

The City of Akron, Ohio

INCOME TAX RULES AND REGULATIONS

Amended January 30, 2002

Adopted under the Authority of Chapter 99  
Section 99.11, of the Akron Code of Ordinances, 1994

(Including amendments approved by ordinances 824-1998 and 774-2000)

ARTICLE I

Section 99.01 of the chapter outlines the uses to which funds raised are to be put and the items on which the tax is to be applied.

ARTICLE II

DEFINITIONS

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

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

"Board of Review" means the board created by and constituted as provided in Section 99.16 of the chapter.

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

"City" means the City of Akron, Ohio.

"Commissioner" means the Tax Commissioner - see below.

"Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory, or foreign country or dependency, but not including S Corporations (see "Association").

"Domicile" means the permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

"Employee" means one who receives wages, salary, commission or other type of compensation from an employer.

"Employer" means an individual, partnership, association, corporation (including a corporation not for profit), governmental agency, board, body, bureau, department, sub-division, or unit or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis whether or not such employer is engaged in business, or that provides any source of taxable income as outlined in Section 99.04. It does not include a person who employs only domestic help for such person's private residence.

"Fiscal Year" means an accounting period of twelve (12) months, or less, ending on any day other than December 31st. Only fiscal years accepted by the Internal Revenue Service for federal income tax purposes may be used for City of Akron tax purposes.

"Gross Income" shall include all monies derived from any source whatsoever, including:

(A) All salaries, income, wages, commissions, and other compensation from whatever source received by residents of the City, including distributive shares of an unincorporated business entity or association against which Akron municipal income tax is not already levied.

(B) All salaries, income, wages, commissions, and other compensation from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in the City.

(C) The portion attributable to the City of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in the City of Akron. Such portion shall be determined as provided in §99.04 and in accordance with the regulations adopted by the Board of Review pursuant to this chapter.

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

"Joint Economic Development District" means a district created under Ohio Revised Code Sections 715.70 and 715.71, as amended from time to time.

"Net Profits" means the net gain from the operation of a business, profession, enterprise, or other activity excluding capital gains and losses, after provision for all necessary and ordinary expenses paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, adjusted to the requirements of this chapter and the Rules and Regulations, but excluding federal and other taxes based on income and the tax imposed by the chapter.

"Non-Resident" means a person who is domiciled outside the City.

"The Ordinance" means Ordinance No. 1298 - 1962, enacted by the City Council of Akron, Ohio on November 13, 1962, and as subsequently amended from time to time.

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

"Place of Business" means any bona fide office (other than a mere statutory office), factory, warehouse or other space which is regularly occupied and used by the taxpayer in carrying on any business activity whether in person or through one or more of his employees regularly in attendance.

"Resident" means a person domiciled in the City of Akron, Ohio.

"Tax Commissioner" means the Commissioner of the Division of Taxation in the Department of Finance of the City of Akron or the person executing the duties of the said Commissioner, hereinafter referred to as Commissioner.

"Taxable Income" means gross income minus the deductions and credits allowed by this chapter.

"Taxable Year" means the calendar year, or the fiscal year, used as the basis on which taxable income is to be computed under the chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

"Taxpayer" means a person, whether an individual, partnership, association, corporation or other entity, required by the chapter to pay a tax.

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

## ARTICLE III

### IMPOSITION OF TAX

#### A. Bases.

##### 1. Resident:

- a. In the case of residents of the City an annual tax of two percent (2%) is imposed on all salaries, wages, commissions, other compensation, and other income (including earnings deposited by the employee into deferred compensation or medical coverage plans) during the effective period of the chapter. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 99.03 of the chapter, the source of the earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings wherever earned or paid are taxable, except that tax shall not be levied on expenses reported in accordance with federal guidelines for Federal Form 2106, subject to audit and approval by the City Division of Taxation.
- b. The following are items which are subject to the tax imposed by Section 99.03:
  - (1) Gross income, including but not limited to 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 an officer, director or employee of a corporation (including charitable and other non-profit organizations), or association or any other entity or person; an officer or employee (whether elected, appointed, or commissioned) of the United States Government or any of its agencies or of the State of Ohio or any of its political subdivisions or agencies thereof; or any foreign country or dependency except as provided in Section 99.06 of the chapter.
  - (2) Commissions earned by a taxpayer, whether directly or through an agent, and whether in cash or in property for services rendered during the effective period of the chapter, regardless of how computed or by whom or wheresoever paid.
    - (a) If amounts received as a drawing account exceed the commissions earned and the excess is not subject to the demand of the employer for repayment, the tax is payable on the amounts received as a drawing account.
    - (b) Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer

deducts such expenses or advances as such from his gross income for the purpose of determining his net profits taxable under federal law, and the employee is not required to include such receipts as income on his federal income tax return.

- (c) If commissions are included in the net earnings of the trade, business, profession, enterprise or activity, carried on by an unincorporated entity or association of which the individual receiving such commission is owner or part owner and therefore subject to Article III A.3. or A.4. of the Rules and Regulations, they shall not be subject to Article III A.1. of the Rules and Regulations.
- (3) Fees, unless such fees are properly includible as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity or association owned or partly owned by said individual and such net profits are subject to Article III A.3. and/or A.4. of the Rules and Regulations.
- (4) Other compensation and income, as reported on W-2's or 1099's, including but not limited to tips, bonuses, lump sum distribution from qualified pension and profit sharing trusts not made pursuant to employee's retirement, profit sharing, "non-competition" covenants, portions of stock options that are not considered capital gains by the City of Akron, lottery winnings, sports winnings, gambling winnings of any type, or gifts of any type in connection with services rendered, and including compensation paid to domestic employees, casual employees and other types of employees.
- (5) Payments made to an employee by an employer as sick leave, vacation pay, or any other types of payments made under a wage or salary continuation plan, including "sub" pay (such as pay received from unions by individuals in lieu of wages), during periods of absence from work are taxable when paid.
- (6) Payments made to an employee by an employer as separation or severance payouts (including but not limited to separation pay, termination pay, and early retirement incentives) and reportable as earned income (including, but not limited to, sick pay and vacation pay) are taxable when paid if applicable tax has not previously been paid. On-going retirement benefits, such as pension payments, are exempt from Akron income tax.
- (7) Moving expenses, to the extent that they are reimbursed by employers, are not taxable if deducted on federal return.
- (8) The employer's cost of group-term life insurance in excess of \$50,000 coverage is taxable to the employee as compensation.

