each year for tax years prior to 2004 and April 15 of each year thereafter, every person subject to the provisions of Section 181.03 (a)(1) to (b)(5), inclusive, of the Ordinance shall, except hereinafter provided, make and file on or before April 30 of each year prior to tax year 2004 and April 15 of each year thereafter, with the Administrator, a return on a form prescribed by and acceptable to the Administrator, whether or not a tax is due. The City shall accept for filing a generic form of such any return, report, or document if the generic form, once completed and filed, contains all of the information required to be submitted with the City's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the Rules or Ordinance of the City governing the filing of returns, reports or documents.

a. Every resident as defined shall file an annual return. Exception shall be children under the age of sixteen (16), if said children are not subject to the provisions of Section 181.03 (a)(1) to (b)(5), inclusive, of the ordinance.

b. To constitute a valid form, the following information must be included:

1. The City's account number and taxpayer's Social Security number or Employer's Federal Identification number.

2. Credit to other cities must show separately the tax paid to Fairfield, tax paid to other cities not to exceed 1.5%, estimated payments made during the current year and prior overpayments.

3. A separate line indicating amounts for penalty, interest, late penalties and a total line for these amounts.

4. Schedules X, Y and Z on the business returns.

5. Taxpayer(s) signatures.

6. A statement as follows: " I certify I have examined this return including the accompanying schedules and statements, and declare that it is true, correct and the figures used herein are accurate. If prepared by a person other than the taxpayer, the declaration is based on all information which the preparer has any knowledge."

7. All applicable federal schedules, forms and statements.

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 181.03 of the Ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of qualifying 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 a nonresident employee's entire earnings for the tax period are paid by an employer or employers, and the one and one-half percent (1.5%) tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire earnings of such employee-taxpayer, and where the employer of such employee has filed a report or return in which such employee's entire and only earnings are reported to the Administrator and where such employee has no taxable income other than such earnings and the tax so withheld has been paid to the Administrator, such employee need not file a return.

5. An employee who is permitted to deduct business expenses, as allowable and described under Article III (A)(6)(c)(8) of these Regulations, from qualifying wages, or commissions must file a return in order to claim such deductions even though all or part of such qualifying wages, or commissions are subject to withholding. Such amounts must be properly reported on Form 2106, as filed with the Internal Revenue Service, and must be verifiable.

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 is required to file only one (1) return.

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

9. Except as provided for herein, the tax is on the partnership or association as an entity whether resident or nonresident and a return is required disclosing the net profits apportioned to Fairfield and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity is required to make a return and pay the tax in accordance with Article III (A)(3)(b)(2) of these regulations.

10. A husband and wife may file a joint return either when engaged in the same or separate business, but may not deduct business losses of either from compensation paid by the employer. If a joint return is made, the tax shall be computed on the aggregated taxable income and the liability with respect to the tax shall be joint and several.

11. Executors and administrators are liable for the payment of any taxes due by a deceased from an estate of said deceased.

12. The return shall be accompanied by payment of any taxes thereon.

#### B. Information Required and Reconciliation with Federal Return

1. In returns filed hereunder, there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees, and other compensation subject to the tax earned from each employer, taxable net profits, and other pertinent information as the 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 Fairfield tax and unallowable expenses shall be eliminated in determining net income subject to Fairfield tax. The fact that any taxpayer is not required to file a federal tax return does not relieve him from filing a Fairfield 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 Fairfield, a report of such change shall be filed by the taxpayer within

three (3) months after receipt of the final notice from the Federal Internal Revenue Service or final Court decision, See Article XI (B)(2).

4. If a change in federal income tax liability results in a reduction of taxes owed and paid to Fairfield, a claim for refund shall be filed with the Administrator as prescribed in Section 181.11 of the Ordinance and Article XI (C) of these regulations.

