

SPONSER Clark

ORDINANCE NO. 3581

AN ORDINANCE AMENDING AND REPEALING EXISTING ORDINANCE NUMBER 3557 FOR THE PURPOSE OF INCREASING THE EXISTING INCOME TAX RATE OF .75% TO 1.0%, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Wellston, is without sufficient funds to maintain its current level of operations and financial obligations;

WHEREAS, it has been determined that it is in the best interest of the City of Wellston, Ohio that an increase of .25% over the existing income tax be levied, making the rate of the income tax 1.0%, so that services relating to the health, safety and welfare of the City may continue and so that other future benefits and services may be provided to the City;

WHEREAS, there is hereby adopted and enacted by reference the INCOME TAX REGULATIONS attached hereto and made a part hereof;

WHEREAS, Ordinance Number 3557 is hereby repealed;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WELLSTON, AND STATE OF OHIO THAT:

Section One: The provisions of the attached INCOME TAX REGULATIONS levying an income tax on the salaries, wages, commissions, and other compensation and on net profits is hereby approved.

Section Two: Ordinance Number 3557 is hereby repealed.

Section Three: Council declares this Ordinance to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Wellston, Ohio for the reason that City services must be continued to be provided to the residents of the community and such services, and future services can be continued at the current level with the additional funding from a City income tax at the rate of 1.0%. This Ordinance shall be effective immediately.

Passed this 1st day of December, 2005.

  
Council President

ATTEST:

  
Clerk of the Legislative Authority

Approved this 1st day of December, 2005.

  
Mayor

**SECTION “A”**

**INCOME TAX REGULATIONS**

**CHAPTER 39.01  
PURPOSE**

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the City, there shall be, and is hereby levied a tax on salaries, wages, commissions and other compensation, and on net profits as herein under provided.

**DEFINITIONS**

For the purpose of these regulations, the following terms shall have the definitions hereinafter given:

- (A) “Administrator.” the individual or organization designated by Ordinance, whether appointed or elected, to administer and enforce the provisions of this chapter, regardless of the particular title assigned such individual.
- (B) “Association.” Any form of unincorporated enterprise, owned by two or more persons, except a partnership or a limited partnership.
- (C) “Board of Review.” The Board created by and constituted as provided in Section 39.29.
- (D) “Business.” An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, association, corporation or any other entity, except a partnership or limited partnership. It is intended hereby to specifically include the renting or leasing of property-real, personal or mixed.
- (E) “Business allocation percentage.” The portion of net profits to be allocated to the City of Wellston as having been earned in the municipality, either under separate accounting method or under the three-factor formula or property, payroll and sales, provided for in Chapter 39.34.
- (F) “Corporation.” A corporation or joining stock association organized under the laws of the United States, the State of Ohio or any other state territory or foreign country or dependency.
- (G) “Employee.” One who works for wages, salary, commission or other types of compensation in the service of any employer. Any person upon whom an employer is required to withhold for either federal income or social security on whose account payments are made under the Ohio Worker’s Compensation law shall prima facie be an employee.
- (H) “Employer.” An individual, partnership, limited partnership, association, corporation, governmental body, unit or agency, which employs one or more persons on a salary, wage, commission or other compensation basis.
- (I) “Fiscal year.” An accounting period of twelve (12) months or less ending on any day other than December 31. Only fiscal years accepted by the Internal

Revenue Service for federal income tax purposes may be used for City tax purposes.

- (J) “Gross receipts.” The total income from any source whatsoever.
- (K) “Net profit/loss.” The net profit/loss from the operation of a business, profession or enterprise or other activity after provision for all ordinary, reasonable and necessary expenses, either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, without deduction of taxes imposed by this Ordinance, federal, state and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners and other owners; and otherwise adjusted to the requirements of this chapter.
- (L) “Non-resident.” An individual, corporation, association or other entity domiciled outside the City.
- (M) “Non-resident unincorporated business entity.” An unincorporated business entity not having an office or place of business within the City, except a partnership or limited partnership.
- (N) “Other entity.” The term “other entity” means any person or unincorporated body not previously named or defined and includes, inter alia, fiduciaries located within the City, except partnerships and limited partnerships.
- (O) “Person.” Every natural person, corporation, fiduciary or association or other entity. Whenever used in a clause prescribing or imposing a penalty, the term “person”, as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to a corporation, the officers thereof, and in the case of an unincorporated entity or corporation not having any partner, member or officer within this municipality, any employee or agent of such unincorporated entity or corporation who can be found within the corporate limits of this municipality.
- (P) “Place of business.” Any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance. A taxpayer does not have a regular place of business outside Wellston solely by consigning goods to an independent factor or contractor outside the City for sale.
- (Q) “Resident.” An individual, corporation, association or other entity domiciled within the City, except partnerships and limited partnerships.
- (R) “Resident unincorporated business entity.” An unincorporated business entity having an office or place of business within the City.
- (S) “Taxable income.” Wages, salaries and other compensation paid by an employer or employers before any deductions and/or the net profits from the operation of an business, profession or other enterprise or activity adjusted in accordance with the provisions of the Ordinance.
- (T) “Taxable year.” The calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this Ordinance and, in the case of return for a fractional part of a year, the period for which such return is required to be made.

- (U) “Taxpayer.” A person, whether an individual, corporation, association or other entity. Partnerships and limited partnerships are not considered as taxable entities and are not taxed as such. Income from partnerships is taxable to the partners.
- (V) “The Ordinance.” Ordinance No. \_\_\_\_\_, enacted by the Council of the City of Wellston, Ohio on \_\_\_\_\_, 200\_\_, and all amendments or supplements thereto.  
The singular shall include the plural and the masculine shall include the feminine and neuter.

**CHAPTER 39.02**  
**AMPLIFICATION OF DERIVING NET PROFIT/LOSS**

Amplifications of the definition contained in Chapter 39.01(J) and (K) of these regulations, but limitation thereof, the following additional information respecting net business profits is furnished:

Net Profit/Loss

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

Gross receipts:

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

Expenses:

- (1) All ordinary, reasonable and necessary expenses of doing business, including reasonable compensation paid to employees, shall be allowed, but no deduction may be claimed for or salary or withdrawal of a

proprietor or members or other owners of an unincorporated business or enterprise.

