

EARNED INCOME TAX ORDINANCE

171.01 PURPOSE.

To provide funds for municipal purposes, there shall be, and is hereby, levied a tax on salaries, wages, commissions and other compensation, and on net profits as hereinafter provided.
(Ord. 2000-87. Passed 12-5-00.)

171.02 DEFINITIONS.

- (a) As used in this chapter the following words shall have the meanings ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning.
- (1) "Association" means a partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons.
 - (2) "Board of Review" means the Board created by and constituted as provided for in Section 171.13.
 - (3) "Business" means any LLC, rental real estate, 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.
 - (4) "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.
 - (5) "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 taxpayer has only one domicile even though he may have more than one residence.
 - (6) "Employee" means one who works for wages, salary, commission or other types of compensation in the services of an employer.
 - (7) "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profits, who or that employs one or more persons on a salary, wage, commission or other compensation basis.
 - (8) "Fiscal year" means an accounting period of twelve (12) months with a reporting cycle of fifty-two (52) calendar weeks ending on any day other than December 31.
 - (9) "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
 - (10) "Generic Form" means an electronic or paper form designed for reporting estimated municipal 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.
 - (11) "Gross receipts" means total income of taxpayers from whatever source derived.
 - (12) "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.
 - (13) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
 - (14) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.
 - (15) "Municipality" means the Village of Elmwood Place, Ohio.
 - (16) "Net profits" means the net gain from all operations including those pertaining to capital gains and losses of a business, profession or enterprise after provision for all ordinary and necessary expense, except contributions, and except taxes imposed by this chapter and Federal and other taxes based on income, paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, and in the case of an association, without deduction of salaries paid to partners or other owners.
 - (17) "Nonresident" means a person, whether an individual, partnership, association, corporation or other entity, domiciled outside the Municipality.
 - (18) "Other Payer" means any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent.
 - (19) "Person" means every natural person, partnership, fiduciary, association, corporation or other entity. Wherever used in any clause prescribing or imposing a penalty, the term "person" as applied to any association shall include the partners or members thereof, and as applied to corporations, the officers thereof.
 - (20) "Place of business" means any bona fide 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.
 - (21) "Resident" means a person, whether an individual, partnership, association, corporation or other entity, domiciled in the Municipality.
 - (22) "Return Preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.
 - (23) "Rules and Regulations" means the Rules and Regulations as set forth in Sections 171.21 through 171.30 of this chapter and which are incorporated as the rules of interpretation of this chapter.
 - (24) "Schedule C" means Internal Revenue Service Schedule C filed by a taxpayer pursuant to the Internal Revenue Code.
 - (25) "S Corporation" means an entity designated as a Subchapter S Corporation under the Internal Revenue Code, treated as a corporation for purposes of the Municipal tax.
 - (26) "Tax Commissioner" means the person described in Section 171.08, who shall be appointed by the Village Mayor and who is designated to be the chief administrative officer of the Elmwood Place Income Tax Division.

- (27) "Tax year" means the calendar year, or the fiscal year upon the basis of which net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.
- (28) "Taxpayer" means a person, whether an individual, partnership, association, corporation or other entity, required by this chapter to file a return or pay a tax.
- (b) The singular shall include the plural, the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.
(Ord. 2000-87. Passed 12-5-00.)

171.03 IMPOSITION OF TAX.

- (a) Basis of Imposition. Subject to provisions of Section 171.16, an annual tax shall be, and is hereby, levied on and after July 1, 1956, at the rate of two per cent (2%) per annum upon the following:
- (1) On all salaries, wages, including sick and vacation pay, commissions, and other compensation earned during the effective period hereof by residents.
 - (2) On all salaries, wages, including sick, vacation, severance, and any pay as part of an employee buyout or wage continuation plan, commissions and other compensation earned during the effective period hereof by nonresidents for work done or services performed or rendered in the Municipality, except in the case of nonresident employees or nonresident unincorporated businesses to whom the 12-day occasional entry rule applies. As stated in the Ohio Revised Code, the Municipality shall not tax the compensation of an individual if any of the following apply:
 - A. the individual does not reside in the Municipality;
 - B. the compensation is paid for personal services performed by the individual in the Municipality on twelve (12) or fewer days during the calendar year;
 - C. in the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the Municipality and the individual pays tax on compensation described in division (B) of this section to the Village, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual;
 - D. the individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the Municipality.
 - E. The tax provided for herein shall not be levied on the net profits of any nonprofit organization exempt from the federal income tax or on students 18 years or under. (Ord. 2000-87. Passed 12-5-00).
 - (3)
 - A. On the portion attributable to the Municipality of the net profits earned during the effective period hereof of a resident association, unincorporated business, profession or other entity, derived from sales made, work done or services performed or rendered, or business or other activities conducted, in the Municipality.
 - B. On a resident partner's or owner's share of the net profits earned during the effective period hereof of a resident association or other unincorporated entity not attributable to the Municipality and not levied against such association or other unincorporated entity by the Municipality or any other municipality at the same or a higher rate.
 - (4)
 - A. On the portion attributable to the Municipality of the net profits earned during the effective period hereof of a nonresident association, unincorporated business, profession or other entity, derived from sales made, work done or services performed or rendered, or business or other activities conducted, in the Municipality, whether or not such association, or other unincorporated entity has an office or place of business in the Municipality.
 - B. On a resident partner's or owner's share of the net profits earned during the effective period hereof of a nonresident association or other unincorporated entity not attributable to the Municipality and not levied against such association or other unincorporated entity by the Municipality or any other municipality at the same or a higher rate.
 - (5) On the net profits earned during the effective period hereof of all corporations derived from sales made, work done or services performed or rendered, and business or other activities conducted, in the Municipality, whether or not such corporations have an office or place of business in the Municipality.
- (b) Allocation of Net Profits. Where a person conducts a business both within and outside the Municipality, the portion of the entire net profits of such business to be allocated as having been made within the Municipality may be determined from the records of such business, if such business had bona fide records which disclose with reasonable accuracy what portion of its net profits is attributable to that part of its activities conducted within the Municipality, or at the option of the taxpayer may be determined by the following formula, which shall be used if such taxpayer has no bona fide records showing net profits from business activities within the Municipality, subject however, to the provisions of subsection (D)(2) hereof.
- (1) Multiply the entire net profits of the business by a business allocation percentage to be determined by:
 - A. Ascertaining the percentage which the average net book value of the real and tangible personal property owned or used in the business and situated within the Municipality, during the period covered by the return, is of the average net book value of all the real and tangible personal property owned or used in the business, wherever situated, during such period.
 - B. Ascertaining the percentage which the gross receipts of the business from sales made and services performed in the Municipality, during the period covered by the return, are of the total gross receipts from all sales and services, wherever made or performed, during such period.
 - C. Ascertaining the percentage which the total wages, salaries, commissions and other compensation paid, during the period covered by the return, to employees for services performed in the Municipality is of the total wages, salaries, commissions and other compensation paid during such period to all employees within and outside the Municipality.

- D. Adding together the percentages determined in accordance with sub-sections (b)(1)A., B. and C. hereof, or such of the aforesaid percentages as are applicable to the particular taxpayer and dividing the total so obtained by the number of percentages used in deriving such total.
1. A factor is applicable even though it may be allocable entirely in or outside the Municipality.
 2. Provided however, that in the event a just and equitable result cannot be obtained under the formula provided for herein, the Tax Commissioner, upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper allocation. Should the taxpayer object to or disagree with the Tax Commissioner's decision, an appeal may be filed with the Board of Review which shall have the power to adjust, modify, or overrule such decision by the Tax Commissioner.
- (c) Operating Loss Carry Forward.
- (1) The portion of a net operating loss sustained in any taxable year, beginning with the year 1970, allocable to the Municipality may be applied against the portion of the profit of succeeding tax years allocable to the Municipality, until exhausted, but in no event for more than the five (5) taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.
 - (2) The portion of a net operating loss sustained shall be allocated to the Municipality in the same manner as provided herein for allocating net profits to the Municipality.
 - (3) The Tax Commissioner shall provide the manner in which such net operating loss carry forward shall be determined.
- (d) Consolidated Returns.
- (1) Filing of consolidated returns may be permitted or required in accordance with Rules and Regulations prescribed by the Tax Commissioner.
 - (2) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, the Tax Commissioner shall require such information, in addition to the return hereinafter provided for, as he may deem necessary to ascertain whether net profits are properly allocated to the Municipality. If the Tax Commissioner finds net profits are not properly allocated to the Municipality by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, he may require the filing of a consolidated return or adjust such transactions so as to produce a fair and proper allocation of net profits to the Municipality.
- (e) Exceptions. The tax provided for herein shall not be levied upon pay or allowances exempted from municipal income taxes by Ohio R.C. 718.01, or upon the net profits of any civic, charitable, religious, fraternal or other organization specified in such section to the extent that such net profits are exempted from municipal income taxes under such section.