#### C. Extensions

1. Upon filing of a copy of the taxpayer's request for filing a federal extension, or a written request of the taxpayer made on or before the original date for filing the return as prescribed in Section 181.05 of the Ordinance, the Administrator may extend the time for filing such return for a period to the last day of the month following the month to which the due date of the federal income tax return has been extended. Whenever deemed necessary, the Administrator may require a tentative return accompanied by payment of the estimated tax. An extension of time for filing does not extend the time for payment of the tax; hence, interest and penalty, as defined under section 181.10 of the ordinance, may apply to any unpaid tax from the original due date of the return until said filing of the return. No penalty or interest will be assessed in those cases in which the return is filed and the final tax paid within the period as extended provided all other filing and payment requirements of the Ordinance have been met. Any extension by the administrator shall be granted with the understanding that declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that declaration filing and payment requirements have not been fulfilled, interest and penalties may be assessed in full and in the same manner as though no extension had been granted.

a. The Administrator may deny the taxpayer's request for extension if the taxpayer fails to timely file the request, fails to file a copy of the Federal Extension Request (if applicable), owes the City any delinquent income tax or any penalty, interest, assessment or other charge for late payment of income tax, or has failed to file any required income tax return, report, or other related document for a prior tax period.

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 181.06 of the Ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 181.07 of the Ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid, in accordance with Section 181.13 of the Ordinance, 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 Fairfield 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.

3. An application for refund of overpayment of taxes withheld must be made by the employer or by the taxpayer with a letter of authorization from the employer. Refunds will be made payable to the employee.

#### 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 limitations contained in Sections 181.10 and 181.11 of the Ordinance. 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 Fairfield tax liability, such taxpayer shall make and file an amended Fairfield return showing income subject to the Fairfield tax based upon such final determination of federal tax liability, and pay any additional tax shown thereon or make claim for refund of any overpayment.

### **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 the City of Fairfield, 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 percent (1.5%) from:

a. Qualifying wages, bonuses, incentive payments, severance payments, fees, commissions or other forms of compensation paid to residents of the City of Fairfield, regardless of the place where services are rendered and

b. All compensation paid nonresidents for services rendered, work performed or other activities engaged in within the City of Fairfield.

c. An employer is liable for the payment of the tax required to be deducted and withheld, whether or not such tax, in fact, has been withheld.

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

3. Employers who do not maintain a permanent office or place of business in Fairfield, but who are subject to tax on net profits attributable to Fairfield, under the method of apportionment provided for in the Ordinance is considered to be employers within Fairfield and subject to the requirements 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. In such cases, the City will not process any employee claims of refund or overpayment until the employer pays the tax withheld.

5. Commissions and fees paid to professional men, brokers and others who are independent contractors, and not employees of the payor, 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.

a. The commissions and fees paid to those individuals as independent contractors and as unincorporated entities by an employer shall report to the administrator the name, address, social security number and total amount paid if said amount is in an excess of six hundred dollars (\$600.00). This return shall be considered a required return and shall be subject to the penalty as described under Section 181.10(b)(3) of the Ordinance.

6. Where a nonresident receives compensation for personal services rendered or perform partly within and partly without Fairfield, the withholding employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within Fairfield in accordance with the following rules of apportionment:

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

b. The deducting and withholding of personal service compensation of other nonresident 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 Fairfield is of the total number of working hours.

c. The fact that nonresident employees are subject to call at any time does not permit the apportionment of pay for time worked within the city of Fairfield on a seven-day per week basis. The percentage of time worked in Fairfield 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.

1. The determination of tax liability of nonresidents working in and out of the corporate limits is to be computed on the formula of the total number of days worked in the City divided by the total number of days worked during the year and

the resulting percentage applied to the total annual income from wages including sick leave, holiday pay, vacation pay and other compensation required to be reported as gross pay. Where no record can be substantiated of the number of days worked, the figure **260** is to be used as the total number of days worked.

2. For purposes of determining the tax liability of professional truck drivers, a flat percentage of ten percent (10%) will be used as the percent of time in the City of Fairfield, provided the wages were withheld correctly and all the necessary supporting documents required by the Administrator are attached to the return.

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

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

9. An employer whose records show that an employee is a nonresident of Fairfield and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal services rendered or work done outside Fairfield 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 Fairfield. All employees are required to notify the employer of any change of residence and the date thereof.

10. A Fairfield employer required to withhold the tax from a Fairfield 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 Fairfield tax from such Fairfield 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 Fairfield.

11. 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 subjected to all of the requirements of the Ordinance.

12. The Administrator shall have authority to enter into an agreement with other taxing municipalities permitting an employer to withhold the entire tax on the wages of a floater either for the taxing municipality in which the employer has his principal place of business or the taxing municipality in which the employee resides.