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

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

(4) Where 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.

(5) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, but in no event shall the amount exceed the amount allowable for federal income tax purposes.

(6) Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax, then taxes on and other expenses of said property are not deductible. In any event, the following taxes are not deductible from income: (a) the tax under the Ordinance; (b) federal or other taxes based upon income exclusive of the amount of Ohio franchise tax computed on the net worth basis; (c) gift, estate or inheritance taxes; and (d) taxes for local benefits or improvements to property which tend to appreciate the value thereof.

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

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

(9) Capital gains and losses from sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profit-loss earned. Any amount received on a sale or other disposition of tangible

personal property used in business, in excess of book value, shall be treated as taxable income under the Ordinance to the extent of depreciation allowable (under the Ordinance). The balance shall be treated as capital gain.

(D) Rentals from real property:

(1) Rentals received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by the taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

(2) Where the gross monthly rental of any real properties, regardless of number and value, aggregate in excess of one hundred dollars (\$100.00) per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer and the net income of such rental properties shall be subject to tax; provided that, in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceed one hundred dollars (\$100.00) per month; provided further that, in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds one hundred dollars (\$100.00) per month; and provided further, that the person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds one hundred dollars (\$100.00) per month.

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

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

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

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

(7) Residents of this municipality are subject to such taxation upon the net income from rentals (to the extent above specified) regardless of the location of the real property owned.

(8) Non-residents of this municipality are subject to such taxation only

if the real property is situated within this municipality. Non-residents, in determining whether gross monthly rents exceed one hundred dollars (\$100.00), shall take into consideration only real estate situated within this municipality.

(9) Corporations owning or managing real estate are taxable only on that portion of income derived from property located in this municipality.

(E) Patents and copyrights:

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

### **CHAPTER 39.03 COMMENCEMENT OF THE TAX**

The tax imposed by this chapter is effective as to income and profits earned or accruing on or after (THE EFFECTIVE DATE OF THIS ORDINANCE) and payroll deductions must be made against all salaries, wages, commissions, bonuses and other compensation earned or accruing on and after that date.

### **CHAPTER 39.04 IMPOSITION OF TAX; RESIDENT EMPLOYEES**

In the case of residents of the City, an annual tax of one percent (1%) is imposed on all salaries, wages, commissions and other compensation earned or accrued on and after (THE EFFECTIVE DATE OF THIS ORDINANCE). For purposes of determining the tax on the earnings of resident taxpayers taxed under Section 39.34 the source of the earnings and the place or places in or at which the services were rendered are immaterial. All such earnings, whatever earned or paid, are taxable.

The following are items which are subject to the tax:

Salaries, wages, bonuses or incentive payments received or earned by an individual, whether directly or through an agent and whether in cash or in property, for services rendered on and after (THE EFFECTIVE DATE OF THIS ORDINANCE).

- (1) As an officer or employee, or both, of a corporation (including charitable and other non-profit organizations), joint stock association or joint stock company;
- (2) As an employee (as distinguished from a partner or member) of a

partnership, limited partnership or any other form of unincorporated enterprise owned by one or more persons;

(3) As an employee (as distinguished from the proprietor) of a business, trade or profession conducted by an individual owner;

(4) As an officer or employee (whether elected, appointed or commissioned) of a governmental administration, agency, arm, authority, body, branch, board, bureau, department, division, subdivision, section or unit of the State of Ohio or any of the political subdivisions thereof;

(5) As an officer or employee (whether elected, appointed or commissioned) of a governmental administration, agency, arm, authority, body, branch, board, bureau, department, division, subdivision, section or unit of the United States governmental or of a corporation created and owned or controlled by the United States governmental or any of its agencies;

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

(B) Wages, bonuses or incentive payment received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered on and after November 20, 2001.

(1) Whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit or production or piecework rates; and

(2) Whether paid by an individual, limited partnership, partnership, association, corporation (including charitable and other non-profit organizations), governmental administration, agency, arm, authority, board, body, branch, department, division, subdivision, section or unit, or any other entity.

(C) Commissions received or earned by the taxpayer, whether directly or through an agent and whether in cash or in property, for services rendered on and after November 20, 2001, regardless of how computed, by whom or wheresoever paid.

(1) If the 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 gross amounts received.

(2) Amounts received from an employer by way of expenses and not by way of compensation, and used as such by the individual receiving them, are not deemed to be compensation if the employer deducts such expense 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.

(3) If such commissions are included in the net earnings of a trade, business, profession, enterprise or activity regularly carried on by an unincorporated entity



of which the individual receiving such commission is owner or part owner and therefore subject to the tax under Sec. 39.34(A), they shall not again be separately taxed under Sec. 39.34(A). In such case, such net earning shall be taxed as provided in Sec. 39.02.

(D) The receipt of fees and other compensation for personal services rendered shall be deemed to be subject to taxation under this chapter.

(E) Domestic and casual laborers are subject to City tax under this chapter but are not subject to withholding provisions. That is to say, the domestic and casual laborers will report earnings and pay the tax directly to the Wellston City Income Tax Department.

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

(G) Where compensation is paid or received in some form other than cash, its fair market value at the time of receipt shall be subject to the tax. 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.

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

(H) The provisions of this chapter shall not be construed as levying a tax upon the following:

- (1) Poor relief, unemployment insurance benefits, supplemental unemployment benefit, old age pensions or similar payments received from the local, state or federal governments or charitable or religious organizations.
- (2) Proceeds of insurance, annuities, worker's compensations insurance, social security benefits pensions, compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits.
- (3) Compensations 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.
- (6) Income of persons under the age of 18 years.
- (7) Any charitable, educational, fraternal or other type of non-profit association or organization enumerated in Section 718.01 of the Revised Code which is exempt from payment of real estate taxes; however, any association or organizations in this category not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the tax levied under this chapter on all business activities of a type ordinarily

conducted for profit by taxpayers operating for profit. Where such non-profit association or organization conducts income-producing business both within and without the corporate limits, it shall calculate its profits allocable to the City under the method or methods provided above.

(8) Partnerships and limited partnerships as entities. Such income is taxed to the partners.