171.04 EFFECTIVE PERIOD.

The tax imposed by this Chapter shall be levied, collected and paid with respect to all income and net profits, subject to the tax, earned during the period beginning on January 1, 2001.
(Ord. 2000-87. Passed 12-5-00.)

171.05 RETURN AND PAYMENT OF TAX.

- (a) Dates and Exemptions. Each person who engages in business, or whose salary, wages, commissions, or other compensation whether or not subject to a municipal tax equal to or greater than the Municipality's, shall make and file a return with the Tax Commissioner for each calendar year on or before the April 30 following the end of such calendar year. A taxpayer on a fiscal year accounting basis for federal income tax purposes shall, beginning with his first fiscal year, any part of which falls within the effective period hereof, file his return within four (4) months from the end of such fiscal year or period. The Tax Commissioner shall provide by regulation that the return of an employer or employers, showing the amount of tax deducted by such employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by him or them to the Tax Commissioner, shall be accepted as the return required of any employee whose sole income subject to tax under this chapter is such salary, wages, commissions or other compensation.
- (b) **MANDATORY REGISTRATION** – ALL RESIDENTS AND BUSINESSES SITUATED IN THE VILLAGE OF ELMWOOD PLACE ARE REQUIRED TO FILE A RESIDENT REGISTRATION FORM AS REQUESTED BY THE TAX COMMISSIONER.
- (c) **MANDATORY FILING** – FILING IS REQUIRED FOR ALL BUSINESSES AND RESIDENTS SITUATED IN THE VILLAGE OF ELMWOOD PLACE.
- (b) Returns and Content Thereof. The Tax Commissioner shall accept a generic form of any return, report, or document required to be filed if the generic form once completed and filed, contains all of the information required to be submitted with the Municipality's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the Municipality. To constitute a valid form the following information must be included:
- (1) The aggregate amounts of salaries, wages, commissions and other compensation earned, and gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income, earned during the preceding year and subject to such tax;
 - (2) The amount of the tax imposed by this chapter on such earnings and profits; and
 - (3) Such other pertinent statements, information returns, copies of federal or state tax returns and/or schedules or other information as the Tax Commissioner may require, including a statement that the figures used in the return

are the figures used in the return for Federal income tax, adjusted to set forth only such income as is taxable under the provisions of this chapter, as attachments.

(c) Extensions.

- (1) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of the Municipality's tax return. The taxpayer shall make the request by filing a copy of the taxpayer's request for a federal filing extension with the Tax Commissioner.
- (2) Any taxpayer not required to file a federal income tax return may request an extension for filing the Municipality's tax return in writing.
- (3) The request for extension shall be filed not later than the last day for filing the Municipality's tax return as prescribed by ordinance or rule of the Municipality.
- (4) A valid extension request extends the due date for filing a return six (6) months from the original due date of such return.
- (5) The Municipality may deny a taxpayer's request for extension if the taxpayer:
 - A. fails to timely file the request;
 - B. fails to file a copy of the federal extension request (if applicable);
 - C. owes the Municipality any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or nonpayment of income tax;
 - D. has failed to file any required income tax return, report, or other related document for a prior tax period.
- (6) The granting of an extension for filing a municipal income tax return does not extend the last date for paying of the tax; hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by Section 171.10. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the extension period provided all other filing and payment requirements of the Tax Code have been met. Any extension by the Tax Commissioner 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, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.

(d) Payment with Returns.

- (1) The taxpayer making a return shall at the time of the filing thereof pay to the Tax Commissioner 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 171.06; or where any portion of such tax shall have been paid by the taxpayer pursuant to the provisions of Section 171.07, or where an income tax creditable against the municipal tax pursuant to Section 171.15 has been paid to another municipality, credit for the amount so paid 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 such return.
 - (2) A taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this Chapter may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment, or part thereof, shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.
- (e) Amended Returns.
- (1) Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and limitations contained in Sections 171.11 and 171.15. Such amended returns shall be on a form obtainable on request from or acceptable to the Tax Commissioner.
 - (2) Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's municipal tax liability, such taxpayer shall make and file an amended municipal return showing income subject to the Municipal tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.
(Ord. 2000-87. Passed 12-5-00.)

171.06 COLLECTION AT SOURCE.

(a) Withholding by Employer. Each employer within, or doing business within, the Municipality who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct, when such salary, wage, commission or other compensation is paid, allocated or set aside, the tax of two percent (2%) of the gross salaries, wages, commissions or other compensation due by such employer to each such employee and shall, on or before the last day of the month following such withholding, make a return and pay to the Tax Commissioner the amount of taxes so deducted. The return shall be on a form or forms prescribed by or acceptable to the Tax Commissioner and shall be subject to the Rules and Regulations prescribed by the Tax Commissioner. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

(a) So long as the taxes withheld by an employer for the Municipality during the measurement period are less than three hundred dollars (\$300) per month, payments may be made quarterly on or before the last day of the month following the end of the quarter, subject to the approval of the Tax Commissioner. The Tax Commissioner may revoke the approval of quarterly filing and payments whenever the Tax Commissioner has reason to believe 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 Municipality to do so. Notice of withdrawal shall be made in writing and, in such case, the employer must begin to file in accordance with this Section.

(b) \$150 Deminimus Rule. A nonresident employer, agent of such an employer, or other payer that is not situated in the Municipality shall not be required to deduct and withhold taxes from the taxable income of an individual unless the total amount of tax required to be deducted and withheld for the Municipality on account of all of the employer's employees or all of the other payer's payees exceeds one hundred fifty dollars (\$150) for a calendar year.

- (1) If the total amount of tax required to be deducted and withheld on account of all of the nonresident employer's employees or all of the other payer's payees exceeds one hundred fifty dollars (\$150) for a calendar year, the employer, agent of such an employer or other payer must deduct and withhold taxes in each ensuing year even if the amount required to be deducted and withheld in each of those ensuing years is one hundred fifty dollars (\$150) or less, until such time that the tax so deducted and withheld is one hundred fifty dollars (\$150) or less for three (3) consecutive years.

(c) Employer Considered as Trustee. Each employer in collecting such tax shall be deemed to hold the same, until payment is made by such employer to the Municipality, as a trustee for the benefit of the Municipality, and any such tax collected by such employer from his employees shall, until the same is paid to the Municipality, be deemed a trust fund in the hands of such employer. Each employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax, in fact, has been withheld.

(d) Corporate Officers' Personal Liability. It shall be the responsibility, jointly and severally, of the president and treasurer of each corporation, and person in charge of the employer's place of business within the Municipality if the president and treasurer are not residents of Hamilton County, Ohio, required to withhold the tax from wages of its employees under this section, to see that all such taxes so withheld are paid to the Municipality in accordance with the provisions of this section. In the event taxes withheld by a corporation from the salaries of its employees are not paid to the Municipality in accordance with the provisions of this section, the president, treasurer and such person in charge of such corporation shall each be criminally liable under the provisions of Section 171.12.

(e) Withholding Return; List of Employees. Each employer shall file a withholding tax reconciliation (Form W-3) showing the sum total of all compensation paid all employees, the portion of which, (if any) was not subject to withholding along with an explanation for same, and the portion of which was subject to withholding, together with the amount of such withholdings remitted. Such return shall include information concerning each employee from whom the Elmwood Place tax was withheld, showing the name, address, zip code and social security number of each such employee, the total amount of compensation paid during the year and the amount of Elmwood Place tax withheld. If the total tax withheld from any employee included tax withheld and remitted to another municipality, the amount of same shall be separately shown on the return of information to Elmwood Place concerning each employee. The withholding tax reconciliation shall be filed by each employer on or before the January 31 next following the end of such calendar year.

(f) Domestic Servants. Provided however, that 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. However, employers are required to notify the Tax Office in writing of said employees and such domestic servants shall be responsible for filing and paying their own returns and taxes.

(Ord. 2000-87. Passed 12-5-00.)

171.07 DECLARATIONS.

(a) Requirement for Filing. Every person who anticipates a tax liability which is expected to exceed \$500.00 or more, or who engages in any business, profession, enterprise or activity resulting in income subject to the tax imposed by this chapter, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any.

(b) Dates for Filing. After 1978 such declaration shall be filed on or before April 30 of such calendar year; or within four (4) months after either the start of the taxpayer's fiscal year or when he first becomes subject to the provisions of this section, whichever is later.

(c) Forms: Credit for Tax Withheld or Paid Another Community.

- (1) Such declaration shall be filed upon a form furnished by, obtainable from or acceptable to the Tax Commissioner. Credit shall be taken in such declaration for the Municipal tax to be withheld from any portion of such income and for income taxes to be paid to another taxing municipality for which credit is allowed against municipal tax under Section 171.15.
- (2) A declaration of estimated tax to be paid the Municipality shall be accompanied by a payment of at least $\frac{1}{4}$ of the estimated tax per quarter, less credit for taxes withheld or paid to another municipality, and at least a similar amount shall be paid on or before the last day of the month following each calendar quarter.

(d) Amended Declaration.