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

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

2. Non-Resident Employee:

- a. In the case of individuals who are not residents of the City, there is imposed under Section 99.03 of the chapter, a tax of two percent (2%) on all salaries, income, wages, commissions, and other compensation earned (including earnings deposited by the employee into deferred compensation or medical coverage plans) during the effective period of the chapter for work done or services performed or rendered within the City, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial. Tax shall not be levied on expenses reported in accordance with federal guidelines for Federal Form 2106, subject to audit and approval by the City Division of Taxation.
- b. The items subject to tax for non-residents are the same as those listed and defined in Article III A.1. above. For the methods of computing the extent of such work or services performed within the City, in cases involving compensation for personal services partly within and partly without the City, see Article VI A.6. of these regulations.

3. Resident Unincorporated Businesses:

- a. In the case of resident unincorporated businesses, professions, enterprises, undertakings or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of two percent (2%) on the net profits earned, accrued or received during the effective period of the chapter attributable to the City under the formula or separate accounting method provided in Section 99.04 of the chapter, derived from work done or services performed or rendered and business or other activities conducted in the City.
- b. The tax imposed on resident associations or unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof, but the tax imposed on an unincorporated resident entity owned by one person is upon the individual owner. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III A.3.e. and f. below.

- c. The tax imposed by Section 99.03 of the chapter is imposed on all resident unincorporated entities or associations having net profits attributable to the City under the method of allocation provided for in the chapter, regardless of where the owner or owners of such resident unincorporated business entities or associations reside.
  - d. Resident unincorporated entities or associations owned by two or more persons, all of whom are residents of the City, shall disregard the method of allocation provided for in the chapter and pay the tax on their entire net profits thereof. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits; however, a return shall be required from any such owner or member having taxable income other than the distributive share of the net profits from the entity.
  - e. A resident individual who is sole owner of a resident unincorporated entity or association shall disregard the business allocation formula and pay the tax on the entire net profits of his resident unincorporated business entity or association.
  - f. In the case of a resident individual partner or part owner of a resident unincorporated entity or association, there is imposed an annual tax of two percent (2%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the chapter not attributable to the City, under the method of allocation provided for in Section 99.04 of the chapter, and not taxed against the entity.
4. Non-resident Unincorporated Businesses or Associations:
- a. In the case of non-resident, unincorporated businesses, associations, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of two percent (2%) on the net profits earned, accrued or received during the effective period of the chapter attributable to the City, under the formula or separate accounting method provided for in Section 99.04 of the chapter.
  - b. The tax imposed on non-resident unincorporated entities or associations owned by two or more persons is upon the entities rather than the individual members or owners thereof. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III A.4.d. and e. below.
  - c. Non-resident unincorporated entities or associations, owned by two or more persons all of whom are residents of the City, may elect to disregard the method of allocation provided for in the chapter and pay the tax on the entire net profits. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of the net profits.

- d. A resident individual who is sole owner of a non-resident unincorporated business entity or association shall disregard the business allocation formula and pay the tax on the entire net profits of his unincorporated entity or association.
  - e. In the case of a resident individual partner or part owner of non-resident unincorporated entity or association, there is imposed an annual tax of two percent (2%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the chapter not attributable to the City under the method of allocation provided for in Section 99.04 of the chapter and not taxed against the entity.
5. Net Profits of Corporations:
- a. In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the City, there is imposed an annual tax of two percent (2%) on the net profits earned, received or accrued during the effective period of the chapter attributable to the City under the formula or separate accounting method provided for in Section 99.04 of the chapter.
  - b. In determining whether a corporation is conducting a business or other activity in the City, the provisions of Article III C. of these regulations shall be applicable.
6. Other: When a resident or non-resident receives compensation for services for sales of real estate or insurance from an employer whose situs is the City of Akron, that total compensation is taxable at Akron's tax rate and is payable to the City of Akron. The site of the property sold or residence of the purchaser of insurance has no bearing on the taxing of the compensation.

B. Amplification:

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

1. Net Profits:
- a. Net Profits as used in the chapter and these regulations means net profits derived from any business, profession or other activity or undertaking carried on for profit or normally carried on for profit.
  - b. Net Profits as disclosed on any return filed pursuant to the provisions of the chapter shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service, providing such method does not conflict with any provisions of the chapter or these regulations.



2. Gross Receipts:

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

3. Expenses:

- a. 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, enterprise, or association.

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

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

(3) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Tax Commissioner (if the reserve method is used), a reasonable addition to the reserve may be claimed; but in no event shall the amount exceed the amount allowable for federal income tax purposes.

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

- (5) The "federal investment credit" is not deductible. However, if the investment credit requires the basis of the property to be lowered, depreciation may be computed on the original basis.

4. Other Income or Losses:

- a. Capital gains and losses (capital or other) from sale, exchange or other disposition of property used in the trade or business shall not be taken into consideration in arriving at net profits earned. However, any amount or value received, realized or recognized on a sale or other disposition of tangible personal property or real property used in business, in excess of original book value, shall be treated as taxable income under the chapter to the extent of depreciation previously taken as a deduction. The method of calculating the depreciation deduction shall not be considered when recovering the depreciation as the result of the sale, exchange or other disposition of property. The balance in excess of the amount of depreciation recovered shall be treated as a capital gain.
- (1) Definition of Property Used in the Trade or Business. For purposes of this article, the term "property used in the trade or business" means property used in the trade or business of a character which is subject to the allowance for depreciation and real property used in the trade or business, held for more than 6 months, which is not:
- (a) Property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year;
- (b) Property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or
- (c) A copyright, a literary, musical, or artistic composition, or similar property held by the taxpayer.
- b. In general, non-taxable income and expense incurred in connection therewith are not to be considered in determining net profits. Income from intangibles, by way of dividends, interest and the like, shall not be included if such income is subject to taxation under the intangible personal property laws of the State of Ohio or is specifically exempt from taxation under said laws.
- c. Income derived from the operation of oil and/or gas wells shall be taxable, and expenses incurred in connection therewith shall be considered in determining net profits.
- d. The Tax Commissioner, upon submission by the taxpayer of satisfactory evidence showing the amount of expenses attributable to non-taxable income, shall permit the taxpayer to include in his return expenses attributable to non-taxable income in an

amount agreed to by the taxpayer and the Tax Commissioner. In lieu of such evidence, five percent (5%) of non-taxable income shall be considered to be attributable expenses.