#### **CHAPTER 39.05 IMPOSITION OF TAX; NON-RESIDENTS**

(A) In the case of individuals who are non-residents of the City there is imposed under this chapter an annual tax of one percent (1%) on all salaries, wages, commissions and other compensation earned or accruing on or after (THE EFFECTIVE DATE OF THIS ORDINANCE), for work done or other 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 case or in property. Prior to (THE EFFECTIVE DATE OF THIS ORDINANCE) the rate of tax is .75% for that earned or accruing on or after November 20, 2001.

(B) The items subject to tax under this chapter are the same as those listed and defined in Chapter 39.04. For methods of computing the extent of such work or service performed within the City, and cases involving compensation for personal services partly within and partly outside the City, see Chapter 39.15.

#### **CHAPTER 39.06 IMPOSITION OF TAX ON NET PROFITS OF RESIDENT UNINCORPORATED BUSINESSES**

- (A) (1) In the case of resident unincorporated businesses, professions, enterprises services, undertaking or other entities conducted, operated, engaged, in prosecuted or carried on, irrespective of whether such taxpayer has an office of place of business in this municipality, there is imposed an annual tax of one percent (1%) on the net profits earned, accrued or received during the effective period of the Ordinance attributable to this municipality, under the formula or separate accounting method provided for in Chapter 39.34 of this Chapter, derived from sales made, work done or services performed or rendered and business or other activities conducted in this municipality. Prior to (the effective date of this Ordinance) and after November 20, 2001, the tax rate shall be .75%.
- (2) The tax imposed on resident associations or other unincorporated entities owned by two or more persons is upon the individual members or owners thereof, but the tax imposed on an unincorporated resident on that part of a resident owner's distributive share of net profits not taxed against the entity, see Chapter 39.06(B). The return filed must indicate the names and addresses of each member along with the percentage and dollar value of their

respective distributive shares. Partnerships and limited partnerships are exempted.

(3) The tax imposed by Chapter 39.34(A)(3)(a) of this Ordinance is imposed on all resident unincorporated entities having net profits attributable to this municipality under the method of allocation provided for in the Ordinance, regardless of where the owner or owners of such resident unincorporated business entity reside.

(4) Resident unincorporated entities owned by two or more persons, all of whom are residents of this municipality, shall disregard the method of allocation provided for in the Ordinance and pay the tax on their entire net profits thereof. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits; however, an additional return shall be required from any such owner or member having taxable income other than the distributive share of the net profits from the entity.

(B) Imposition of tax on resident's distributive share of profits of a resident unincorporated entity shall disregard the business allocation formula and pay the tax on the entire net profits of this resident unincorporated business entity to this municipality. Partnerships and limited partnerships are not taxed as entities.

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

(2) In the case of a resident individual member or part owner of a resident unincorporated entity, there is imposed an annual tax of one percent (1%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the Ordinance not attributable to this municipality, under the method of allocation provided for in Chapter 39.34(H)(3)(a) of the Ordinance, and not taxed against the entity by this municipality.

#### **CHAPTER 39.07 IMPOSITION OF TAX ON NET PROFITS OF NON-RESIDENT UNINCORPORATED BUSINESSES**

- (A) (1) In the case of non-resident unincorporated businesses, professions, enterprises, undertaking or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of one percent (1%) on the net profits earned, accrued or received during the effective period of the Ordinance attributable to this municipality, in the Ordinance.
- (2) The tax imposed on non-resident unincorporated entities owned by two or more persons is upon the individual members of owners thereof. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity by this municipality, see Chapter 39.07(B). The names and

addresses of all the members must be included thereon along with the percentage and dollar value of their respective distributive shares.

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

(B) A non-resident entity within the meaning of Chapter 39.34 which has a branch or branches, office or offices and/or store or stores, warehouse or other place or places in which the entity's business is transacted, located in the City, shall be considered to be conducting, operating, prosecuting or carrying on a trade, business, profession, undertaking or other activity to consummated in, by or through the Wellston branch, office, store, warehouse, or other place of business, including (1) billing made on such transactions, or (2) services rendered or (3) shipments made, or (4) goods, chattels, merchandise, etc., sold, or (5) commissions, fees or other remuneration or payments earned.

(C) Imposition of tax on resident's share of profits of a non-resident unincorporated business entity not attributable to this municipality.

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

(2) In the case of a resident individual partner or part-owner of a non-residents unincorporated entity, there is imposed an annual tax of one percent (1%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the Ordinance not attributable to the City under the method of allocation provided for in Chapter 39.34 of the Ordinance and taxed against the entity by this municipality.

(D) Partnership and limited partnerships are excluded from above language. Income to partners is taxed to the partners.

### **CHAPTER 39.08 IMPOSITION OF TAX ON NET PROFITS OF CORPORATIONS**

(A) In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in this municipality, there is imposed an annual tax of one percent (1%) on the net profits earned, received or accrued during the effective period of the Ordinance attributable to this municipality under the formula or separate accounting method provided for in the Ordinance.

(B) In determining whether a corporation is conducting a business or other activity

in this municipality, the provisions of Chapter 39.09 of these regulations shall be applicable.

(C) A corporation doing business both within and without the City may, in determining the part of the net profits which are taxable under this chapter, at its option:

- (1) Use the usual accounting system of the taxpayer corporation, so long as said usual accounting system shall be one acceptable to the Internal Revenue Service as evidenced by acceptance and approval of income tax returns filed therein; or
- (2) Use the business allocation percentage formula set forth in Chapter 39.34.

(D) Consolidated returns

(1) Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership. For a subsidiary corporation to be included in a consolidated return, eighty percent (80%) of its stock must be owned by the other members of the affiliated group. A consolidated return must include all companies which are so affiliated.

(2) Once a consolidated return has been filed for any taxable year, the consolidated group must continue to file consolidated returns in subsequent years unless:

- (a) Permission in writing is granted by the administrator to file separate returns; or
- (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; or
- (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 return.

(3) If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income for the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for the subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group; but for the period after it ceases to be a member, separate returns must be filed. If a corporation has been a member of a affiliated group for less than one month of the taxable year of the group, it may be considered as not 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 (1) month.

(4) In determine the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property fraction (Step 1 of the formula) shall be determined on the basis of the average net book value of the property during the period such corporation was a member of the group. The rental portion of the fraction, however, shall be computed at eight (8) times the annual rent. The gross receipts and fractions shall be based on the actual figures.