- (1) A declaration may be amended at any time, provided however, that in case an amended declaration is filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.
- (2) An amended declaration must be filed on or before the date fixed by regulation of the Tax Commissioner.

(e) Annual Return Required. On or before the last day of the fourth month of the calendar or fiscal year, an annual return shall be filed and any balance which may be due the Municipality shall be paid therewith in accordance with the provisions of Section 171.05.

171.08 APPOINTMENT AND DUTIES OF TAX COMMISSIONER.

- (a) (1) There is hereby created a Department to be known as the Income Tax Division. Such Division shall be administered by a person appointed by the Village Mayor who shall be titled "Tax Commissioner".
- (2) It shall be the duty of the Tax Commissioner to collect and receive the tax imposed by this chapter in the manner prescribed therein, and to keep an accurate record thereof, and to report all monies so received.

- (3) It shall be the duty of the Tax Commissioner to enforce payment of all income taxes owing the Municipality, 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 a return of taxes withheld, and to show the date and amounts of payments thereof.

(b) The Tax Commissioner is hereby charged with the enforcement of the provisions of this chapter, including the interpretation and enforcement of the Rules and Regulations set forth in Sections 171.21 through 171.30, and is hereby empowered to enforce the ordinance and the Rules and Regulations authorized or required by this chapter, relating to any matter or thing pertaining to the collection and payment of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.

(c) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Commissioner may determine the amount of tax appearing to be due the Municipality from the taxpayer and may send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(d) Upon the demonstration and documentation of good cause, the Tax Commissioner shall have the power to compromise penalty and interest liabilities imposed by this chapter, consistent with this chapter and the Rules and Regulations. In no case shall the Tax Commissioner possess the authority to abate or compromise a tax liability.

(e) It shall be the duty of the Tax Commissioner to monitor the application of this chapter, and to report to both the Mayor and Council any recommendations for additions, deletions, or adjustments.

171.09 INVESTIGATIVE POWERS OF TAX COMMISSIONER; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION

(a) The Tax Commissioner, or any of his authorized agents, is hereby authorized to examine the books, papers, records and Federal income tax returns of any employer, or taxpayer, or any person subject to, or whom the Tax Commissioner believes is subject to, the provisions of this chapter for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax or withholdings due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request of the Tax Commissioner, or his duly authorized agent or employee, the means, facilities and opportunities for making such examinations and investigations as are hereby authorized.

(b) The Tax Commissioner is hereby authorized to order any person, presumed to have knowledge of the facts, to appear at the office of the Tax Commissioner and to examine such person, under oath, concerning any income which was or should have been returned for taxation, or withheld, or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal income tax returns, and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

(c) The refusal to produce books, papers, records or Federal income tax returns, or the refusal to submit to such examination by any employer or person subject, or presumed to be subject, to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Tax Commissioner authorized hereby, shall be deemed a violation of this chapter punishable as provided in Section 171.12.

(d) Every taxpayer shall retain all records necessary to compute his tax liability for a period of five (5) years from the date his return is filed or the taxes required to be withheld are paid.

(e) Any information gained as a result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, and no disclosure thereof shall be made except to Municipal, County, State or Federal taxing agencies, or, except for official purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this section shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six (6) months, or both, for each offense. In addition to the above penalty, any employee of the Municipality who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(f) Notwithstanding any termination of the tax imposed by this chapter, the Tax Commissioner or the individual appointed to complete his duties shall have all of the powers given the Tax Commissioner in subsections (a), (b) and (c) hereof during the period in which this chapter was in effect against any person or entity which has not fully satisfied his or its tax liability under the provisions of this chapter.

171.10 INTEREST AND PENALTIES.

(a) All taxes imposed and monies withheld or required to be withheld by employers under the provisions of this chapter, remaining unpaid after they become due, shall bear interest at the rate of one per cent (1%) per month.

(b) In addition to interest as provided in subsection (a) hereof, penalties for failure to pay taxes and to withhold and remit taxes pursuant to the provisions of this chapter are hereby imposed as follows:

- (1) In the case of taxpayers failing to file a tax return by the due date or by the date resulting from an extension, and/or failing to pay the full amount of tax due,:

- (a) a filing penalty of fifty dollars (\$50.00)
 - (b) interest of one percent (1%) per month or fraction thereof
 - (c) penalty of five percent (5%) per month or fraction thereof
- (2) In the case of employers, required by Section 171.24 to withhold the Municipal tax, who fail to withhold and remit such taxes to the Tax Commissioner, a penalty for each period of delinquency shall be assessed equal to the higher of:
- A. Fifty dollars (\$50.00) filing penalty if paid after it is due
 - B. A calculated amount based on period of delinquency as follows:
 - interest of one percent (1%) per month or fraction thereof if paid after it is due
 - penalty of five percent (5%) per month or fraction thereof if paid after it is due

The percentages herein specified when used shall apply from the first month of delinquency.

- (c) Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Tax Commissioner when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Commissioner; and provided further that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after the final determination of the federal tax liability.
- (d) Filings, including request for extensions, postmarked, or received, through and inclusive of the fifth calendar day of any month may be considered by the Tax Commissioner to have been postmarked, or received, the last day of the preceding month.
- (e) Computed penalties of less than one dollar (\$1.00) for a first violation shall not be assessed. However, notification to the taxpayer of a first time violation will be made.
- (f) Upon an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and interest, the Board of Review may abate such penalty or interest, or both.

171.11 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

- (a) All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit as other debts of like amount are recoverable. No additional assessment shall be made after three (3) years from the time of payment of any tax due hereunder; provided however, there shall be no period of limitation on an additional assessment in a case of a return that omits gross income in excess of twenty-five per cent (25%) of that required to be reported or in the case of filing a false or fraudulent return with intent to evade the tax, or in the case of failure to file a return. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations the period within which an additional assessment may be made by the Tax Commissioner shall be extended one (1) year from the time of the final determination of the Federal tax liability.
- (b) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made or the return was due, or within three (3) months after final determination of the federal tax liability, whichever is later.
- (c) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment, except that if any overpayment is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the complete return is filed, whichever is later. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by Ohio R.C. 5703.47.

171.12 VIOLATIONS AND PENALTIES.

- (a) Any person who shall:
 - (1) Fail, neglect or refuse to make any return or declaration required by this chapter; or
 - (2) Make an incomplete, false or fraudulent return; or
 - (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
 - (4) Fail, neglect or refuse to withhold the tax from his employees and remit such withholding tax to the Tax Commissioner; or
 - (5) Refuse to permit the Tax Commissioner or any duly authorized agent or employee to examine his or his employer's books, records, papers, or federal income tax returns; or
 - (6) Fail to appear before the Tax Commissioner and to produce his or his employer's books, records, papers or federal income tax returns upon order or subpoena of the Tax Commissioner; or
 - (7) Refuse to disclose to the Tax Commissioner 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 this chapter or any order or subpoena of the Tax Commissioner; or
 - (9) Fail, neglect or refuse to make any payment on the estimated tax for any year as required by Section 171.07; or
 - (10) Fail, as president or treasurer of a corporation, to cause the tax withheld from the wages of the employees of such corporation pursuant to this chapter to be paid to the Municipality in accordance with the provisions of Section 171.06; or

- (11) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter;

for which violation no penalty is otherwise provided, is guilty of a minor misdemeanor on a first offense and shall be fined not more than one hundred dollars (\$100.00); on a second offense within two years after the first offense, such person is 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; on each subsequent tax code violation within two years after the first offense such person is guilty of a misdemeanor of the third degree, and punished as provided for herein.

(b) Statute of Limitations: Interest on Late Refunds.

- (1) Civil actions to recover Municipal income taxes and penalties and interest on Municipal income taxes shall be brought within three (3) years after the tax was due or the return was filed, whichever is later.
- (2) Prosecutions for an offense made punishable under this chapter shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.
(ORC 718.06)

(c) The failure of any employer, taxpayer 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.

(d) The term "person" as used in this section shall, in addition to the meaning prescribed in Section 171.02, include in the case of an association or corporation not having any partner, member or officer within the Municipality, any employee or agent of such association or corporation who can be found within the corporate limits of the Municipality.

171.13 BOARD OF REVIEW.

(a) There shall be a Board of Review which shall consist of three (3) members, each of whom shall be appointed by the Mayor. Members of the Board of Review shall be appointed for terms of three (3) years, so arranged that one member's term shall expire on July 1 of each year. Any vacancy which shall occur in a regular term shall be filled for the unexpired portion of such term. Board members shall receive such compensation as Council may determine. Existing members of the Board of Review shall serve without the necessity of reappointment until July 1, at which time the Mayor shall appoint members and establish terms consistent with this section.

(b) Whenever the Tax Commissioner issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the Municipality, the Tax Commissioner shall notify the taxpayer at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

(c) A majority of the members of the Board shall constitute a quorum. The Board of Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Section 149.43 of the Ohio Revised Code. Hearings requested by a taxpayer before the Board are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code.