- e. Rentals from real property received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by taxpayer individually or through agents or other representative) constitutes a business activity of the taxpayer in whole or in part.
  - (1) Where the gross monthly rental of any real properties, regardless of number and value, aggregates in excess of \$250.00 per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to tax:
    - (a) Provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$250.00 per month.
    - (b) Provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the far, whether or not the gross income exceeds \$250.00 per month.
    - (c) Provided further that the person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds \$250.00 per month.
  - (2) In determining the amount of gross rental of any real property periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.
  - (3) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
  - (4) Real property, as the term is used in this article, shall include commercial property, residential property, farm property, and any and all other types of real estate.
  - (5) In determining the taxable income from rentals, the deductible expenses therefrom shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for federal income tax purposes.

- (6) Residents of the City are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned.
  - (7) Non-residents of the City are subject to such taxation only if the real property is situated within the City. Non-residents, in determining whether gross monthly rentals exceed, \$250.00 shall take into consideration only real estate situated within the City.
  - (8) To be considered non-taxable as ground rents, the property must be under a perpetual leasehold by the term of which the lessor performs no services of any type, including the payment of taxes on the property.
  - (9) Corporations owning or managing real estate are taxable only on that portion of income derived from property located in the City.
- f. Income from patents or copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to taxation under the intangible personal property laws of the State. Income in the form of royalties is taxable if the taxpayer's activities produced the publication or other product, the sale of which produces the royalties.
  - g. Net operating losses may be carried forward for three (3) years. No portion of a net operating loss shall be carried back against net profits of a prior year. Losses shall not be allowed (in whole or in part) to be allocated to Akron as loss carry forward if the loss occurred during a time period in which gross receipts (in whole or in part) were not allocated and reported to Akron.
  - h. In determining income subject to taxation, losses from the operation of a business or profession cannot be used to reduce wages from employment or other employment compensation.

#### C. Allocation of Business Profits:

If the books and records of a taxpayer conducting a business or profession both within and without the City disclose with reasonable accuracy what portion of its net profits is attributable to business conducted within the City, the separate accounting method may be used. In the absence of such records, the business allocation percentage method will be used.

##### 1. Separate Accounting Method:

- a. The net profits allocable to the City from business, professional or other activities conducted in the City by corporations or unincorporated entities (whether resident or non-resident) may be determined from the records of the taxpayer if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within the City.

- b. If the books and records of the taxpayer are used as the basis for apportioning net profits, rather than the business allocation formula, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Tax Commissioner to determine whether the net profits attributable to the City are apportioned with reasonable accuracy.
- c. In determining the income allocable to the City from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the City.

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 wherever situated, during the period covered by the return.
  - (1) The percentage of taxpayer's real and tangible personal property within the City is determined by dividing the average net book value of such property within the City (without deduction of any encumbrances) by the average net book value of all such property within and without the City. In determining such percentage, property rented to the taxpayer, as well as real and tangible personal property owned by the taxpayer, must be considered
    - (a) The net book value of real and tangible personal property rented by the taxpayer shall be determined by multiplying gross annual rents payable by eight (8).
    - (b) Gross rent means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or possession of property and includes:
      - (i) Any amount payable for the use or possession of real and tangible personal property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;
      - (ii) Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs or other amounts required to be paid by the terms of a lease or other arrangement.
- b. STEP 2: Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within the City is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees, within and without the City, during the period covered by the return.

- (1) Salaries and reasonable compensation paid owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purpose of this computation.
  - (2) Wages, salaries, and other compensation shall be computed on the cash or accrual basis in accordance within the method of accounting used for income tax purposes.
  - (3) In the case of an employee who performs services both within and without the City the amount treated as compensation for services performed within the City shall deemed to be:
    - (a) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the City;
    - (b) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services within the City bears to the value of all his services; and
    - (c) In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the City is of his total working time.
- c. STEP 3: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made, work done and services rendered in the City is of the total gross receipts, wherever derived, during the period covered by the return.
- (1) The following sales shall be considered Akron sales:
    - (a) All sales made through retail stores located within the City to purchasers within or without the City except such of said sales to purchasers outside the City that are directly attributable to regular solicitations made outside the City personally by the taxpayer or his employees.
    - (b) All sales of tangible personal property delivered to purchasers within the City if shipped or delivered from an office, store, warehouse, factory or place of storage located within the City.
    - (c) All sales of tangible personal property delivered to purchasers within the City even though transported from a point outside the City of the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sale is directly or indirectly the result of such solicitation.

- (d) All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within the City to purchasers outside the City if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place of delivery.
  - (e) Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.
- (2) In the application of the foregoing sub-paragraphs, a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale; and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside the City by mail, phone, or other electronic means from an office or place of business within the City shall be considered a solicitation of sales within the City.
- d. STEP 4: Add the percentage determined in accordance with Steps 1, 2 and 3, or such of the aforesaid percentages as may be applicable to the particular taxpayer's business, and divide the total so obtained by the number of percentages used in ascertaining said total. The result so obtained is the business allocation percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely outside the City. A factor is excluded only when it does not exist anywhere.
  - e. STEP 5: The business allocation percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits allocable to the City.

3. Substitute Method:

- a. In the event a just and equitable result cannot be obtained under the formula the 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 Commissioner to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing before the end of the taxable year. The application shall state the specific grounds on which the substitution of factors or use of different method is requested and the relief sought to be obtained. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the Commissioner.

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

D. Consolidated Returns:

1. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership provided such group files consolidated returns for federal income tax purposes. For a subsidiary corporation to be included in a consolidated return 80% of its stock must be owned by the other members of the affiliated group. A consolidated return must include all companies which are so affiliated.
2. Once a consolidated return has been filed for any taxable year the consolidated group must continue to file consolidated returns in subsequent years unless:
  - a. Permission in writing is granted by the 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.
3. If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income from the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group, but separate returns must be filed for the period after it ceases to be a member. If a corporation has been a member of the affiliated group for less than one month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one month. If a subsidiary is a member of a consolidated group for only part of a taxable year, the income considered to be earned in such fractional part of the year shall be that portion of the net income for the entire year which the number of days it was a member of the group bears to the total number of days in the taxable year.



4. In determining the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property factor (Step 1 of the formula) shall be determined on the basis of the average net book value of the property during the period such corporation was a member of the group. The rental portion of the factor, however, shall be computed at 8 times the annual rent. The gross receipts and wage factors shall be based on the actual figures.
5. All subsidiary corporations must agree in writing to the filing of the consolidated return, as they will be liable for the tax as well as the parent corporation.
6. In consolidating the net income, the taxable income of each corporation shall be computed in accordance with the provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of the affiliated group.
7. In determining expenses that are not allowable because they are allocable to non-taxable income, such calculations shall be based on the consolidated net income. As an example, intercompany dividends which are eliminated in the consolidation will not be taken into consideration in determining non-taxable income.