(5) All subsidiary corporations must agree in writing to the filing of the consolidated return as they will be liable for the tax as well as will be the parent corporation.

(6) The net operating loss carryover of a corporation which filed a separate return in a prior year may be carried over to the consolidated return but will be limited in a amount consolidation. The net operating loss carryover from a separate year shall be deducted first before application of the allocation fraction. After application of the allocation fraction, the consolidated net operating loss carryover allocated to this municipality shall be allowed.

(7) 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.

(8) In determining expenses that are not allowed because they are allocable to non-taxable income, such calculations shall be based on the consolidated net income. As an example, inter-company dividends which are eliminated in the consolidation will not be taken into consideration in determining non-taxable income.

## **CHAPTER 39.09 ALLOCATION OF BUSINESS PROFITS**

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

(A) Separate accounting method:

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

(2) If the books and records of the taxpayer are used as the basis for apportioning net profits rather than the business allocation formula, a statement must accompany the return explaining the manner in which such

apportionment is made in sufficient detail to enable the Administrator to determine whether the net profits attributable to this municipality are apportioned with reasonable accuracy.

(3) In determining the income allocable to this municipality from the books and records of the taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without this municipality.

(B) Business allocation percentage method:

(1) STEP 1: Ascertain the percentage which the average net book value of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within this municipality, is of the average net book value of all real and tangible personal property, including leasehold improvements, owned or used in the business whatever situated, during the period covered by the return.

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

- (a) The net book value of real and tangible personal property rented by taxpayer shall be determined by multiplying gross annual rents payable by eight (8).
- (b) Gross rents means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or possession of property, and includes:
  - (i) Any amount payable for the use or possession of real and tangible property or any part thereof, whether designed 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, insurances, repairs or other amounts required to be paid by the terms of the lease or other amounts required to be paid by the terms of the lease or other arrangement.

(2) STEP 2: Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within this municipality is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without this municipality during the period covered by the return.

- (a) Salaries and reasonable compensation paid owners or credited to

the account of owners or partners during the period covered by the return are considered wages for the purposes of this computation.

- (b) Wages, salaries and other compensation shall be computed on the cash or actual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.
- (c) In the case of an employee who performs services both within and without this municipality, the amount treated as compensation for services performed within the City shall be deemed to be:
  - (i) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within this municipality.
  - (ii) In the case of an employee whose compensation depends directly on other results achieved, the proportion of the total compensation received which the value of all his services; and
  - (iii) In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within this municipality is of his total working time.

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

- (a) The following sales shall be considered this municipality's sales:
  - (i) All sales made through retail stores located in this municipality to purchasers within or without this municipality, except such of said sales to purchasers outside this municipality that are directly attributable to regular solicitations made outside this municipality personally by taxpayer's employees.
  - (ii) All sales of tangible personal property delivered to purchasers within this municipality if shipped or delivered from an office, store, warehouse, factory or place of storage located within this municipality.
  - (iii) All sales of tangible personal property delivered to purchasers within this municipality even though transported from a point outside this municipality if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within this municipality



and the sale is directly or indirectly the result of such solicitation.

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

(v) 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.

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

(4) STEP 4: Add the percentages determined in accordance with Steps 1, 2 and 3, or such of the aforesaid percentages 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 this municipality. A factor is excluded only when it does not exist anywhere.

(5) 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 new profits allocable to this municipality.

(C) Substitute method:

(1) In the event a just and equitable result cannot be obtained under the formula, the Administrator, under the guidelines established by the Board of Review, 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.

(2) Application to the Administrator to substitute other factors in the formula or to use a differed method to allocate net profits must be made in writing before the end of the taxable year and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. A copy thereof shall be served at the time of filing upon the taxpayer. No specific form need to be followed in making such application. Once a taxpayer has filed under a substitute

method, he must continue to file until given permission to change by the Administrator.

(D) Compensation for work done and performed or services rendered:

(1) Compensation and other receipts for work done or services performed within Wellston are allocable to Wellston and taxable under this chapter. All amounts so received, credited or charged by the taxpayer in payment for such work or services are so allocable, irrespective of whether done or performed by employees or agents of taxpayer, by subcontractors or by any other persons. It is immaterial where such amounts were payable or where they were received.

(2) Commissions of fees received by the taxpayer are allocated to Wellston if the service for which the commissions were paid were performed in Wellston. If the taxpayer's services will be deemed to have been performed in Wellston.

Where a lump sum is received by the taxpayer in payment for services within and without Wellston, the amount attributable to services within Wellston is to be determined on the basis of the relative values, or amounts of time spent in the performance of, such services within and without Wellston.

(3) Other business receipts. Receipts from the sale of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) are not business receipts from the sale of real property held by the taxpayer as a dealer for sale to customers in the regular course of business are business receipts and are allocable to Wellston if the real property was situated in Wellston. Receipts from sales intangibles included in business capital, held by the taxpayer as a dealer for sale to customers in the regular course of business, are business receipts and are allocable to Wellston if the sales were made in Wellston or through a regular place of business of the taxpayer of Wellston.

(E) Payroll factor: The percentage of the taxpayer's payroll allocable to Wellston

is determined by dividing the wages, salaries and other personal service compensation of the taxpayer's employees within Wellston during the period covered by the report, by the total amount of compensation of all taxpayer's employees during such period.

(1) Wages, salaries and other compensation are computed on the case or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.

(2) Employees within Wellston include all employees regularly connected with or working out of a place of business maintained by the taxpayer in Wellston, irrespective of where the services of such employee were performed. However, if the taxpayer establishes to the satisfaction of the Administrator that because of the fact that a substantial part of its payroll

was paid to employees attached to a Wellston place of business who performed a substantial part of their services outside Wellston, the computation of the payroll factor according to the general rule stated above would not produce an equitable result, then the Administrator may, in his discretion, permit the payroll factor to be computed on the basis of the amount compensation paid for services rendered within and without the City. On the other hand, wherever it appears that, because a substantial part of the taxpayer's payroll was paid to employees attached to places of business outside Wellston who performed a substantial part of their services within Wellston, the computation of the payroll factor according to the general rule would not properly reflect the amount of the taxpayer's business done within Wellston by its employees, the Administrator may require the payroll factor to be computed on the basis of the amount of compensation paid for services performed within and without Wellston, the amount treated as compensation for services performed within Wellston shall be deemed to be:

- (a) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his effort within Wellston;
- (b) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation which the value of his services within Wellston 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 working time employed in Wellston bears to the total working time.