13. Regulation defines an employer to be any individual, partnership, association, corporation, and any other entity that hires, books, or contracts for individuals/groups to work, perform or entertain at their place of business or rents

facilities for the purpose of providing such work, entertainment, and as such, is responsible for the collecting and remitting of the Fairfield income tax.

B. Employer Deemed Trustee of Taxes Withheld

1. Every employer is deemed to be a trustee for Fairfield 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.

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

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

1. The deductions from salaries, wages, and other compensation required to be made by employers are to begin with the compensation earned on and after the effective date of the Ordinance. The employer (in addition to any return required to be filed with respect to his own earnings or net profits) shall, on or before the last day of the month following each quarterly period, make a return (Form W-1) 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. The return (Form W-1) required to be filed under this Article shall be made on a form furnished by or obtainable on request from the Administrator.

a. The employer shall report the gross wages and remit the tax on the following criteria to the Administrator:

1. If the tax liability of the qualifying wages is three hundred dollars (\$300.00) or greater per month, the employer shall make and pay the tax to the administrator on a monthly basis. Such filing shall be made and paid on or before the fifteenth (15<sup>th</sup>) day of the month following such withholding.

2. If the tax liability of the qualifying wages is less than three hundred dollars (\$300.00), the employer may make and pay the tax on a quarterly basis. Such filing shall be remitted thirty (30) days after the end of the quarter.

3. The Administrator may revoke the approval of quarterly filing and payments whenever he has reason to believe that the conditions for granting such authorization have changed, that the conditions for granting such authorization have changed, were judged incorrectly, were not met, or when it is in the best interest of the City to do so. Notice of such withdrawal shall be made in writing and, in such case, the employer must begin to file in accordance with this section.

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 quarterly period, the employer shall make the necessary adjustment directly with the employee and the amount to be reported on the quarterly return (Form W-1) as withheld shall be the corrected amount;

2. If the over-withholding is discovered in a subsequent quarter of the same calendar year, the employer may make proper adjustment with the employee. In such case, the return (Form W-1) for the quarter in which the adjustment is made, shall indicate the total amount actually withheld, the amount of the adjustment deducted there from, and the corrected amount reported on the return (Form W-1);

3. If the over-withholding is discovered in the following year, the employer shall notify the Administrator of such over-withholding and the circumstances thereof. Upon proper verification, the Administrator shall either refund to the employer the amount of such excess withholding or credit it to the next period;

b. Nonresidents Employed Outside the City:

1. Where an employer has withheld the tax from qualifying wages of a nonresident of the City of Fairfield and such nonresident has been employed outside of the City of Fairfield for all or a 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 or employer the amount of such excess withholding.

3. On or before the 28th day of February, following any calendar year in which 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 from whom Fairfield 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 Fairfield income tax withheld from such employee.

4. For the convenience of employers, the information return may be in one of three ways at the election of each employer, as follows:

a. Those employers using Federal Form W-2 furnished commercially shall submit a copy of such commercial Federal Form W-2 providing the copy furnished to the City of Fairfield clearly shows the information required in 2 immediately preceding.

b. Those employers not using Federal Form W-2 furnished commercially may obtain upon request from the Administrator Form W-3.

c. Where the furnishing of this information as above indicated will create a distinct hardship to the employer, upon written request to the Administrator, employer may be permitted to furnish a list of all employees subject to the tax, which list shall show the employee's full name, Social Security Number, last known address, gross amount of compensation paid during the year and the amount of Fairfield income tax withheld.

d. The qualifying wages 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.

5. In addition to such information returns, and at the time the same are filed, such employer shall file with the Administrator Form W-3 to enable the Administrator to reconcile the sum total of compensation paid and taxes withheld as disclosed by information return Form W-2, or list of employees, and prior returns and remittances made pursuant to the Ordinance.

**D. Responsibility of Officers for Collecting Tax**

1. It shall be the responsibility jointly and severally of the President and Treasury of each corporation required to withhold taxes on employees wages to see that all taxes so withheld are paid to the City of Fairfield in accordance with the provisions of the Ordinance. In the event taxes withheld by a corporation from the salaries of its employees are not paid to the City of Fairfield in accordance with the provisions of the Ordinance, the President and Treasurer of said corporation shall each be criminally liable under the provisions of Section 12 hereof.

**E. 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 (.01). No person shall be entitled to a refund merely because such rounding off of the tax results in an apparent overpayment based on his earnings.