E. Exceptions:

The following shall not be considered taxable:

1. Welfare payments, unemployment insurance benefits, old age pensions or similar payments.
2. Proceeds of insurance, annuities (however, employee's share of premium is taxable if it was not previously taxed), workman's compensation insurance, social security benefits, pensions, compensatory damages for personal injuries but 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.
5. Military pay and allowances received as a member of the armed forces of the United States and of members of their reserve components, including the Ohio National Guard.
6. Any charitable, educational, fraternal or other type of non-profit association or organization enumerated in Section 718.01 of the Revised Code of Ohio which is exempt from payment of real estate taxes is exempt from payment of the tax imposed by the chapter.

- a. Any association or organization falling in the category listed in the preceding paragraph not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the tax levied under the chapter on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.
  - b. Where such non-profit association or organization conducts income-producing business both within and without the City, it shall calculate its profits allocable to the City under the method or methods provided above.
7. Salaries, wages, commissions, other compensation, other income and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from interstate commerce.
  8. Salaries, wages, commissions, other compensation, other income and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.
  9. Dividends and other income of domestic corporations received from their affiliates or subsidiaries, if such affiliates or subsidiaries do not own any property and do no business within the United States.
  10. The income of individuals under 18 years of age. The year in which an individual turns 18 shall be considered as a fully taxable year.
  11. Alimony received.
  12. The income of all individuals whose gross income is \$600 per year or less, regardless of source.

#### ARTICLE IV

#### TAX SHARING AGREEMENTS

Subject of the approval of council, the Finance Director shall have authority to enter into agreements with other political subdivisions relative to the sharing of income taxes imposed on gross incomes of residents and non-residents of Akron.

## ARTICLE V

### RETURN AND PAYMENT OF THE TAX

#### A. Date and Requirement and Filing.

1.
  - a. On or before April 30th of each year, every person subject to the provisions of Section 99.03 of the chapter shall, except as hereinafter provided make and file with the Commissioner a return or exemption certificate on a form prescribed by and obtainable, upon request, from the Commissioner, whether or not a tax be due.
  - b. The City of Akron accepts generic forms for Akron's annual tax return. However, to be acceptable the generic form must contain all the information required on Akron's regular tax return forms, and must be in a similar format that will allow processing of the generic forms without altering Akron's procedures for processing forms. Determination as to whether a generic form meets this criteria shall be the responsibility of the Akron Tax Commissioner.
  - c. The fact that a taxpayer is not required to file a federal tax return does not relieve him from filing an Akron tax return.
2. If the return is made for a fiscal year or any period less than a year, said return shall be made within four (4) months from the end of the fiscal year or other period.
3. Any taxpayer who received taxable income not subject to withholding under the chapter must file a return.
4. Any taxpayer having income, wages, or other compensation for which a return must be filed, and also having net profits from a business covering the same or a different period, is required to file only one return.
5. Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof.
6. Except as provided for herein, the tax is on the partnership or association as an entity, whether resident or non-resident, and a return is required disclosing the net profits allocable to the City and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity or association is required to make a return and pay the tax in accordance with Article III A.3.f. of these regulations.
7. Retirees having no taxable income for municipal income tax purposes shall be exempt from these filing requirements upon filing an exemption certificate as prescribed by the Commissioner. Such exemption shall be in effect until such time as the retirant receives

income taxable for municipal income tax purposes, at which time the retiree shall be required to comply with all applicable provisions of Chapter 99.

8. A husband and wife may file a joint return.

B. Information Required and Reconciliation with Federal Returns:

1.

a. Every person subject to tax under Section 99.03 of the chapter shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, wages, commissions, and other personal service compensation, net profits from business or other activities, including the rental from real and personal property, and other income taxable under the chapter, received for the period covered by the return and such other pertinent facts and information in detail as the Commissioner may require.

b. Where figures of total income, total deductions, and net profits are included, as shown by a federal return, any items of income which are not subject to the City of Akron tax and allowable expenses shall be eliminated in determining net income subject to the City of Akron tax.

2. In returns filed hereunder there shall be set forth the amount of tax imposed by the chapter on all taxable income. Any credits due, as described in Article XV of these regulations, may then be deducted and the balance of tax, or overpayments if any, set forth.

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

C. Extensions:

1. The Commissioner may extend the time for filing the annual return for a period not to exceed six (6) months, or one (1) month beyond any extension requested of or granted by the Federal Internal Revenue Service. The Commissioner may deny the extension if the taxpayer's Akron income tax account is delinquent in any manner.

a. The Commissioner may require a tentative return accompanied by payment of the tentative tax on or before the regular filing date when granting an extension.

b. When the return is filed within the extended filing period and a balance of tax due is indicated after all payments and credits provided in Sections 99.08, 99.09, 99.10 and 99.18 of the chapter have been applied, the balance of tax due, together with interest on that balance, shall be paid. The interest shall be computed from the date the return was originally due, even though an extension has been granted.

- c. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended, provided all other filing and payment requirements of the chapter have been met.
2. Information returns, schedules and statements needed to support tax returns are to be filed within the time limits set forth for filing the tax returns.

#### D. Payment With Return.

1. The taxpayer making a return shall, at the time of the filing thereof pay to the 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 99.09 of the chapter, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 99.10 of the chapter, or where an income tax has been paid to another municipality or to a Joint Economic Development District, credit for the amount so paid in accordance with Section 99.18 hereof, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.
2. A taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of the chapter may have such overpayment applied against any subsequent liability, 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 and one cent (\$1.01) shall be collected or refunded.

#### E. Amended Returns.

1. Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and / or limitations contained in Sections 99.14 and 99.15 of the chapter. Such amended return shall be on a form obtainable, upon request, from the Commissioner. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.
2. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City of Akron return showing income subject to the tax based upon such final determination of federal tax liability, and pay any additional tax shown thereon or make claim for refund of any overpayment. See Article XI B.1. of these regulations.