(F) Adjustment of business allocation percentage formula: Generally, the business allocation percentage formula will result in a fair apportionment of the taxpayer's net profits within and without Wellston. However, due to the peculiar circumstances of certain businesses, the formula may work a hardship in some cases, or result in tax evasion in others, thus not do justice to the taxpayer or the City. Accordingly, in such cases, the Administrator may substitute factors calculated to bring about a fair and proper allocation in any case where the taxpayer has adopted the optional use of the business allocation percentage formula.

#### **CHAPTER 39.10 OPERATING LOSS CARRY-FORWARD**

(A) The portion of net operating loss, based on income taxable under the Ordinance, sustained in any taxable year subsequent to November 20, 2001, allocable to this municipality, may be applied against the portion of the profit of succeeding year(s) allocable to this municipality until exhausted, but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits for any prior year.

(B) In the event net profits are allocated both within and without this municipality, the portion of a net operating loss sustained shall be allocated to this municipality. The portion of a net operating loss to be carried forward shall be determined in the year the net operating loss is sustained on the basis of the allocation factors applicable to that year, The same method of accounting and allocation must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained.

(C) In the case of fiscal years beginning prior to the effective date of the Ordinance, the net operating loss deduction will be that portion of the operating loss that the number of months of the fiscal year after the effective date of the Ordinance bears to the total number of months in such fiscal year.

(D) A short fiscal year ( a fiscal year of less than twelve (12) months) in cases where there has been a change in accounting period, where a new taxpayer selects a short fiscal year or where a new taxpayer operates in this municipality for less than his full accounting period, shall be considered as a full taxable fiscal year.

(E) In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:

- (1) Year in which net operating loss was sustained;
- (2) Method of accounting and allocation used in determine portion of net operating loss allocable to this municipality;
- (3) Amount of net operating loss claimed as a deduction in current year.
- (4) Amount of net operating loss claimed as a deduction in current year.

(F) The net operating loss of a business which loses its identify through merger, consolidation, etc., shall not be allowed as a carry-forward loss deduction to the surviving business entity.

(G) In the case of a net operating loss in the filing of consolidated returns, see Chapter 39.08.

#### **CHAPTER 39.11 ON WHAT EARNINGS OR NET PROFITS TAX FIRST LEVIED**

(A) The tax referred to in Chapter 39.04 and 39.05 shall first be levied, collected and paid with respect to the salaries, wages, bonuses, incentives payments, commissions, fees and/or other compensation earned on and after (THE EFFECTIVE DATE OF THIS ORDINANCE).

(B) The tax referred to in Chapter 39.06, 39.07 and 39.08 with respect to net

profits of trades, businesses, professions, enterprises, undertakings and other activities shall first be levied, collected and paid with respect to such net profits earned or accrued (in accordance with the regular accounting system of taxpayer as approved by the Internal Revenue Service) from and after (THE EFFECTIVE DATE OF THIS ORDINANCE).

(C) But see Chapter 39.12 for fiscal year returns.

#### **CHAPTER 39.12 FISCAL YEARS**

(A) Where the fiscal year of a trade, business, profession, enterprise, undertaking and/or other activity differs from the calendar year, the tax shall be applicable to the net profits for the fiscal year, but for the first fiscal year with respect only to such portion thereof as was earned on and after (THE EFFECTIVE DATE OF THIS ORDINANCE).

(B) A fiscal year will be recognized only if it has been or may be recognized as such by the Internal Revenue Service for the purpose of federal income tax.

#### **CHAPTER 39.13 RECONCILIATION WITH FEDERAL RETURNS**

(A) In a form satisfactory to the Administrator, there shall be submitted with each return filed by a taxpayer subject to the federal income tax, a reconciliation between the amount shown in the return filed with the Administrator and the business income reported to the Internal Revenue Service.

(B) If, as a result of a change made in business income by the Internal Revenue Service, or by a judicial decision, an additional amount will be owed to the City, a report of such change shall be filed by the taxpayer within three (3) months after receipt of the final notice of such change from the federal authorities or after final decision of a court adjudication of any such federal income tax liability.

#### **CHAPTER 39.14 RETURN AND PAYMENT OF TAX**

(A) On or before April 30, 2002, every taxpayer engaged in any business the net profits of which are subject in whole or part to the tax imposed by this chapter shall make and file with the Administrator a final return on a form furnished by or obtainable from the Administrator. Thereafter, each such taxpayer shall, on or before April 30 of each subsequent year, make and file a final return with the Administrator. Like returns shall be filed at the same time and in the same manner by all persons whose wages, salaries, bonuses, incentive payments,

commissions, fees and other compensation received during the preceding taxable year are subject to the tax imposed by the chapter.

However, where an employee's entire earnings for the year are paid by an employer and the one percent (1%) tax thereon, has, in each instance, been withheld and deducted by the employer from the gross amount of the entire earnings of such employee-taxpayer, and where the of such employee has filed a report of return in which such employee's entire and only earnings are reported to the Administrator, and where such employee has no taxable income other than such earnings, it shall not be necessary for such employee to file a return for any taxable year in which such conditions have prevailed. Any person who receives both compensation for services performed for an employer, in whatsoever form, and in addition receives income from any business activity or occupation not subject to withholding under the chapter must file a declaration and final return.

(B) In all returns filed hereunder, there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation received and/or net profits earned (all hereinbefore defined) by and during the proceeding year and subject to said tax, together with such pertinent information as the Administrator may require.

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

(D) The return shall also show the amount of the tax imposed by the chapter on such earnings or net profits, or both.

(E) The taxpayer making the return shall, at the time of filing thereof, pay to the City Tax Administrator the amount of tax shown to be due and unpaid by the return. If, pursuant to the provisions of Chapter 39.20, the taxpayer has, at the time of making such final return, overpaid his tax, such taxpayer shall show the amount of overpayment and may in said return either (1) request a refund thereof, or (2) request that the amount thereof be credited against the amount which will be required to be paid by the taxpayer on the next succeeding installment of tax which may become due. For payments in installments, see Chapter 39.20.