**ARTICLE VII - DECLARATIONS**

**A. Requirement for Filing**

1. A Declaration of estimated tax shall be filed by every taxpayer who may reasonably expect 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 tax 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 business not previously subject to the tax, or whose employer does not withhold the tax, shall file a Declaration based on ninety percent (90%) of the current year's tax liability within four (4) months after the date he becomes subject to the tax.

a. A calendar year taxpayer subject to section a. herein shall file quarterly estimated tax payments by the following dates of each tax year:

April 30th- twenty-five percent (25%) estimated tax payment due for tax years prior to 2004 or  
April 15<sup>th</sup>- twenty-five percent (25%) estimated tax payment due for each tax year thereafter  
July 31st- fifty percent (50%) estimated tax payment due  
October 31st- seventy-five percent (75%) estimated tax payment due  
January 31st- one hundred percent (100%) estimated tax payment due

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.

a. Fiscal year taxpayers subject to section 2a. herein shall file estimated payments by the end of the fourth (4<sup>th</sup>), seventh (7<sup>th</sup>), tenth (10<sup>th</sup>) and thirteenth (13<sup>th</sup>) month from the beginning of the fiscal year and percentage of the estimated tax due each quarter shall be the same as in B.1.a. herein prior to tax year 2004 and on the 15<sup>th</sup> of the fourth (4<sup>th</sup>) month, end of the seventh (7<sup>th</sup>), tenth (10<sup>th</sup>), and thirteenth (13<sup>th</sup>) month from the beginning of the fiscal year thereafter.

#### 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 Fairfield tax to be withheld from any portion of such income. In accordance with the provisions of Section 181.13 of the Ordinance, credit may be taken for tax withheld and remitted to another taxing municipality.

2. The original estimate of tax liability or subsequent amendment thereof may be amended at any time.

3. An amended Declaration must be filed prior to the close of the calendar year, or in the case of a fiscal taxpayer, prior to the date established by the Administrator, if it appears that the original Declaration underestimated the taxpayer's income by ten percent (10%) or more. At such time a payment, which, together with prior payments sufficient to pay taxpayer's entire liability, shall be made. If a taxpayer has not complied with this requirement, the difference between ninety percent (90%) of his tax liability and the amount of estimated tax paid by January 31st of the year immediately following the tax, or the date fixed by the Administrator's regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Article X hereof.

#### D. Dates of Payments

1. The Declaration must be accompanied by at least one-fourth (1/4) of the estimated tax shown due thereon. Unless such payment is made, the taxpayer will not be considered as having filed a Declaration within the meaning of the Ordinance.

2. 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 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 received.

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

B. Enforcement Provisions

1. The Administrator is shared with the administration and enforcement of the provision of the Ordinance and is subject to the approval of the Board of Review, 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 pertinent to the matter on which the ruling is 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 had proved to the Administrator that, due to certain hardship conditions; he is unable to pay the full amount of tax due. Such authorization shall not be granted until the proper returns are filed by the taxpayer 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 provision of Section 181.10 and 181.11 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 interest and penalties as prescribed in Section 181.10 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. Compromise Authority

1. Subject to policies laid down by the Board of Review, the Administrator is authorized to compromise any assessments of interest and penalties.

**ARTICLE IX - EXAMINATION OF BOOKS & RECORDS**

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 supposed employer and every 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, at either his office or the place of business or residence of the taxpayer at his designation, 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 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 certified 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 181.99 of 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 sixty (60) days, or both.

In addition to the above penalty, any employee of the City of Fairfield 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 X - INTEREST AND PENALTIES**

### **A. Interest**

1. All taxes imposed and monies withheld by or required to be withheld by employers under the provisions of the Ordinance and remaining unpaid after they have become due shall bear interest at the rate of one percent (1.0%) per month or fraction thereof.

### **B. Penalties**

In addition to interest as provided in Paragraph A hereof, penalties for failure to estimate, pay, withhold and remit and to file a tax return pursuant to the provisions of the Ordinance are hereby imposed as follows:

1. In the case of taxpayers failing to pay the full amount of tax due, a penalty of the higher of fifty dollars (\$50.00) or two percent (2.0%) per month, or fraction thereof, of the amount of unpaid tax if the tax is paid during the first (1st) year after said tax became due; a penalty of five percent (5.0%) per month, or fraction thereof, of the amount of the unpaid tax if said tax is paid later than one (1) year after it became due. All penalty rates mentioned in this paragraph are to incur from the first (1st) month of delinquency.