## ARTICLE VI

### COLLECTION OF TAX AT THE SOURCE

#### A. Duty of Withholding.

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within the City, who employs one or more persons whether as an employee, officer, director or otherwise, to deduct each time any compensation is paid the tax of two percent (2%) from:
  - a. The gross amount of all salaries, income, wages, bonuses, incentive payments, fees, commissions or other forms of compensation paid to residents of the City, regardless of the place where the services are rendered; and
  - b. All compensation paid non-residents for service rendered, work performed or other activities engaged in within the City.
2. All employers within or doing business within the City are required to make the collections and deductions specified in this article, regardless of the fact that the services on account of which any particular deduction is required, as to residents of the City, were performed outside the City.
3. Employers who do not maintain a permanent office or place of business in the City but who are subject to tax on net profits attributable to the City under the method of allocation provided for in the chapter, are considered to be employers within the City and subject to the requirements of withholding. However:
  - a. If not currently required to withhold Akron income tax, then a non-resident employer, agent of such employer, or other payer not situated in Akron shall not be required to withhold Akron income tax from remuneration paid to employees of the employer until the collective liability of the employees working in Akron initially exceeds \$150 in a calendar year.
  - b. When the collective tax liability exceeds \$150, the non-resident employer is required to begin withholding the appropriate income tax for Akron on behalf of all employees performing work in Akron. The income tax withheld shall be remitted to Akron in accordance with Article VI B.1. or VI B.1.a., as determined by the Commissioner.
  - c. Once the collective liability has exceeded \$150, the employer must withhold income tax for Akron (i.e. for work performed in Akron) for the remainder of that calendar year and for subsequent years, even if the liability in subsequent calendar years does not exceed \$150. However, if the tax liability for each of the three consecutive years (subsequent

to that year in which the employer became liable for withholding Akron income tax) does not exceed \$150, the employer will be considered as not having performed work in Akron in regard to further tax liability, and will again be subject to Article VI A.3.a.

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 Commissioner, the employee is not liable for the tax so withheld.
5. Commissions and fees paid to independent contractors are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and return and pay the tax pursuant to the provisions of the chapter and Article V and VII of these regulations.
6. Where a non-resident receives compensation for personal services rendered or performed partly within the City, the employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within the City in accordance with the following rules of apportionment:
  - a. If the non-resident is a salesman, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within the City bears to the total volume of business transacted by him, except as clarified in Article III A.6.
  - b. The deducting and withholding of personal service compensation of other non-resident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee which the total number of his working hours within the City is of the total number of working hours.
  - c. The fact that non-resident employees are subject to call at any time does not permit the allocation of pay for time worked within the City on a seven-day per week basis. The percentage of time worked in the City will be computed on the basis of a forty-hour week.
  - d.
    - (1) Effective January 1, 2001, Akron shall not tax the compensation paid to a non-resident individual for personal services or work performed by the individual in the City on twelve (12) or fewer days in a calendar year (which hereby classifies the individual as an "occasional entrant") unless one of the following applies:
      - (a) The individual is the employee of another person, the principal place of business in which the employee normally works is located in another city in Ohio that imposes a tax applying to compensation paid to the individual for services

performed on those days, and the individual is not liable to that other city for tax on the compensation paid for such services.

- (b) The individual is a professional athlete, the promoter of a professional entertainment sports event, or an employee of such promoter, all as may be reasonably defined by the City (See Section 99.09F of the Income Tax Ordinance.)
- (2) For purposes of the 12-day calculation, any portion of a day worked in Akron shall be counted as one day worked in Akron.
  - (3) Beginning with the thirteenth day the employer of said individual shall begin withholding Akron income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to Akron in accordance with Section 99.09 of the Income Tax Ordinance. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in Akron by the individual for the first twelve days.
  - (4) Any tax withheld for Akron under Article VI A.6.d.(1)(a) is subject to being refunded only to the municipality in which the employer's principal place of business is located, and only after the municipality has established that the employee has a liability to them. However, any tax withheld for Akron under the \$150 de minimus provisions of Article VI A.3. is not subject to refund even if the employee for which tax was withheld is an occasional entrant.
- e. Wage continuation plans paid by the employer for purpose of health, rest, recuperation or other reward are deemed to have the same tax situs as the primary job assignment or job location of the employee and are taxable on the same ratio as the normal earnings of such employee for his primary job assignment.
7. An employer shall withhold the tax on the full amount of any advances made to any employee on account of commissions.
  8. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided such expenses are incurred in earning compensation, including commissions, and are not deducted as a business expense by the employee under Article III of these regulations.
  9. An employer whose records show that an employee is a non-resident of the City 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 City by such employee. Provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Commissioner



notifies such employer in writing that such employee is a resident of the City. All employees are required to notify the employer of any change of residence and the date thereof.

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

1. The deductions from salaries, wages and other compensation required to be made by employers are to begin with the compensation earned on and after the effective date of the chapter. The employer (in addition to any return required to be filed with respect to his own earnings or net profits) shall, on or before the fifteenth day of each month, make a return and pay to the Commissioner the tax withheld during the preceding month. Provided, however, the Commissioner shall have the authority to approve the filing of returns and payment of the tax withheld on a quarterly basis.
  - a. The Commissioner may authorize any employer to file returns and remit the tax withheld on a quarterly basis provided that such authorization does not jeopardize the interest of the City. Quarterly payments will normally be approved for employers whose annual city income tax return shows that taxes withheld for Akron averaged less than \$100 per month.
  - b. Any employer who wishes to file and remit on a quarterly basis may request the authority for quarterly filing from the Commissioner. Such request must be in writing, stating the name and City of Akron withholding account number of the employer; the address to which tax documents should be mailed; the estimated amount of tax to be withheld each quarter and the name and title of the person responsible for complying with the withholding requirements of the chapter.
  - c. In considering such a request, the Commissioner will base his decision on the facts so that the best interests of the City are served. He shall refuse such authority if he has reason to believe that the employer is a below average credit risk, engaging in seasonal or transitory business in fact or as to location, or for any other reason known to him which might place a burden upon the City or where such request is contrary to the policy of the City. The Commissioner will notify the employer, in writing, of the decision made upon his request.
  - d. If the request is granted the notice will specify the effective date of the authorization. In such case the employer shall, on or before the last day of each month following the calendar quarters ending March 31, June 30, September 30, and December 31, make a return and pay to the Commissioner the tax withheld during the preceding calendar quarter. Once this approval is granted, the employer may continue on such basis unless notified in writing by the Commissioner that approval to file quarterly is withdrawn.
  - e. The Commissioner may withdraw the authorization from quarterly filing and payments whenever he has reason to believe that the conditions for granting such authorization

have changed, were judged incorrectly, were not met or when it is to the best interest of the City to do so. Notice of the withdrawal shall be made in writing and may be served in person or mailed to the address where the returns are mailed. In such case, the employer must begin to file monthly.