(F) Where any portion of the tax otherwise due shall have been deducted at the source and shall have been paid to the Administrator by the person making the said reduction, a credit equal to the amount so paid shall be deducted from the amount shown to be due, and only the balance, if any, shall be due and payable at the time of the filings of the said return.

(G) Upon written request of the taxpayer, the Administrator may extend the time for filing the annual return for a period of not more than six (6) months or not more than thirty (30) days beyond any extension requested of and granted by the Internal Revenue Service for filing of the federal income tax return.

(H) Operating losses from businesses or professional activities, the profits of which would be taxable under the Ordinance, may be offset against salaries, wages, commissions and other personal service compensation or against net profits for other business or professional activities.

### **CHAPTER 39.15 COLLECTION AT SOURCE**

(A) It is the duty of each employer (as hereinbefore-defined) who employs one or more persons on a salary, wage, commission or other compensation basis, to deduct from compensation paid to any employee subject to this chapter, the tax of one percent (1%) of such salary, wage, bonus, incentive payment, commission or other compensation due by said employer to said employee. The tax shall be deducted by the employer from:

- (1) All compensation paid to employees who are non-residents of the City for services rendered, work performed or other activities engaged in to earn such compensation within the City; and
- (2) From the gross amount of all salaries, wages, bonuses, incentive payments, commissions or other forms of compensation paid to employees who are residents of the City, regardless of the place where the services are rendered.

(B) All employees maintaining an office or other place of business in Wellston are required to make the collections and deductions specified in this section, regardless of the fact that the services on account of which any particular deduction is required as to residents of the City, were performed at a place of business of any such employer situated outside the City.

(C) 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 received.

(D) Commissions and fees paid to professional persons, brokers, and others who are independent contractors and not employees of the payor are not subject to withholding or collection of the tax at the source. Such taxpayer must, in all instances, file returns and pay the tax pursuant to the provisions of Chapter 39.29 or 39.34.

(E) In the case of employees who are non-residents of Wellston, the amount to be deducted is one percent (1%) of the compensation paid with respect to personal services rendered in Wellston.

(F) Where a non-resident receives compensation for personal services

rendered or performed partly within and partly outside Wellston, the withholding employer shall deduct, withhold and remit that portion of the compensation which is earned within Wellston in accordance with the following rules of apportionment:

- (1) If the non-resident is a salesman, agent or other employee whose compensation or the basis of compensation depends directly on the volume of business transacted by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the City bears to the volume of business transacted by him within and outside the City.
- (2) The deducting and withholding of personal service compensation of all other employees (including officers of corporations) shall attach to the portion of the personal service compensation of such employee which the total number of working days employed within the City bears to the total number of working days employed within and outside the City.
- (3) If it is impossible to apportion the earnings as provided above, because of (a) the peculiar nature of the service of the employee or (b) the unusual basis of compensation, apportionment shall be made in accordance with the facts, and the tax deducted and withheld accordingly.
- (4) The occasional entry into the City of a non-resident employee who performs the duties for which he is employed entirely outside the City, but enters the City for the purpose of his duties outside the City, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the City.

(G) An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions (whether by way of drawing account or otherwise-but see paragraph (H) below) where such advances are in excess of commissions earned.

(H) An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which tax is to be withheld, ignore any amount allowed and paid by the employer to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services. Provided, however, that such expenses must be of the kind and in the amount recognized and allowed as deductible expenses for federal income tax purposes.

(I) **Manager's Obligation.**

- (1) Every manager is deemed to be a trustee of the municipality in collecting and holding the tax required under this chapter to be withheld and the funds so collected by such withholding are deemed trust funds. Every Manager is liable directly to the municipality for payment of such trust, whether actually collected by such employer or not the employer actually remits the tax to the municipality for purposes of determining employee payments or credits.



(2) All managers shall be personally liable to the extent to the tax, interest and penalty, jointly and severally, for failure to file the employer's return or to pay the employer's tax, interest and penalty as required under this chapter.

(3) No change in structure by an employer, including a fundamental change, discharges its managers from liability for the employee's or manager's failure to remit funds held in trust, to file a tax return or to pay taxes.

## **CHAPTER 39.16 RETURNS OF TAX WITHHELD AND PAYMENT**

(A) The deduction from salaries, wages and other compensation required to be made by employers are to begin with compensation earned on and after November 20, 2001. The first return and payment required to be made on account of such deductions shall be made, filed and paid to be the Administrator between July 1, 2001 and July 31, 2001.

(B) Each employer within the City who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct monthly, or more other than monthly, and at the time of the payment of such salary, wage, commission or other compensation, the tax of one percent (1%) of salaries, wages, commissions or other compensation due by the said employer to the said employee.

(C) Every employer required to deduct and withhold any amount under this section shall file a return thereof and shall pay that amount as required herein as follows:

(1) In quarterly payments to be made no later than thirty (30) days following the last day of March, June, September and December of each year, if the employer reasonably estimates that the amount to be deducted and withheld during the quarter will not exceed *Three* Hundred Dollars (\$300.00).

(2) In monthly payments to be made no later than thirty (30) days following the close of the calendar month during which the amount was withheld, if (C)(1) of this section does not apply.

(D) Said return shall be on a form prescribed by and obtainable from the Administrator and shall be subject to the rules and regulations prescribed therefore by the Administrator. Such employer, in collecting said tax, shall be deemed to hold same until payment is made by such employer to the City as a trustee for the benefit of the City, and any such tax collected by such employer from his employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer.

(E) *The failure of any employer or person to receive or procure a return,*

*declaration or other required form shall not excuse him or her from making any information return, return or declaration, from filing such form or from paying the tax.*

(F) For adjustment of errors in returns of tax withheld by employers see Chapter 39.22.

(G) On or before the 31<sup>st</sup> of January following any calendar year in which such deductions have been made by any employer, such employer shall file with the Administrator, in the form prescribed by the Administrator, an information return for each employee from whom this municipality's income tax has been withheld, showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of this municipality's income tax withheld from such employee. All payments not subject to withholding shall be reported on a form required by the Administrator.