(d) Any person who is aggrieved by a decision by the Tax Commissioner and who has filed with the Municipality the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Review by filing a request with the Board. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Tax Commissioner has issued the decision.

(e) The imposition of penalty and interest as prescribed in the codified ordinance of the Municipality is not a sole basis for an appeal.

(f) The Board of Review shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or enrolled agent.

(g) The Board may affirm, reverse, or modify the Tax Commissioner's decision or any part of that decision. 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.

(h) The Board of Review shall be empowered to recommend to Council for their consideration modifications to, additions to or deletions from this chapter, with or without the concurrence of the Tax Commissioner.

(Ord. 2000-87. Passed 12-5-00.)

171.14 INFORMATION BY LANDLORDS.

(a) Within thirty (30) days after a new tenant occupies rental property of any kind within the Municipality, all owners of rental property who rent to tenants of apartments, rooms and other rental accommodations shall file with the Tax Commissioner a report showing the name, address and telephone number, if available, of each such tenant who occupies an apartment, room or other rental property within the Municipality.

(b) Within thirty (30) days after a tenant vacates an apartment, room or other rental property located within the Municipality, the owner of such vacated rental property shall file with the Tax Commissioner a report showing the date of vacation from the rental property and a forwarding address.
(Ord. 2000-87. Passed 12-5-00.)

171.15 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

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

(b) Every individual taxpayer who resides in the Municipality and who receives salaries, wages, commissions, or other compensation or net profits from sales made, work done or services performed or rendered outside of the Municipality, if it be made to appear that a municipal income tax has been paid on such income to another municipality, he shall claim a credit of the amount of tax paid by him or on his behalf to such municipality, but the credit is limited to the income allocated to the other municipality times the Municipality tax rate. No credit is given for school district taxes paid; only other municipal taxes and county taxes.

(c) Notwithstanding the provisions contained in Section 171.11, or any other provisions inconsistent herewith, a claim for refund or credit under this section shall be made in such manner as the Tax Commissioner may provide. No such claim for refund or credit shall be allowed unless made on or before the date of filing the taxpayer's final return unless such taxpayer's employer files with the Tax Commissioner a list showing the tax withheld from such taxpayer's wages, salaries or commissions for other municipalities.

171.16 SAVING CLAUSE.

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

RULES AND REGULATIONS

171.21 DEFINITIONS.

(a) As used in these Rules and Regulations (Sections 171.21 through 171.30), the following words shall have the meaning ascribed to them herein, except as and if the context clearly indicates or requires a different meaning.

- (1) "Board" means the Board of Review provided for by Section 171.13.
- (2) "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. 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 inter vivos or testamentary, unaccompanied by the actual operation of a business as herein defined shall not be construed as the operation of a business.
- (3) "Business allocation" means the portion of net profits to be allocated to the Municipality as having been made in the Municipality, either under separate accounting method, or under the three factor formula of property, payroll and sales, provided for in Section 171.03.
- (4) "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.
- (5) "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 on whose account payments are made under the Ohio Workers' Compensation law shall prima facie be an employee.
- (6) "Employer" means an individual, partnership, association, corporation (including a corporation not for profit), governmental agency, board, body, bureau, department, subdivision or unit or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis whether or not such employer is engaged in business. It does not include a person who employs only domestic help for such person's private residence.
- (7) "Floater" means an employee who does not work at a place of business of his employer and/or who regularly works in two or more taxing municipalities during a year.
- (8) "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Service Code.
- (9) "Generic Form" means an electronic or paper form designed for reporting estimated municipal 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.
- (10) "Ground rents" means payments made by a lessee to a lessor under a perpetual leasehold where the lessor neither pays the taxes on the property nor performs services of any type with respect to the property.

- (11) "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.
- (12) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
- (13) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.
- (14) "Joint Economic Development District" means districts created under the Ohio Revised Code Sections 715.70 and 715.71, as amended from time to time.
- (15) "Ordinance" means Chapter 171 of the Elmwood Place Codified Ordinances.
- (16) "Other Payer" means any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent.
- (17) "Person" means every natural person, partnership, fiduciary, association, corporation or other entity. Whenever used in a clause prescribing or imposing a penalty, the term "person" as applied to any association shall mean the partners or members thereof, and as applied to a corporation, the officers thereof, and in the case of any unincorporated entity or corporation not having any partner, member or officer within the Municipality, any employee or agent of such unincorporated entity or corporation who can be found within the corporate limits of the Municipality.
- (18) "Principal place of business", in the case of any employer having its headquarters activities at a place of business within a taxing municipality, the term shall mean the place of business at which the headquarters is situated. In the case of an employer not having its headquarters activities at a place of business within a taxing municipality, the term shall mean the largest place of business located in a taxing municipality.
- (19) "Resident" means a person, whether an individual, association, corporation or other entity domiciled in the Municipality. In the case of an individual, continuous residence within the Municipality for three (3) months or more shall prima facie constitute domiciliary residence.
- (20) "Return Preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.
- (21) "Schedule C" means Internal Revenue Service Schedule C filed by a taxpayer pursuant to the Internal Revenue Code.
- (22) "Taxable income" means wages, salaries and other compensation paid by an employer or employers before deductions of any kind, and the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of Chapter 171 and these Rules and Regulations.
- (23) "Taxing municipality" means a municipality levying a tax on income earned by nonresidents working within such municipality and on income earned by its residents.
- (b) The singular shall include the plural and the masculine shall include the feminine and the neuter.
(Ord. 2000-87. Passed 12-5-00.)

171.22 IMPOSITION OF TAX.

(a) Bases.

(1) Resident Employee.

- A. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 171.03(a)(1), the sources of the earnings and the place or places in or at which the services were rendered are immaterial. All such earnings wherever earned or paid are taxable.
- B. The following are items which are subject to the tax imposed by Section 171.03(a)(1):
- 1.00 Gross salaries, wages, bonuses and incentive payments earned by an individual whether directly or through an agent and whether in cash or in property for services rendered during the tax period as:
 - 1.01 An officer, director or employee of a corporation (including charitable and other non-profit organizations), joint stock association or joint stock company;
 - 1.02 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;
 - 1.03 An employee (as distinguished from a proprietor) of a business, trade or profession conducted by an individual owner;
 - 1.04 An officer or employee (whether elected, appointed or commissioned) of the United States Government, or any of its agencies; or of the State of Ohio or any of its political subdivisions or agencies thereof; or any foreign country or dependency--except as provided in Section 171.03(e);
 - 1.05 An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates; and whether paid by an individual, partnership, association, corporation (including charitable and other non-profit corporations), governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity.
 - 2.00 Commissions earned by an individual directly or through an agent and whether in cash or in property for services rendered, regardless of how computed or by whom or wheresoever paid.
 - 2.01 If amounts received as a drawing account exceed the commissions earned, and the excess is not subject to the demand of the employer for repayment, the tax is payable on the amounts received as a drawing account.
 - 2.02 Amounts received from an employer for expenses, and not as compensation and used as such by the individual receiving them, are not deemed to be compensation if the employer deducts such expenses or advances as such from his gross income for the purpose of

- determining his net profits taxable under federal law, and the employee is not required to include such receipts as income on his federal tax return.
- 2.03 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, they shall not be taxed under Section 171.03(a)(1).
 - 3.00 Fees, unless such fees are properly includable 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 such individual.
 - 4.00 Other compensation, including tips, bonuses or gifts of any type, and including compensation paid to domestic servants, casual employees and other types of employees.
 - 5.00 Payments made to an employee by an employer as vacation pay or wages under any other wage continuation plan during periods of disability or sickness are taxable when paid. 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 employer has paid the premium for this insurance coverage.
 - 6.00 Sums deducted from gross wages or other compensation for retirement purposes (deferred compensation) are taxable.
 - 7.00 If the income appears on a W-2 form and is not shown to be an exception in accordance with subsection (f) hereof (Exceptions), it shall be considered other compensation and therefore taxable to the individual. This includes, but is not limited to:
 - 7.01 Tips, bonuses, fees, gifts in lieu of pay, gratuities.
 - 7.02 Supplemental unemployment pay, severance pay.
 - 7.03 Incentive pay and pay to induce early retirement.
 - 7.04 Car allowance, personal use of employer-provided vehicle.
 - 7.05 Group term life insurance to the extent taxable to the Federal government.
 - 7.06 Sick pay whether paid by the employer to the employee or through a third party.
 - 7.07 Contributions by an employee or on behalf of an employee from gross wages, into an employee or third party trust or pension plan as permitted by any provision of the Internal Revenue Code which may be excludable from gross wages for Federal income tax purposes (401K plans and similar plans).
 - 7.08 The value of employer sponsored plans which permit the participant to reduce his taxable income for Federal tax purposes. Such a reduction does not cause the gross wage or salary to lose its character as a gross wage or salary subject to the provisions of Section 171.03(a) (cafeteria plans and the like).
 - 7.09 The ordinary income portion of a stock option or employee stock purchase plan to the extent that it is shown on the W-2 as ordinary income and is includable on the taxpayer's Federal income tax return.
 - 7.10 Incentive payments, no matter how described, including, but not limited to payments to induce early retirement.
- 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.
- 1.00 In the case of domestic 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) Nonresident Employee.
- A. In the case of individuals who are not residents, there is imposed under Section 171.03(a)(2), a tax on all gross salaries, wages, commissions and other compensation earned for work done or services performed or rendered within the Municipality whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial.
 - B. The items subject to tax under Section 171.03(a)(2) are the same as those listed and defined respecting a resident employee.
 - C. The Municipality shall not tax the compensation of an individual if all of the following apply:
 1. the individual does not reside in the Municipality;
 2. the compensation is paid for personal services performed by the individual in the Municipality on twelve (12) or fewer days during the calendar year;
 3. in the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the Municipality and the individual pays tax on compensation described in item (2) of this section to the Village, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual;
 4. the individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the Municipality.
 - D. For purposes of the 12-day calculation, "Day" means any part of a 24-hour calendar day where compensation is earned in the Municipality.
 - E. Beginning with the thirteenth (13) 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.
 - F. Income tax withheld by a nonresident employer and paid to the Municipality as a result of the employer being subject to the \$150 de minimus provision cannot be refunded to an individual under the 12-day occasional entry provision.