2. In the case of employers who fail to withhold and remit the tax to the Administrator, the taxes to be withheld from employees, a penalty of the higher of one hundred dollars (\$100.00) or five percent (5.0%) per month, or fraction thereof, of the unpaid withholding, if paid after the original due date. All penalty rates mentioned in this paragraph are to incur from the first (1st) month of delinquency.

3. In the case of taxpayers required to file declarations and pay estimated tax quarterly, if such taxpayers fail to pay within one (1) month after the close of the tax year at least ninety percent (90%) of the tax finally determined to be due for said year, a penalty of the higher of fifty dollars (\$50.00) or one percent (1.0%) per month, or fraction thereof, of the amount representing the difference between the amount of estimated tax paid prior to the end of the month following the close of the tax year and ninety percent (90%) of the amount of tax finally determined to be due for said year.

4. In the case of taxpayers who fail to file a return by the due date as required by 181.03 (a) of the Ordinance, a penalty of fifty dollars (\$50.00).

5. In the case of taxpayers who fail to file a return as required by Section 181.05 (a) of the Ordinance, a penalty of two hundred dollars (\$200.00).

### **C. Exceptions**

1. No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within the prescribed time.

2. In the absence of fraud neither interest nor penalty 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 written protest or explanation, the Administrator shall determine the assessment, which may or may not be the same as the proposed assessment.

D. Appeal from Assessment

1. Imposition of penalty and/or interest as prescribed by the Codified Ordinance is not a sole basis for appeal.

**ARTICLE XI - COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS**

A. Unpaid Sums

1. All taxes imposed by the Ordinance and not paid when due become, together with interest and penalties thereon, a debt due the City from the taxpayer and are recoverable, as are other debts, by either civil or criminal action. Employers who are required, under Section 181.06 of the Ordinance, to withhold and remit the taxes required to be withheld at the source, and who fail to withhold or remit, become liable to the City in a criminal action or employment of a collection agency 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, does not subject a substantial portion of income to municipal tax as imposed by the ordinance, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report or subject to municipal tax twenty-five percent (25%) or more of gross income shall be considered a substantial omission.

3. In those cases in which the Commissioner of Internal Revenue Service 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 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, 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 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 became due.

b. To his current estimated tax liability.

C. Limitations

1. 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, refunded, or credited to the taxpayer or his account.

**ARTICLE XII - VIOLATIONS AND PENALTIES**

A. Any person who shall

1. fail, neglect or refuse to make any return or declaration required by the Ordinance; or

2. make an 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 and remit such withholding to the Administrator; or

5. refuse to permit the Administrator or any duly authorized agent or employee to examine his or his employer's books, records, papers and federal income tax returns; or

6. fail to appear before the Administrator and to produce his or his employer's books, records, papers or federal income tax returns upon order or subpoena of the Administrator; or

7. refuse to disclose to the Administrator any information with respect to such person's or such person's employer's income or net profits; or

8. fail to comply with the provisions of the Ordinance or any order or subpoena of the Administrator; or

9. fail, neglect, or refuse to make any payment on the estimated tax for any year as required by Section 181.07 of the Ordinance; or

10. attempt to do anything whatever to avoid the payment of the whole or any part of the tax, interest or penalties imposed by the Ordinance, shall be guilty of a misdemeanor of the third degree 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. Penalties

1. Any person violating any of the provisions of the Ordinance shall be guilty of a misdemeanor and subject to the penalties provided for in Section 181.99 of the Ordinance.

2. An officer, employee, or agent of a corporation is responsible for any violations of the Ordinance on the part of the corporation.

3. The penalties provided in the Ordinance are in addition to and not exclusive of the penalties provided by all pertinent criminal statutes of the State of Ohio and to the civil remedies provided in the Ordinance.

C. Prosecutions

1. All Prosecutions under this section shall be commenced within three (3) years from the time of the offense complained of 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 six (6) years from the date the return was due or the date the false or fraudulent return was filed.

D. Failure to Receive Forms – Not a Defense

1. 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, return or declaration, from filing such form, or from paying the tax.

E. The term "person" as used in this section shall, in addition to the meaning prescribed in Section 181.02 of the Ordinance, include in the case of an association or corporation not having any partner, member or officer within the City of Fairfield, any employee or agent of such association or corporation who can be found within the corporate limits of the City of Fairfield.