#### **CHAPTER 39.17 LIMITATION ON CREDIT FOR TAX PAID AT SOURCE**

The failure of any employer, residing either within or outside the City, to collect the tax and to make any return prescribed herein, shall not relieve the employee from the payment of such tax in compliance with these regulations respecting the making of returns and the payment of taxes.

#### **CHAPTER 39.18 STATUS AND LIABILITY OF EMPLOYERS**

(A) Every employer is deemed to be a trustee of the City of Wellston in collecting and holding the tax required under the Ordinance to be withheld, and the funds so collected by such withholding are deemed to be trust funds.

(B) 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 actually collected by such employer or not.

#### **CHAPTER 39.19 DECLARATIONS**

(A) All taxpayers (as defined in this chapter) subject to the taxes imposed in Chapter 39.34 and every taxpayer who anticipates any income or net profits not subject to total withholding as provided in the preceding, shall file with the Administrator a declaration of estimated tax as follows:

(1) On or before April 30 of each year during the life of this chapter, every such taxpayer shall file a declaration of estimated tax and each such declaration shall contain a statement of the taxpayer's estimated tax for the full taxable year in which such declaration is filed.

(2) The declaration of estimated tax shall be at least eighty percent (80%) of the previous year's or the current year's actual tax.

(3) Taxpayers who or which are permitted, pursuant to the provisions of Chapter 39.12, to return or pay their tax upon a fiscal year basis, shall file their first declaration within four (4) months after the beginning of the first fiscal year beginning after April 1, 2002, and the subsequent declaration for each year thereafter on or before the thirtieth (30<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the beginning of each such fiscal year.

(4) The estimated tax may be paid in full with the declaration or in equal installments on or before April 30, June 30, September 30 and December 31, the first filing being as of July 31, 2002. Those taxpayer on a fiscal year basis shall make quarterly payments on or before the last day of the sixth (6<sup>th</sup>), ninth (9<sup>th</sup>) and twelfth (12<sup>th</sup>) months following the beginning of such fiscal year. The first installment, equal to at least one-fourth (1/4<sup>th</sup>) of the estimated tax, must accompany the declaration.

(5) The declarations so required shall be filed upon a form furnished by or obtainable from the Administrator. Any taxpayer who has filed an estimate for federal income tax purposes may, in making the declaration required hereunder, simply state therein that the figures therein contained are the same figures used by the taxpayer in making the declaration of his estimate for the federal income tax. However, in addition to such statement, any such taxpayer may, in such declaration, modify and adjust such declared income so as to exclude therefrom income which is not subject to tax under the chapter.

(6) Any estimate filed hereunder may be amended by the filing of an amended estimate at the time prescribed for the payment of any installment of tax paid in accordance with Chapter 39.20.

(B) An employee whose entire wages, salaries or other compensation for any taxable year will be subjected to the withholding provisions under Chapter 39.16 through 39.18, and whose tax will accordingly be withheld as to his entire earnings for such year by his employer, and who, during such taxable year, expects to derive no other compensation or other income which is subject to tax under this chapter, need not file a declaration as provided in this section.

#### **CHAPTER 39.20 PAYMENT OF TAX INSTALLMENTS**

(A) At the time of filing each declaration (required by Chapter 39.19), each taxpayer shall pay to the Administrator one-fourth (1/4<sup>th</sup>) of the amount of his estimated tax provided that the estimated tax liability is fifty dollars (\$50.00) or greater. Thereafter, on or before the thirtieth (30<sup>th</sup>) day of June, September and December 31 of each year during the life of the chapter, such taxpayer shall pay at least a similar amount. However, if any such taxpayer shall, on or before any such payment date, file an amended declaration showing an increase or decrease of the estimated tax, the installments then and thereafter due shall be increased or

diminished (as the case may be) in such manner that the balance of the estimated tax shall be fully paid on or before December 31 of the taxable year involved through the payment of quarterly installments in equal amounts during the quarterly periods remaining from and after the filing of any such amended declaration.

(B) Taxpayer permitted to make returns and pay their taxes on a fiscal year basis (see Chapter 39.12) may the quarterly payments on their declarations of estimated tax pursuant to Chapter 39.19(B)(3) and (4).

(C) For final returns and final adjustments of tax due, Chapter 39.14.

**CHAPTER 39.21**  
**RECIPROCITY PROVISION CREDIT FOR TAX PAID TO OTHER**  
**MUNICIPALITIES**

Every individual taxpayer who resides in the City but receives net profits, salaries, wages, commissions or other personal service compensation for work done or services performed or rendered outside the City, if it be made to appear that he has paid a municipal City income tax on such net profits, salary, wages, commission or other compensation to another municipality, shall be allowed a credit on the tax imposed by this Ordinance of the amount so paid by him or in his behalf to the other municipality. The credit shall not exceed the tax assessed by this Ordinance on such net profit, salary, wages, commission or compensation earned in such other municipality or municipalities where such City income tax is paid.

**CHAPTER 39.22**  
**INQUISITORIAL POWERS OF THE AUDITOR**

(A) The Auditor personally or his agent or employees are authorized and empowered to examine the books, papers and records of any employer or supposed employer, or of any taxpayer or supposed taxpayer, in order to verify the accuracy of any return made, to ascertain the tax imposed by this Ordinance.

(B) Every employer or supposed employer and every taxpayer or supposed taxpayer is required to furnish to the Auditor or his duly authorized agents or employees the means, facilities and opportunity for such examinations, investigations and audits as are authorized in and by this Ordinance.

(C) The Auditor or his duly authorized agent or employee is further authorized and empowered to examine under oath any person concerning any income which was or should have been returned for taxation, and to this end, the Administrator has the right and power to compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, who he believes to have knowledge of such knowledge of such income.

(D) Refusal of any examination by any employer or persons subject to the tax, or presumed to be such employer or person so subject, constitutes a minor misdemeanor punishable by fine or imprisonment, or both.

**CHAPTER 39.23  
RECORDS TO BE KEPT BY EMPLOYERS AND TAXPAYERS**

Employers and others subject to the tax under this Ordinance are required to keep such records as will enable the filing of true and accurate returns, whether of taxes withheld at source or of taxes payable upon earnings or net profits, or both, and such records are to be preserved for three (3) years to enable the Administrator, or any agent or employee of the Administrator, to verify the corrections of returns filed.