- (3) A. Imposition of Tax on Net Profits of Resident Unincorporated Businesses.
- 1.00 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.
 - 2.00 The tax imposed by Section 171.03(a)(3) is imposed on all resident unincorporated entities having net profits attributable to the Municipality under the method of allocation provided for, regardless of where the owner or owners of such resident unincorporated business entity reside.
 - 3.00 Resident associations or unincorporated entities owned exclusively by residents of the Municipality may elect to disregard the method of allocation provided for and pay the tax on their entire net profits if no allocation by the entity to another municipality exists. 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.
 - 4.00 The tax imposed shall not apply to income derived within the Municipality by any person from interstate commerce if the only business activities within the State of Ohio by or on behalf of such person are either or both the following:
 - a. Solicitation of orders by such person, or his representative, in the State of Ohio for sales of tangible personal property, which orders are sent outside 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
 - b. 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 subsection a. 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 in 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 of 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.
- B. Imposition of Tax on Resident's Distributive Share of Profits of a Resident Unincorporated Business Entity Not Attributable to the Municipality.
- 1.00 A resident individual who is an owner of a resident unincorporated entity shall pay the tax on his entire share of net profits of the resident unincorporated business entity unless allocation to another municipality exists. See Section 171.15 for credits.
 - 2.00 In the case of a resident individual partner or part owner of a resident unincorporated entity, the tax is imposed on such individual's distributive share of net profits not attributable to the Municipality under the method of allocation provided for in Section 171.03, and not taxed against the entity.
- (4) A. Imposition of Tax on Net Profits of Nonresident Unincorporated Businesses.
- 1.00 In the case of nonresident associations or other unincorporated entities, whether or not they have an office or any place of business in the Municipality, the tax is imposed on net profits attributable to the Municipality under the method of allocation provided for in Section 171.03.
 - 2.00 The tax imposed on nonresident associations or other unincorporated entities is upon the entities rather than the individual members or owners thereof.
 - 3.00 The tax imposed by Section 171.03(a)(3)A. is imposed on all nonresident associations and other unincorporated entities having net profits attributable to the Municipality under the method of allocation provided for, regardless of where the owner or owners of such nonresident associations or unincorporated entities reside.
 - 4.00 Nonresident unincorporated entities owned exclusively by residents of the Municipality may elect to disregard the method of allocation provided for and pay the tax on their entire net profits if no allocation by the entity to another municipality exists. 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 profits from the entity.
- B. Imposition of Tax on Resident's Share of Profits of a Nonresident Unincorporated Business Entity Not Attributable to the Municipality.
- 1.00 A resident individual who is an owner of a nonresident unincorporated business entity shall pay the tax on his entire share of net profits of the unincorporated entity, unless allocation to another municipality exists.
 - 2.00 In the case of a resident individual partner or part owner of a nonresident unincorporated entity, the tax is imposed on such individual's distributive share of net profits not attributable to the Municipality under the method of allocation provided for in Section 171.03, and not taxed against the entity.

(5) Imposition of Tax on Net Profits of Corporations.

- A. In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the Municipality, the tax is imposed on the net profits attributable to the Municipality under the formula or separate accounting method provided for.
- B. In determining whether a corporation is conducting a business or other activity in the Municipality, the provisions of these Regulations shall be applicable.
- C. Corporations which are required by the provisions of Ohio R.C. 5727.38 to 5727.41, inclusive, to pay an excise tax in any taxable year, may exclude that part of their gross receipts upon which the excise tax is paid. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to the tax imposed by Section 171.03.

(6) Amplification.

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

A. Net Profits.

- 1.00 Net profits shown on returns filed pursuant to this chapter must be reconciled with the income reported to the Federal Internal Revenue Service.

B. Gross Receipts.

- 1.00 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 or services performed or rendered as well as income from sales of stock in trade.
- 2.00 From gross receipts there shall be deducted allowable expenses to arrive at the net profits subject to tax.

C. Expenses.

- 1.00 All ordinary and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed but no deduction may be claimed for salary or withdrawal of a proprietor or of the partners, members or other owners of an unincorporated business or enterprise.
 - 1.01 If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated for by insurance or otherwise of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the Federal income tax. Provided however, that loss on the sale, exchange or other disposition of depreciable property or real estate, used in the taxpayer's business shall not exceed that recognized for the purpose of the Federal income tax.
 - 1.02 Current amortization of emergency facilities under the provisions of the Internal Revenue Code, if recognized as such for Federal income tax purposes, may be included as an expense deduction hereunder.
 - 1.03 Where depreciable property is voluntarily destroyed the cost of demolition of the building, less any increase in the value of the land caused by such demolition, will be allowed as an expense and may be completely taken in the year of demolition or over a period of not to exceed five (5) years.
 - 1.04 Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Tax Commissioner (if the reserve method is used), as reasonable addition to the reserve may be claimed, but in no event shall the amount exceed the amount allowable for Federal income tax purposes.
 - 1.05 Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax, then taxes on and other expenses of such property are not deductible. In any event, the following taxes are not deductible from income: (1) The tax under Chapter 171; (2) Federal or other taxes based upon income; (3) Gift, estate or inheritance taxes; and (4) Taxes for local benefit or improvements to property which tend to appreciate the value thereof.
 - 1.06 In general nontaxable income and expenses incurred in connection therewith are not to be considered in determining net profits. Income from intangibles, by way of dividends, interest and the like, shall not be included if such income is subject to taxation under the intangible personal property laws of the State of Ohio or is specifically exempt from taxation under such law.
 - 1.07 Expenses attributable to nontaxable income shall not be allowed. Where no record of such expenses is kept, five percent (5%) of the nontaxable income will be considered as expenses applicable. However, where interest income is equal to or greater than twenty-five percent (25%) of net income, and interest expenses are claimed, the expenses attributable to nontaxable income shall be fifty percent (50%) of the interest income or five percent (5%) of the total nontaxable income reported, whichever is greater.
 - 1.08 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 allowed by the Internal Revenue Service for Federal income tax purposes but only to the extent such expenses are incurred in earning commissions or other compensations subject to the tax imposed by Chapter 171.
 - 1.09 Income from the sale or lease of mineral rights are not taxable and expenses or loss in connection therewith are not deductible for tax purposes except in cases where the taxpayer conducts the activities by which the minerals are extracted from the land.

1.10 Funds allocated by an employer to an employee's qualified profit sharing, pension or retirement fund are not taxable to the employee.