- f. Effective August 1, 2001, every employer required to withhold the tax on compensation paid shall make payments of withheld tax electronically using one of the electronic funds transfer (EFT) methods prescribed by the City, unless exemption from this requirement is given by the Commissioner.
2. If more than the amount of tax required to be deducted by the chapter is withheld from any employee's pay, such excess may be refunded by the employer or the Commissioner. If more than the amount of tax required to be deducted by the chapter is withheld from any employee's pay, such excess may be refunded by the employer or the Commissioner. In those cases in which too much has been withheld by the employer from an employee and remitted to the Commissioner and there has been a termination of the employee- employer relationship, the taxpayer (employee) may obtain a refund by application to the Commissioner, except that refunds will not be made unless claimed within three (3) years after the year for which the tax was withheld as provided in Section 99.14 of the chapter and Article XI of these regulations. 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.
3. Every employer is deemed to be a trustee for the City in collecting and withholding the tax required under the chapter to be withheld and the funds so collected by such withholding are deemed to be trust funds.
4. Every such employer required to deduct and withhold the tax at the source is liable directly to the City for payment of such tax whether the tax was actually collected from such employee or not.
5. On or before the 31st day of January, following any calendar year in which such deductions have been made by any employer, such employer shall file with the Commissioner in the form prescribed by the Commissioner, an information return for each employee from whom city income tax has been withheld, clearly showing the name, address and social security number of the employee, the total Medicare wage and Akron wage paid during the year and the amount of City of Akron income tax withheld from such employee. The information provided must include all employees subject to the tax and must be accompanied by a completed City reconciliation form, indicating the number of employees and total wages and withheld amounts. The gross compensation to be reported for each employee shall be for the full twelve (12) calendar months of the year or such portion thereof as the employee reported on was employed.
6. For the convenience of employers, the information return referred to in paragraph 5 above may be made in one of several ways, as follows:

- a. Magnetic media. Reporting of employee wages via diskettes, magnetic cartridges or mag tapes is permitted, using the standard formats currently used by the Social Security Administration for federal tax reporting. An approved simplified format is also available on request.
  - b. W-2 list. Employers may submit the tax information using an alphabetized employee list, as long as employees' full names, addresses, social security numbers, Medicare wages, Akron City wages and Akron withheld taxes are accurately reported.
  - c. W-2 copies. Copies that are complete (including all information required in paragraph 5 above) and fully legible, may be submitted to satisfy this requirement.
7. In addition to the withholding statements, and at the time they are filed, each employer shall file with the Commissioner a reconciliation of returns, comparing the returns of income tax withheld to the total amount of taxes withheld as disclosed by the withholding statements.
  8. It is the responsibility of any entity or individual to provide copies to the City of Federal Form 1099, or such other form used to report commissions, fees, and other compensation paid to non-employees.

#### C. Fractional Parts of Cent.

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

#### D. Domestic Employees.

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

E. Employers for limited engagements, who make a payment for said engagements as set forth in Section 99.09 (F)(1) and (F)(2) of the Ordinance shall withhold and remit to the City municipal income tax at the current rate on the gross amount so paid.

F. Every contractor performing work for the City shall be bound by the requirements of Section 99.09 of the Ordinance, and shall assure that all of its subcontractors performing work for the City adhere to the same provisions. See particularly Section 99.09 (H).

## ARTICLE VII

### DECLARATIONS

#### A. Requirements of Filing:

1.
  - a. A declaration of estimated tax shall be filed by every taxpayer who may reasonably be expected to have taxable income, the tax on which is not or will not be withheld in full by an employer or employers. The declaration must be filed only if the estimate of tax that will not be withheld exceeds one hundred twenty dollars (\$120.00). Where required such declaration shall be filed within four (4) months after the beginning of the taxable year.
  - b. The City of Akron accepts generic forms for making estimated payments. However, to be acceptable the generic form must contain all the information required on Akron's regular estimated payment form, and must be in a similar format that will allow processing of the generic forms without altering Akron's procedures for processing forms. Determination as to whether a generic form meets this criteria shall be the responsibility of the Akron Tax Commissioner.
2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year. This provision is further subject to the provisions in Article VII C.2.

#### B. Date of Filing:

1. A person or other entity conducting a business not previously subject to the tax or whose employer does not withhold the tax, shall file a declaration within four (4) months after the date he becomes subject to the tax.
2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration within four (4) months after the start of each fiscal year or period.

#### C. Form For Filing:

1. Such declaration shall be filed upon a form or forms furnished by, or obtainable upon request from, the Commissioner. Credit shall be taken for City of Akron tax to be withheld from any portion of such income. In accordance with the provisions of Section 99.18 of the chapter, credit may be taken for tax to be paid or to be withheld and remitted to another taxing municipality or to a Joint Economic Development District.
2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration at any time. Such amendment may

be made on the regular declaration form or a form furnished by and obtainable from the Commissioner. An amendment must be filed on or before each quarterly filing date if there is a change of more than 30% to the original estimate. Interest and penalty amounts may be assessed against estimated payments that result in being less than 100% of the prior tax year or 90% of income taxable to Akron for the current year

D. Dates of Payments:

1. The estimated tax may be paid in full with the declaration or in four equal installments on or before the last day of the fourth, seventh, tenth and thirteenth month after the beginning of the taxable year.
2. The declaration must be accompanied by at least one installment of the estimated tax shown due thereon.
3. In the event an amended declaration has been filed the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

E. Final Returns Required:

1. The filing of a declaration does not relieve the taxpayer of the necessity of filing a final return even though there is no change in the declared tax liability. A final return must be filed to obtain refund of any overpayment of one dollar and one cent (\$1.01) or more.

## ARTICLE VIII

### DUTIES AND POWERS OF THE TAX COMMISSIONER

A. Collection of Tax and Retention of Records:

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

## B. Enforcement Provisions:

1. The Commissioner is charged with the administration and enforcement of the provisions of the chapter and is, subject to the approval of the Board of Review, empowered to adopt, promulgate, and enforce Rules and Regulations relating to any matter or thing pertaining to the administration and enforcement of the chapter. The Commissioner has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the chapter.
2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the chapter or these Rules and Regulations, should submit to the Commissioner in writing all the facts involved and the ruling sought.
3. These regulations, together with all amendments and supplements hereto and all changes herein, will be on file with the Clerk of Council and at the office of the Commissioner and will be open to public inspection.
4. The 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 Commissioner that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Installment payments for all amounts owed by the taxpayer under the chapter shall not exceed a period in excess of six (6) months except with the approval of the Commissioner, and only after written application by the taxpayer.
5. Failure to make any installment payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 99.14 and 99.15 of the chapter shall apply.
6. Payments received shall first be applied to delinquent penalties and interest, and then to taxes.