**ARTICLE XIII - BOARD OF REVIEW**

A. Composition

1. A Board of Review, consisting of the City Law Director, as chairman, and two (2) qualified electors of the City to be appointed by the City Manager of the City of Fairfield is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately

and the provisions of Section 9 hereof 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. Such records are not public records available for inspection under Section 149.43 of the Revised Code. Hearings requested by a taxpayer before the Board of Review created pursuant to this section are not meetings of a public body subject to Section 121.22 of the Revised Code.

**B. Duties**

1. 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 Board of Review before the same become effective. After such approval, such rules, regulations, amendments and changes shall be filed with the Clerk of Council and shall be open to public inspection. The Board shall bear 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 apportionment.

**C. Appeals**

1. An person who is aggrieved by a decision by the Administrator can request an appeal. 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 Administrator has issued the decision. Imposition of penalty and interest as prescribed by the Ordinance is not a sole basis for an appeal.

2. The Board shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives the hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by another person.

3. The Board shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal and send notice of its decision by ordinary mail to the petitioner within fifteen (15) days after issuing the decision.

4. The Board, by a majority vote, may affirm, modify or reverse, in whole or in part, any such ruling or decision of the Administrator.

**ARTICLE XIV - CREDIT ALLOWED FOR TAX PAID TO ANOTHER MUNICIPALITY**

**A. Limitations**

1. Where a resident of the City of Fairfield is subject to a municipal income tax in another State or 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**

1. Resident individuals of the City of Fairfield who are required to pay a tax to another municipality or joint economic development district or zone on salaries,

wages, commissions or other compensation for work done or services performed in such other municipality or joint economic development district or zone, or net profits from businesses, professions or other activities conducted in such other municipality or joint economic development district or zone, may claim a credit of the amount of tax paid by them or on their behalf to such other municipality or joint economic development district or zone but only to the extent of the tax imposed by the Ordinance on such compensation or net profits.

2. Tax credit for taxes paid to another city or joint economic development district or zone is limited to the income determined to be taxable by the Administrator. The credit allowed is also limited to the income taxed by another city or joint economic development district or zone. The credit allowed is calculated by dividing the tax withheld by that city's tax rate and multiplying that income by the tax rate imposed by the City of Fairfield.

3. Tax credit for taxes paid by a resident on his unincorporated entities shall be limited to the income determined to be taxable by the administrator. If taxpayer pays directly to another city or joint economic development district or zone for his unincorporated entity and has another unincorporated entity that sustains a loss, the tax credit allowed will be reduced to the net taxable income recognized by the City. No taxes paid to another city or joint economic development district or zone will be credited or refunded to taxpayer in such cases.

4. Except as provided in subsection 5 hereof, if tax or withholding is paid to a municipal corporation on income or wages, and if a second municipal corporation imposes a tax on that income or wages after the time period allowed for a refund of the tax or withholding paid to the first municipal corporation, the second municipal corporation shall allow a credit, against the tax or withholding the second municipality claims is due with respect to such income or wages, equal to the tax or withholding paid to the first municipal corporation with respect to such income or wages.

5. If the tax rate in the second municipal corporation is less than the tax rate in the first municipal corporation, then the credit described in subsection 4 hereof shall be calculated using the tax rate in effect in the second municipal corporation.

#### C. 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.

2. A refund must be claimed by the taxpayer or his employer within three (3) years of the date of filing the final return for the year for which such refund is claimed. The Administrator shall prescribe rules for verification.

D. A statement satisfactory to the Administrator from the taxing authority of Fairfield to which the taxes are paid that a Fairfield resident or his employer is paying the tax shall be considered as fulfilling the requirement of this Article.

#### **ARTICLE XV - SAVINGS CLAUSE**

These Rules and Regulations contain changes from the Rules and Regulations adopted for previous years in an effort to affect uniform administration of municipal income taxes throughout Ohio. Changes in these Regulations from those in previous years do not imply any intent to affect a substantial change in Rules and Regulations, but they are merely changes in form (except as otherwise necessitated by changes in the Ordinance subsequent to the issuance of the previous Rules and Regulations).

#### **ARTICLE XVI - AMENDMENTS AND SUPPLEMENTS**

From time to time, the Administrator may issue amendments and supplements to these regulations.