- (7) Rental from Real Property.
- A. The rental of real estate is ordinarily a business activity, and the income from such rentals is taxable, provided however, where the taxpayer's entire rental activity produces gross rentals of less than two hundred fifty dollars (\$250.00) per month, it will be prima-facie evidence that such rental activities are not a business activity. If gross rentals equal or exceed two hundred fifty dollars (\$250.00) per month, the entire net income from rentals is taxable.
 - B. Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
 - C. Real property, as the term is used in these Rules and Regulations, shall include commercial property, residential property, farm property and any and all other types of real estate.
 - D. 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.
 - E. Residents of the Municipality are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned. However, if any such property is located outside the Municipality, and is subject to another municipal income tax, credit shall be claimed in accordance with Section 171.15.
 - F. Nonresidents of the Municipality are subject to such taxation only if the real property is situated within the Municipality.
 - G. Businesses owning or managing real estate are taxed only on that portion of income derived from property located in the Municipality.
- (8) Patents and Copyrights.
- A. Income from patents or copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to State Intangible Tax. Conversely, such a State Intangible Tax is not deductible in determining the Municipal tax. Such items shall be clearly disclosed on an attachment to be filed with the Municipal tax return.
- (9) Royalties.
- A. Income in the form of royalties is taxable if the taxpayer's activities produced the publication or other product the sale of which produces the royalties.
- (b) Allocation of Business Profits. A request to change the method of allocation shall be made in writing before the end of the tax year.
- (1) Separate Accounting Method.
- A. The net profits allocable to the Municipality from business, professional or other activities conducted in the Municipality by corporations or unincorporated entities, whether resident or nonresident, may be determined from the records of the taxpayer if taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within the Municipality.
 - B. If the books and records of the taxpayer are used as the basis of apportioning net profits rather than the business allocation formula, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Tax Commissioner to determine whether the net profits attributable to the Municipality are apportioned with reasonable accuracy.
 - C. In determining the income allocable to the Municipality from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the Municipality.
- (2) Business Allocation Percentage Method.
- A. Step 1: Ascertain the percentage which the average net book value of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within the Municipality is of the average net book value of all real and tangible personal property including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.
 - 1.00 The percentage of the taxpayer's real and tangible personal property within the Municipality is determined by dividing the average net book value of such property within the Municipality (without deduction of any encumbrances) by the average net book value of all such property within and without the Municipality. In determining such percentage, property rented to the taxpayer as well as real and tangible personal property owned by taxpayer must be considered.
 - 1.01 The net book value of real and tangible personal property rented by the taxpayer shall be determined by multiplying gross annual rents by eight (8).
 - 1.02 Gross rents means the actual sum of money or other consideration payable, directly or indirectly by the taxpayer for the use or possession of property and includes:
 - .001 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 or profits or otherwise.
 - .002 Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs or other amounts required to be paid by the terms of a lease or other arrangement.

- 1.03 Nonresident professional persons shall use the factor of number of offices everywhere to the number of offices located in the Municipality.
- .001 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 the Municipality is of the total gross receipts wherever derived during the period covered by the return. All resident corporations, unincorporated businesses, or other entities whose principal place of business is within the Municipality, shall be considered a resident Municipal business and be subject to the following provision:
- If the sales allocation percentage is less than one hundred percent (100%), a statement shall be submitted with the return indicating: (1) other municipalities to which sales are allocated; (2) percentage of sales allocated to each municipality; (3) whether or not a return was filed and tax paid on the sales allocated to each municipality. Failure to submit this statement (or when the statement indicates no other municipal tax was filed and paid), shall result in all sales being considered as sales of the Municipality.
- 1.00 The following sales shall be considered Municipality sales:
- 1.01 All sales made through retail stores located within the Municipality to purchasers within or without the Municipality except such sales to purchasers outside the Municipality that are directly attributable to regular solicitations made outside the Municipality personally by the taxpayer's employees.
- 1.02 All sales of tangible personal property delivered to purchasers within the Municipality if shipped or delivered from an office, store, warehouse, factory or place of storage located within the Municipality.
- 1.03 All sales of tangible personal property delivered to purchasers within the Municipality even though transported from a point outside the Municipality if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Municipality and the sale is directly or indirectly the result of such solicitation.
- 1.04 All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within the Municipality to purchasers outside the Municipality if the taxpayer is not, through its own employees regularly engaged in the solicitation or promotion of sales at the place of delivery.
- 1.05 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.
- 2.00 In the application of the foregoing subparagraphs a carrier shall be considered the agent of the seller, regardless of the FOB point or other conditions of the sale. The place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside the Municipality by mail or phone from an office or place of business within the Municipality shall not be considered a solicitation of sales outside the Municipality.
- 3.00 Nonresident professional persons shall use the factor of Municipality billings over total billings.
- C. Step 3: Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within the Municipality is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without the Municipality during the period covered by the return.
- 1.00 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.
- 2.00 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.
- 3.00 In the case of an employee who performs services both within and without the Municipality the amount treated as compensation for services performed within the Municipality shall be deemed to be:
- 3.01 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 the Municipality.
- 3.02 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 the Municipality bears to the value of all his services; and
- 3.03 In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the Municipality is of his total working time.
- 3.04 Provided however, an employee regularly connected with or working out of a place of business maintained by the taxpayer in the Municipality who performs seventy-five percent (75%) or more of his services within the Municipality be considered an employee within the Municipality.
- 4.00 Nonresident professional persons shall use the factor of days spent within the Municipality to total working days.
- All employees regularly connected with or working out of a place of business maintained by the taxpayer outside the Municipality who performs twenty-five percent (25%) or less of their services within the Municipality shall be considered employees outside the Municipality. The provisions of this subsection are not applicable in determining the tax liability of a nonresident who works in and outside the Municipality.
- D. Step 4: Add the percentages determined in accordance with Steps 1, 2, and 3 or such of the aforesaid percentages as may be applicable to the particular taxpayer's business and divide the total so obtained by

the number of percentages used in ascertaining such total. The result so obtained is the business allocation percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because such factor is found to be allocable entirely in or outside the Municipality. A factor is excluded only when it does not exist anywhere.

- E. Step 5: The business allocation percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits allocable to the Municipality.
- (3) Substitute Method.
- A. In the event a just and equitable result cannot be obtained under the formula, the Tax Commissioner, upon application of the taxpayer, may substitute other factors in the formula or prescribe other methods of allocating net income calculated to effect a fair and proper allocation.
 - B. Application to the Tax Commissioner to substitute other factors in the formula or to use a different method to allocate net profits shall be made 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 the Tax Commissioner 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 Tax Commissioner.
 - C. The decision of the Tax Commissioner 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 Tax Commissioner.
- (4) A. In the case of professional people and others furnishing personal services, if their only place of business is within the Municipality all their net profits shall prima facie be attributable to the Municipality.
- (c) Operating Loss Carry Forward.
- (1) 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 allocation factors applicable to that year.
The same method of accounting and allocation 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.
 - (2) 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 the Municipality for less than his full accounting period, shall be considered as a full taxable fiscal year for purposes of loss carry-forward.
 - (3) In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:
 - A. Year in which net operating loss was sustained.
 - B. Method of accounting and allocation used to determine portion of net operating loss allocable to the Municipality.
 - 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.
 - (4) The net operating loss of a taxpayer which loses its identity through merger, consolidation, etc., shall not be allowed as a carry forward loss deduction to the surviving or new taxpayer.
- (d) Consolidated Returns.
- (1) Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership. For a corporation to be included in a consolidated return eighty percent (80%) of its stock must be owned by the other members of the affiliated group. A consolidated return must include all companies which are so affiliated.
 - (2) Once a consolidated return has been filed for any taxable year the consolidated group must continue to file consolidated returns in subsequent years unless:
 - A. Permission in writing is granted by the Tax Commissioner 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.
- (e) Recapture of Depreciation. Capital gains and losses from the sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned. However, any amount or value realized on a sale, exchange or other disposition of tangible personal property or real property used in business in excess of book value shall be treated as taxable income under the Chapter to the extent of depreciation allowed or allowable.
- (f) Exceptions. The following shall not be considered taxable.
- (1) Poor relief, unemployment insurance benefits, old age pensions or similar payments received from local, State or Federal government or charitable or religious organizations.
 - (2) Proceeds of insurance, annuities, workers' compensation insurance, social security benefits, pensions, compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits.
 - (3) Compensation for damage to property by way of insurance or otherwise.
 - (4) Interest and dividends from intangible property, and distributions from a decedent's estate or a trust.
 - (5) Military pay and allowances received as a member of the Armed Forces of the United States.
 - (6) Any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio R.C. 718.01 to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.
 - (7) Compensation earned by occasional entrants as defined in 171.03(a)(2)(A).
 - (8) Income from a fellowship is exempt only when given for attendance as a student at a recognized college or university and exempt for Federal income tax purposes.

- (9) Alimony is not taxed to the recipient nor is it allowed as a deduction by the payor.
- (10) Compensation paid under Section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars (\$1,000) may be subjected to taxation. The payer of such compensation is not required to withhold Municipal tax from that compensation.
- (11) 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 the Municipality, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the Municipality, or the headquarters of the authority or commission is located with the Municipality.
- (12) 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, as defined in Section 5727.01 of the Ohio Revised Code, may be taxed by the Municipality subject to Chapter 5745 of the Ohio Revised Code.

Any taxpayer not exempt by subsections (f)(1) through (9) hereof is required to file a declaration and final return and remit the taxes levied under this chapter.

(Ord. 2000-87. Passed 12-5-00.)

171.23 RETURN AND PAYMENT OF TAX

(a) Date and Requirement for Filing.