## C. Estimation of Tax by Commissioner:

In any case where a taxpayer or employer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Commissioner may assess the amount of tax appearing to be due, together with interest and penalties thereon, if any, in the following manner:

1. If the Commissioner determines that any taxpayer subject to the provisions of the chapter has a tax liability for which he has failed to pay the full amount of tax due, the Commissioner shall issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.
  - a. If the Commissioner determines that any taxpayer subject to the provisions of the chapter has a tax liability for which he has filed no return, or has filed an incorrect return and has failed to pay the full amount of tax due, the Commissioner shall issue a

proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.

(1) Such a proposed assessment shall be served upon the taxpayer in person or by mailing to his last known address. Proof of mailing furnished by the U. S. Post Office shall be presumptive proof of receipt thereof by the addressee.

(2) A taxpayer may, within fifteen days after the date the proposed assessment was served or mailed, file a written protest with the Commissioner. Within fifteen days after receipt of the protest the Commissioner shall give the protestant an opportunity to be heard; provided further that the Commissioner may extend the date of hearing for good cause shown. After the hearing the Commissioner shall withdraw the assessment or he shall adjust or reaffirm the assessment and it shall then become final. If no protest is filed as herein provided, such proposed assessment shall become final fifteen (15) days after being served.

b. After a proposed assessment becomes final, notice of such final assessment shall be issued and shall be served in the same manner as a proposed assessment. For appeal of the assessment to the Board of Review, see Article XIII B.

c. When any taxpayer subject to the provisions of the chapter has filed a return indicating the amount of tax due and has failed to pay said tax to the City as required by the chapter, the Commissioner need not issue an assessment but may proceed under the provisions of Sections 99.14 and 99.15 of the chapter.

## 2. Provisions Affecting Employers:

a. If the Commissioner determines that an employer subject to the provisions of the chapter has failed to file a return for tax withheld and has failed to pay to the City the full amount of said taxes, the Commissioner shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon, and the provisions of paragraph D of Section 99.11 of the chapter shall then apply.

b. If the Commissioner determines that an employer subject to the provisions of the chapter has failed to withhold tax the Commissioner shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon, and the provisions of paragraph D of Section 99.11 of the chapter shall then apply.

c. When an employer subject to the provisions of the chapter has filed a return indicating the amount of tax withheld and has failed to pay said tax to the City as required by the chapter, the Commissioner may proceed under the provisions of Sections 99.14 and 99.15 of the chapter and need not issue an assessment as provided in Section 99.11, paragraph D of the chapter.

## ARTICLE IX

### EXAMINATION OF BOOKS AND RECORDS, INFORMATION SO OBTAINED CONFIDENTIAL:

#### PENALTY

##### A. Investigation by Commissioner:

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

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

1. The Commissioner, or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The Commissioner may compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transactions of the taxpayer.
2. The Commissioner's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Commissioner.
3. The Commissioner may order the appearance before him, or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Commissioner is specifically authorized to order the appearance of the local manager or representative of any taxpayer.



4. Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show time and place of the hearing and what books, papers or records the witness is to make available at such hearing.
5. The notice shall be served by the Commissioner or his duly authorized agent, by delivering it to the person named in the notice or by leaving the notice at his usual place of business or residence, or by mailing it to the person by registered or certified mail, return receipt requested, addressed to his usual place of business or residence.

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

Refusal of any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Commissioner or his duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 99.15 of the chapter.

#### D. Confidential Nature of Examinations.

Any information gained as a result of any returns, investigations, verifications or hearings before the Commissioner required by the chapter or authorized by these Rules and Regulations shall be confidential and no disclosure thereof shall be made except for official tax purposes or as ordered by a court of competent jurisdiction or upon receipt of a waiver signed by the individual who has submitted the return. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than sixty (60) days, or both. In addition to the above penalty, any employee of the City of Akron who violates the provisions of Section 99.12 of the chapter relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

#### E. Retention of Records.

Everyone required to file a return shall keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits or both. Such records shall be retained to compute tax liability or justify the person's exemption certificate.

## ARTICLE X

### INTEREST AND PENALTIES

#### A. Interest:

Except as provided in paragraph C of this article, all taxes imposed and monies withheld by employers under the provisions of the chapter and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of one (1) percent per month or fraction thereof.

#### B. Penalties:

In addition to interest as provided in paragraph A hereof, penalties based on the unpaid tax are hereby as follows:

1. For failure to pay taxes due, other than taxes withheld, one (1) percent per month or fraction thereof or five (5) percent, whichever is greater.
2. For failure to remit taxes withheld from employees: three (3) percent per month or fraction thereof or ten (10) percent, whichever is greater.
3. For failure to file income tax returns, \$25.00 for the first instance and \$50 for each subsequent instance.
4. Except in the case of fraud, the penalty shall not exceed fifty (50) percent of the unpaid tax for direct accounts or one hundred (100) percent for withholding accounts.

#### C. Exceptions:

1. No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within fifteen (15) days from the date the taxpayer was notified of such findings.
2. In the absence of fraud neither penalty nor interest shall be assessed on any additional taxes resulting from a federal audit for federal income tax purposes provided an amended return is filed and the additional tax paid within three (3) months after final determination of the federal tax liability.

D. Appellate Review.

The Commissioner may abate penalty, or interest, or both, up to \$5,000 per account.

Upon recommendation of the Commissioner the Board of Review may abate penalty or interest, or both, in any account, or upon appeal the Board of Review may abate penalty or interest, or both, even though the Commissioner has not recommended this abatement.

ARTICLE XI

COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENT

A. Unpaid Sums - A Legal Debt:

1. All taxes imposed by the chapter and not paid when due become, together with interest and penalties thereon, a debt due the City from the taxpayer and are recoverable as are other debts by suit. Employers who are required under Section 99.09 of the chapter, to withhold and remit the taxes required to be withheld at the source, and who fail to withhold and/or remit, become liable to the City in a suit to enforce the payment of the debt created by such failure.
2. No additional assessment shall be made by the Commissioner after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be a six (6) year period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report 25% or more of gross income shall be considered a substantial omission.
3. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations, the period within which an assessment may be made by the Commissioner is extended to one (1) year from the time of final determination of the federal tax liability.
4. Those officers or employees having control or supervision of, or charged with, the responsibility of filing the return and making payments for a corporation or association shall be personally liable for failure to file the return or pay the taxes due as required. The dissolution, bankruptcy, or reorganization of any employer does not discharge the officers'

or employees' liability for a prior failure of such business to file a return or pay the taxes due.