- (1) The Tax Commissioner shall accept a generic form of any return, report, or document required to be filed if the generic form once completed and filed, contains all of the information required to be submitted with the Municipality's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the Municipality.
- (2) The return shall be accompanied by payment of any taxes due thereon.
- (3) Every person subject to the provisions of Section 171.03 shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, wages, commissions and other personal service compensation, net profits from business or other activities, including the rental from use of real and personal property, distributive shares from partnerships, other income taxable under Chapter 171, received for the period covered by the return and such other pertinent facts and information in detail as the Tax Commissioner may require.
- (4) Where a non-resident employee's entire earnings for the tax period are paid by an employer or employers, and the 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 non-resident employee-taxpayer, and where the employer of such non-resident employee has filed a report or return in which such employee's entire and only earnings are reported to the Tax Commissioner, and where such non-resident employee has no taxable income other than such earnings and the tax so withheld has been paid to the Tax Commissioner, such non-resident employee need not file a return. All Elmwood Place **residents** must file a yearly tax return regardless of tax being withheld by an Elmwood Place based business.
- (5) An employee who is permitted to deduct business expenses from gross wages, salaries or commissions shall file a return in order to claim such deductions even though all or part of such wages, salaries or commissions are subject to withholding.
- (6) 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 allocable to the Municipality and the tax paid thereon. However, any resident partner is required to make a return and pay the tax in accordance with these Rules and Regulations if a Municipal tax is due.
- (7) Executors and administrators are liable for the payment of any taxes due by a deceased from an estate of such deceased.
- (8) With respect to a return combining taxable income from two or more sources, the following rules shall be applied:
 - A. Losses from the operation of a business or profession are not deductible from employee earnings but may be carried forward as set forth in Section 171.03(c).
 - B. A loss from the operation of a business or profession may be offset against net profits from other business or professional activities in the amount of the loss commensurate with the portion of profits, if profits existed, with respect to which credit could not be claimed for tax paid to another municipality. Accordingly, if the profits of an activity are subject to tax by another municipality, the portion of a loss that may not be used to offset profits is determined by multiplying the loss by a fraction, the numerator being either the tax rate of the other taxing municipality or the percentage rate to which credit for tax paid to another municipality is limited, whichever is the lesser, and the denominator being the existing Municipality tax rate. Any unused loss, or portion thereof, allowable for offset as determined in this manner, may be carried forward as set forth in Section 171.22(c).
 - C. Losses from the operation of a farm, determined in accordance with accounting methods used by taxpayer for Federal income tax purposes, shall be allowable as an offset to net profit as set forth herein.
- (9) Any individual or entity that is required to issue 1099 misc. forms for IRS service is required to submit copies to the Elmwood Place Tax Department along with their municipal tax return.

(b) Information Required and Reconciliation with Federal Returns.

- (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 Tax Commissioner may require.
- (2) Where figures of total income, deductions and net profits are included, as shown by a Federal return, any items of income which are not subject to the tax and unallowable expenses shall be eliminated in determining net income

subject to the tax. The fact that any taxpayer is not required to file a Federal return does not relieve him from filing a tax return under Chapter 171.

- (3) If a change in Federal income tax liability made by the Federal Internal Revenue Service or by a judicial decision results in an additional amount of tax payable to the Municipality, a report of such change shall be filed by the taxpayer within three (3) months after receipt of the final notice from the Federal Internal Revenue Service or final court decision.
- (4) If a change in Federal income tax liability results in a reduction of taxes owed and paid to the Municipality, a claim for refund shall be filed with the Tax Commissioner as prescribed in Section 171.11.
(Ord. 97-40. Passed 5-8-97.)

171.24 COLLECTION OF TAX AT THE SOURCE.

(a) Duty of Withholding.

- (1) The Tax Commissioner shall have the authority to grant to employers with three (3) or less resident employees permission for such employees to file individually. The tax shall be deducted by the employer from:
 - A. The gross amount of all salaries, wages, bonuses, incentive payments, fees, commissions or other forms of compensation allocated, set aside or paid residents of the Municipality, regardless of the place where the services are rendered; and
 - B. All compensation allocated, set aside or paid nonresidents for services rendered, work performed or other activities engaged in within the Municipality.
 - 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 the Municipality are required to make the collections and deductions specified, regardless of the fact that the services on account of which any particular deduction is required as to residents of the Municipality were performed outside the Municipality.
- (3) Employers who do not maintain a permanent office or place of business in the Municipality, but who are subject to tax on net profits attributable to the Municipality, under the method of allocation provided for, are considered to be employers within the Municipality, and subject to the requirements of withholding.
 - A. \$150 Deminimus Rule. If not currently required to withhold Municipal income tax, a nonresident employer, or other payer that is not situated in the Municipality shall not be required to deduct and withhold taxes from the taxable income of an individual unless the total amount of tax required to be deducted and withheld for the Municipality on account of all of the employer's employees or all of the other payer's payees exceeds one hundred fifty dollars (\$150) for a calendar year.
 - B. If the total amount of tax required to be deducted and withheld on account of all of the nonresident employer's employees or all of the other payer's payees exceeds one hundred fifty dollars (\$150) for a calendar year, the employer, agent of such an employer or other payer must deduct and withhold taxes in that calendar year and in each ensuing year even if the amount required to be deducted and withheld in each of those ensuing years is one hundred fifty dollars (\$150) or less, until such time that the tax so deducted and withheld is one hundred fifty dollars (\$150) or less for three (3) consecutive years.
 - C. A nonresident employer, agent of such an employer, or other payer that is not situated in the Municipality and is exempt from withholding pursuant to this section shall report all taxable income paid to its employees or agents working in the Municipality on an annual basis. This report shall be due on or before January 31st of each year, and shall include a calculation of the total compensation earned in the Municipality by all employees during the preceding calendar year.
- (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 Tax Commissioner, the employee is not liable for the tax so withheld.
- (5) Commissions and fees paid to professionals, 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.
- (6) Where a nonresident receives compensation for personal services rendered or performed partly within and partly without the Municipality, the withholding employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within the Municipality 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 portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within the Municipality bears to the total volume of business transacted by him within and outside the Municipality.
 - 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 the Municipality 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 allocation of pay for time worked within the Municipality on a seven-day per week basis. The percentage of time worked in the Municipality will be computed on the basis of a forty-hour week unless the employer notifies the Tax Commissioner that a greater or less number of hours per week is worked.
 - 1.01 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 Municipality 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 and vacation pay. Where no record can be substantiated of the number of days worked, the figure 254 is to be used as the total number of days worked.

- D. Wages of occasional entrants as defined in Section 171.03(a)(2)(A) are not subject to withholding.
- (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.
 - (9) An employer whose records show that an employee is a nonresident of the Municipality, and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside the Municipality by such employee, provided however, that such employer must withhold the tax on all personal service compensation paid such employee after the Tax Commissioner notifies such employer in writing that such employee is a resident of the Municipality. All employees are required to notify the employer of any change of residence and the date thereof.
 - (10) An employer shall not be required to withhold the tax from the wages and other compensation earned by a resident of the Municipality for work done or services performed in another municipality which imposes a tax upon such wages and other compensation of such resident if such employer withholds the tax on such resident's wages or other compensation for such other municipality. Where such municipal tax is for a smaller amount than the tax imposed by Chapter 171, the employer shall furnish the Tax Commissioner with a list of resident employees for whom such lesser tax is withheld.
 - (11) The Tax Commissioner shall have the authority to enter into 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.
- (b) Return and Payment of Tax Withheld and Status of Employers.
- (1) The Tax Commissioner may require an employer to file returns of and to remit taxes withheld more frequently than quarterly in cases where the employer will be present within the corporate limits of the Municipality for a period of less than a year.
 - (2) If more than the amount of tax required to be deducted is withheld from the employee's pay, the excess shall be refunded by the employer to the employee. If less than the amount of tax required to be deducted is deducted and withheld by the employer in any pay period or pay periods, the deficiency shall be deducted in subsequent pay periods.
- (c) Fractional Parts of Cent. In deducting and withholding the tax at the source and in payment of any tax due, a fractional part of a cent shall be disregarded unless it amounts to one-half cent (1/2¢) or more in which case it shall be increased to one cent (1¢).
(Ord. 2000-87. Passed 12-5-00.)

171.25 DECLARATION.

- (a) Requirement of Filing.
- (1) 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) Amended Declaration.
- (1) An amended declaration must be filed on or before the last day of the month following the close of the taxpayer's tax year if it appears that the original declaration made for such fiscal year underestimated the taxpayer's income by thirty percent (30%) or more. At such time a payment which together with prior payments is sufficient to pay the taxpayer's entire estimated liability shall be made. If upon the filing of the return required it appears that the taxpayer did not pay seventy percent (70%) of his tax liability, as shown on such return, on or before the last day of the month following the close of a tax year, the difference between seventy percent (70%) of such taxpayer's tax liability and the amount of estimated tax he actually paid on or before such date shall be subject to the interest and penalty provisions of Section 171.10.
 - (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.

171.26 DUTIES OF TAX COMMISSIONER.

- (a) Enforcement Provisions.
- (1) Any taxpayer or employer desiring a special ruling on any matter pertaining to Chapter 171 or these Rules and Regulations, should submit to the Tax Commissioner in writing all the facts pertinent to the matter on which the ruling is sought.
 - (2) The Tax Commissioner is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Tax Commissioner that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until the proper returns are filed by the taxpayer for all amounts owed by him.
 - (3) Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable immediately and the provisions of Sections 171.11 and 171.12 shall apply.
- (b) Estimation of Tax by Tax Commissioner.

- (1) Whenever the Tax Commissioner 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 171.10.

- (2) Such determination of tax may be adjusted upon submission by the taxpayer of actual records from which his tax may be computed, provided the submission of such actual records occurs within thirty (30) days of the Tax Commissioner's assessment notice.

171.27 EXAMINATION OF BOOKS AND RECORDS.

(a) Investigations by Tax Commissioner.

- (1) An employer or supposed employer and every taxpayer shall furnish, within ten (10) days following a written request by the Tax Commissioner, or his duly authorized agent, the means, facilities and opportunity for making examinations and investigations.

171.28 CREDIT ALLOWED FOR THE TAX PAID IN ANOTHER MUNICIPALITY.

(a) 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 Tax Commissioner, and presents such evidence of the payment of a similar tax to another municipality, as the Tax Commissioner may require.
- (2) Claims for refund of Municipal income taxes must be brought within three (3) years after the tax was due or the return was filed, whichever is later. The Tax Commissioner may require verification.
- (3) Interest shall be allowed and paid on any overpayment by a taxpayer of any Municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the complete return is filed, whichever is later, no interest shall be allowed on the refunded overpayment. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by Ohio R.C. 5703.47.
(ORC 718.06)

171.29 SAVING 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, and changes in these Rules and Regulations from those of previous years do not imply any intent to effect a substantial change in the Rules and Regulations, but are merely changes in form.

(Ord. 2000-87. Passed 12-5-00.)

171.30 AMENDMENTS AND SUPPLEMENTS.

From time to time, amendments and supplements to this chapter, may be recommended by the Board of Review and/or the Tax Commissioner, for consideration by Council.

(Ord. 2000-87. Passed 12-5-00.)

INDEX

Activity.....	1,2,4,5,9
Advances.....	10,11,19
Agent.....	1,5,6,7,8,10,12,15,18,19
Alimony.....	17
Allocation of net profits.....	2,3
Allocation percentage formula.....	3,14,15,16
Amended declaration.....	5,6,19,20
Amended returns.....	4,5,7
Annuities.....	17
Appeals.....	3,7,8,16
Apportioning net profits.....	14
Assessment.....	19,20
Association, definition of	1
Bad debts.....	13
Board as compensation.....	11
Board of Review.....	3,6,7,8
Board of Review, definition of.....	1,9
Bonuses.....	10,11
Brokers.....	12,18
Business Allocation Formula	14
Business, definition of.....	1,9
Business losses.....	17-18
Businesses, unincorporated.....	2,11-12,13,15
Capital gains.....	1,13,16
Car allowance	11
Casual employment	10-11
Charitable organizations.....	3,10-11,16,17
Civil action	7-8
Collection of tax at source.....	4-5,18-19
Commissions.....	1,2,3,4,5,8,10-12,13,14,15,17,18
Confidential information.....	6
Consolidated returns.....	3-4,16
Contributions, charitable.....	1
Conviction for misdemeanor.....	7
Copyrights.....	14
Corporate officers' personal liability.....	4-5
Corporation, definition of	1
Corporation, imposition of tax on.....	12-13

Credit for taxes withheld or paid to..... another municipality	5,8-9,20
Declaration of Estimated Tax.....	5-6,19-20
Deferred Compensation.....	11
Deferred Payment Plans.....	19-20
Definitions.....	1,2,9,10
Deminimus Rule.....	4-5,18-19
Depletion	13
Depreciation, recapture of	49
Disability pay	10-11
Dividends	1-2,10,13,16-17
Divulging confidential information	6-7
Documentation, requirement of	6-7
Domestic servants, withholding on	5
Domicile, definition of	1
Drawing account	10-11
Due date for returns	3, 4-5
Educational organizations	16-17
Employee business expenses	13-14,17,19
Employee, definition of	1,9
Employer, definition of	1,10
Estate taxes	13
Examination of books, records, etc	5-6,19-20
Exceptions	3,6-7,10-11,16-17
Executors	17
Expenses	12-14
Extensions	3-4
Failure to pay	6-7
Failure to receive or procure a return	7-8
False return	7
Farm property	14,17-18
Federal extensions	3-4
Federal forms & schedules required	6
Fees	10-11,12-13,17-18
Fellowships	16-17
Filing dates	3, 4-5
Fiscal year, definition of	1
Fiscal year returns	3
Floater, definition of	10

Floater, taxation of	19
Form 2106, definition of	10
Forms	3, 4-5
Fraudulent returns or declarations	7
Gains, net	1
Generic form, definition of	1, 10
Generic forms, acceptance of	3-4, 17
Gratuities	10-11
Gross receipts, definition of	1
Ground rents, definition of	10
Group term life insurance	11
Housing allowance	11-12
Imposition of tax	2-3, 10-12
Imprisonment	7
Incentive payments	10, 11, 17-18
Income from: Estates	16-17
Intangibles	13
Rent	12-13, 17
Independent contractors	12, 18
Installment payments	19-20
Intangible income, definition of	1-2, 10
Interest & penalties.....	6, 7
Interest expense	13
Interest income	13
Interest granted on refunds	7
Internal Revenue Service, definition of	1, 10
Internet, definition of	1, 10
Investigative powers	6, 20
Joint stock association	1, 10
Landlords, information by	8
Limited partnership	1, 10
Lodging as compensation	11-12
Loss carry-forward Losses	3, 16
Mandatory Filing	3
Merger	16
Military pay	16-17
Misdemeanor.....	7

Monthly withholding	4-5
Municipality, definition of	1
Net profits, definition of	1
NOL carry-forward	16
Non-profit organizations	10,1-17
Nonresident, definition of	1
Nonresident: Apportionment of earnings	18,19
Nonresident: Imposition of tax	
Association: (Other Activity).....	2,3,12
Corporation	13
Individual	2,11,12
Partnership	2,3,17
Profession	2,17
Unincorporated activities, other	2,12
Nonresidents, withholding on	17
Nontaxable income	13
Occasional entrant	2,11-12,16-17,18-19
Offense repeated	7
Old age pensions	16-17
Operating loss carry forward	16
Ordinance, definition of	10
Other compensation... ..	1,2,3,4,5,8,9,10,11,12,13,14,15,16,17,18,19
Other payer, definition of	1,10
Overpayments	7
Partnership	17
Patents	14
Payment of tax	3, 17-18
Payment plans	19-20
Payments to partners	1, 12-13
Penalties	6-7
Pension plans	11
Pensions	17
Person, definition of	1,2,8,10
Place of business, definition of	1-2
Professional athlete	11
Professional entertainer	11
Property as compensation	11-12
Proposed assessment	19-20

Qualified profit sharing	13-14
Quarterly payments	4-5,19-20
Quarterly returns	4-5
Real property	13-14
Recapture of depreciation	16
Reconciliation with Federal returns	17-18
Refunds	4,7,17-18
Religious organizations	3,16-17
Rental income	13-14
Requirement for filing	4-5, 17-18
Resident, definition of	1-2, 10
Resident: Imposition of tax	
Corporation	12-13
Individual	2-3, 11-12
Individual partner	2-3, 11-12
Partnership	2-3, 11-12
Profession	2-3, 11-12
Unincorporated activities, other	2-3, 11-12
Residents, withholding on	18
Retention of records	6
Return preparer, definition of	1-2, 10
Returns	5-6, 16-18
Royalties	14
Rules & Regulations, definition of	1-2
Salaries	1,2,3,4,5,8,9,11-12,15-16,17-18
Sales allocation percentage	15
Salesman	15-16, 18-19
Schedule C, definition of	1,2,10
School district tax credit exclusion	9
S Corporation, definition of	1,2
Separate accounting method	9-10,12-13,14
Severance pay	2,10-11
Short fiscal year	16
Sick pay	2,10-11,18-19
Singular	2,10
Statute of Limitations	7,8
Stock option	11
Substitute method	15-16
Supplemental unemployment pay	10-11

Tax Commissioner, definition of	1,2
Tax Commissioner, duties and powers of	5-6, 19-20
Taxable income, definition of	10
Taxes paid to other cities	4,5, 8-9, 17
Taxing municipality, definition of	10
Taxpayer, definition of	1,2
Tax year, definition of	1,2
1099 Misc. Requirement	17-18
Third party sick pay	11
Three factor formula	2-3, 9
Tips	10-11
Trade	10-11, 13
Trustee, employer considered as	5
Trusts	9,16-17
12-day occasional entrant rule	2, 11-12
Unemployment insurance	16-17
Vacation pay	2, 10-11, 18-19
Violations & penalties	7,8
Wage continuation plan.....	2,10-11
Wages.....	1,2,3,4,5,7,8,9,10,11,12,15,16,17,18,19
Withholding.....	4-5
Withholding, duty of	18, 19
Withholding for residents	18
Withholding Tax Reconciliation (W-3)	5
Workers' Compensation	9, 16-17