B. Refunds and Overpayments:

1. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made, or the return was due, or three (3) months after the determination of the federal income tax liability, whichever is later.
2. No refund shall be made to any taxpayer until he has complied with all provisions of the chapter and has furnished all information required by the Commissioner.
3. Items included on Federal Form 2106 are eligible as deductions, subject to review and approval by the Commissioner, and subject to limitations imposed by the federal government.
4. Overpayments will be either refunded, or credited to the taxpayer's current year's liability, at his option. Where no election has been made, overpayments of any year's taxes shall be applied as follows:
  - a. To unpaid penalty and interest assessments.
  - b. To the taxes owed for any previous year in the order in which such taxes became due.
  - c. To his current estimated tax liability.
5. Refunds for days worked out of Akron are available only to non-residents, and refunds shall be computed by dividing total wages by total days worked in order to determine an average daily wage. The work year shall be considered two hundred sixty (260) days. Saturdays and Sundays shall not normally be considered work days. Wage continuation plans of any type (including, but not limited to, vacation days, holidays, personnel days, and sick days) are deemed to be days spent in Akron for purposes of a refund calculation. Additions, deletions, or other changes to the method for calculating refunds shall be at the discretion of the Commissioner.

C. Limitations:

1. Amounts of less than one dollar and one cent (\$1.01) shall not be refunded or assessed.

## ARTICLE XII

### VIOLATIONS - PENALTIES

A. No person shall:

1. Fail, neglect or refuse to make any return or declaration required by this chapter; or
2. Make any incomplete, false or fraudulent return; or
3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
4. Fail, neglect or refuse to withhold the tax from his employees or remit such withholdings to the Commissioner; or
5. Refuse to permit the Commissioner or any duly authorized agent or employee to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
6. Fail to appear before the Commissioner and to produce his books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Commissioner; or
7. Refuse to disclose to the Commissioner any information with respect to the income or net profits of a taxpayer; or
8. Fail to comply with the provisions of this chapter or any order or subpoena of the Commissioner authorized hereby; or
9. Give to an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
10. Fail to use ordinary diligence in maintaining proper records of employees; residence addresses, total wages paid and the City of Akron tax withheld, or knowingly give the Commissioner false information; or
11. Evade or attempt to evade in any manner the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

B. Anyone who violates any part of 99.15(A), shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both, for each offense.

C. Prosecutions.

Prosecutions under the chapter must be commenced within the period specified in O.R.C. Section 718.12.

D. Failure to Receive Forms - Not a Defense.

The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him (1) from making any information return, declaration, or return, (2) from filing such form, or (3) from paying the tax.

## ARTICLE XIII

### BOARD OF REVIEW

A. Board of Review.

1. A Board of Review consisting of five members including the Mayor, Director of Finance, Director of Law and two representative citizens of the City of Akron, Ohio not otherwise employed by the City of Akron, Ohio is hereby created. The latter two members shall be appointed by the Mayor with the consent of the City Council for initial terms of one and two years respectively and thereafter for two year terms.
2. The two representative citizens shall not be adherents of the same political party and their per diem compensation shall be fixed by City Council.
3. All rules, regulations and amendments or changes thereto which are adopted by the Commissioner under the authority conferred in the chapter must be approved by the Board of Review before the same shall become effective. After such approval, such rules, regulations, amendments and changes shall be filed with the Clerk of Council and shall be open to public inspection.

## B. Appeals by Taxpayers.

1. The Board of Review shall, on hearing, have jurisdiction to affirm, modify or reverse any assessment, ruling or decision, or any part thereof made by the Commissioner provided the taxpayer making the appeal has filed with the City the required return or other documents concerning the obligation at issue. Such appeal shall be in writing, shall state why the decision should be deemed incorrect or unlawful, and must be made within thirty days from the announcement of an assessment, ruling or decision to which exception is taken by a taxpayer. (See Section 99.16) The Board of Review must schedule a hearing within forty-five days from the date of the appeal. Its decision must be rendered within thirty days from the date of the closing of the record, and shall be in writing and filed with the Income Tax Commissioner.
2. A taxpayer dissatisfied with a decision or filing by the Board of Review may appeal to a court of competent jurisdiction within thirty days from the date of filing of the ruling or decision to which exception is taken.

## C. Organizational Procedures.

1. The Board of Review shall elect, from its members, a chairman, a vice-chairman, and a secretary.
2. A majority of members present at any hearing or meeting shall constitute a quorum.
3. A member, other than the two representative citizens, may appoint a deputy to act for him at meetings of the Board.
4. The Board of Review shall adopt its own procedural rules and keep records of all proceedings accordingly.
5. All hearings upon appeal by the Board shall be conducted privately, unless a public hearing is requested by the taxpayer, and the provisions of Section 99.12 of the chapter with reference to the confidential character of information required to be disclosed by the chapter shall apply to such matters as may be heard before the Board of Review on appeal.

ARTICLE XIV

USE OF FUNDS

(See Section 99.17 of the Chapter)

ARTICLE XV

CREDIT ALLOWED FOR TAX PAID IN ANOTHER MUNICIPALITY

A. Limitation.

Where a resident of the City of Akron is subject to a municipal income tax in another municipality or Joint Economic Development District he shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.

B. Credits to Residents.

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

C. Method of Applying for Credit.

1. No credit will be given unless the taxpayer claims such credit on his final return or other form prescribed by the Commissioner and presents such evidence of the payment of a similar tax to another municipality or Joint Economic Development District as the Commissioner may require.
2. A statement satisfactory to the Commissioner from the taxing authority of the municipality or Joint Economic Development District to which the taxes are paid that a City of Akron resident or his employer is paying the tax shall be considered as fulfilling the requirements of this article.



ARTICLE XVI

SAVINGS CLAUSE

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

ARTICLE XVII

AMENDMENTS AND SUPPLEMENTS

- A. The effectiveness of these regulations issued under Chapter 99 are to be considered effective January 1, 1963.
- B. From time to time amendments and supplements to these regulations may be issued by the Commissioner, subject to the approval of the Board of Review.

Amended and approved by the Board of Review on January 30, 2002.