**CHAPTER 39.24  
COLLECTION OF DEFICIENCIES; ALLOWANCE OF CREDIT FOR  
OVERPAYMENT**

(A) If, as a result of investigation conducted by the Administrator, a return is found to be incorrect, the Administrator is authorized to assess and collect any underpayment of tax withheld at source or any underpayment to tax owing by any taxpayer with respect to earnings or net profits, or both. If no return has been filed and a tax is found to be owing, the tax actually owing may be assessed and collected with or without the formality of obtaining a delinquent return from the employer or taxpayer.

(B) Should it be disclosed, either as a result of an investigation by the Administrator or through the medium of the filing of a claim or petition for refund or credit, that an overpayment has been made, the Auditor will refund such overpayment.

(C) The employer will, in every instance, be required to pay the full tax which should have been withheld, even though he may fail to withhold from the employee. If too much has been withheld, the excess shall be refunded by the employer to the employee. While the withholding agent (employer) will be expected to maintain complete records of such adjustments with the employees, any such adjustment made during any month will not need to be reflected in the withholding return or disclosed by schedules or statements thereto attached.

(D) In those cases in which too much has been withheld by and employer from an employee and remitted to the Administrator and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain an adjustment by application to the Administrator.

(E) Unpaid sums-civil suits:

(1) In addition to any criminal penalties which may be imposed pursuant to Chapter 39.28 of the Ordinance, all taxes imposed by Chapter 39.34 of the Ordinance and not paid when due shall be collectible, together with any interest and penalties thereon, by civil suit. Employers who are required under Chapter 39.18 of the Ordinance to withhold and remit the taxes required to be withheld at the source, and who fail to withhold and/or remit, become liable to the municipality in a civil suit to enforce the payment of the deficiency created by such failure.

(2) No additional assessment shall be made by the Administrator after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be no period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or on filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report twenty-five percent (25%) or more of income required to be reported shall be considered a substantial omission.

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

#### **CHAPTER 39.25 PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION**

Tax returns and all audits connected therewith are confidential. Any information gained by the Administrator, by the agents or employees of the Administrator or by any other official or agent of the City, as a result of any returns, investigations, hearings or verifications required or authorized by this Ordinance, shall be held confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law. Violation of this provision constitutes a misdemeanor, or imprisonment for not more than six months, or both. Every such breach of confidence constitutes a separate offense.

#### **CHAPTER 39.26 INTERST AND PENALTIES**

(A) All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this Ordinance and remaining unpaid after they become due shall bear interest at the rate of one and one half percent (1 ½%) per month or fraction thereof.

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

- (1) For failure to pay taxes due, other than taxes withheld: one dollar (\$1.00) per day not to exceed twenty-five dollars (\$25.00) per year; or one and one half percent (1 ½ %) per month or fraction thereof, whichever is greater.
- (2) For failure to remit taxes withheld from employees: one dollar (\$1.00) per day not to exceed twenty-five dollars (\$25.00) per year; or three percent (3%) per month or fraction thereof, whichever is greater.
- (C) Exceptions: a penalty shall not be assessed on additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator; and provided, further, that in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax liability.
- (D) The Administrator may for good cause shown, under guidelines established by the Board of Review, abate penalty or interest, or both, or upon an appeal from the refusal of the Administrator to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest or both.
- (E) For failure to file a required return in a timely manner if no tax is due, a penalty of twenty-five dollars (\$25.00) per year shall be assessed for each year until the return is filed.
- (F) For failure to file a declaration of estimated income, a penalty of one dollar (\$1.00) per day shall be assessed for each day until the declaration is filed not to exceed twenty-five dollars (\$25.00).

## **CHAPTER 39.27 COLLECTION OF UNPAID TAXES**

- (A) All taxes imposed by this Ordinance shall be collectable, together with any interest and penalties thereon, by suit as other debts of like amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three (3) years from the time the return was due or filed, whichever is later. Provided, however, in those cases in which the Internal Revenue Service and the taxpayer have executed a waiver of the federal statute of limitations, the period within which an additional assessment may be made by the Administrator shall be one year from the time of the final determination of the federal tax liability.
- (B) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date which such payment was made or the return was due, or within three (3) months after final determination of the federal tax liability, whichever is later.

- (C) Amounts of less than one dollar (\$1.00) shall not be collected or refunded.

**CHAPTER 39.28  
VIOLATIONS; PENALTIES**

- (A) Any person who shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this Ordinance; or
- (2) Make any incomplete, false or fraudulent return; or
- (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this Ordinance; or
- (4) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
- (5) Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
- (6) Fail to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
- (7) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
- (8) Fail to comply with the provisions of this Ordinance or any order or subpoena of the Administrator authorized hereby; or
- (9) Give to the employer false information as to his true name, correct Social Security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
- (10) Fail to use ordinary diligence in maintaining proper records of employee's residence addresses total wages paid and the City tax withheld, or to knowingly give the Administrator false information; or
- (11) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Ordinance; shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six (6) months or both, for each offense.

- (B) All prosecutions under this section must be commenced within three (3) years from the time of the offense complained of, except in the case of failure to file a return, or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution must be commenced shall be six (6) years from the date the return was due or the date the false or fraudulent return was filed.

- (C) The failure of any employer or person to receive or procure a return,



declaration or other required form shall not excuse him from making any information return, return or declaration, from filing such form or from paying the tax.

**CHAPTER 39.29  
BOARD OF REVIEW**

(A) A Board of Review, consisting of a chairman and six other individuals, each to be appointed by the Mayor of the City, is hereby created. A majority of the members to the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately, and the provisions of Chapter 39.25 with reference to the confidential character of information required to be disclosed by the Ordinance shall apply to such matters as may be heard before the Board on appeal.

(B) Any person dissatisfied with any ruling or decision of the Administration which is made under the authority conferred by this Ordinance may appeal therefrom to the Board of Review within thirty (30) days from the announcement of such ruling or decision by the Administrator, and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.

(C) The board of review will review the operating procedures and the financial management of the City no less than quarterly to assure that the City is effectively administering tax proceeds.

(D) The Board of Review, as created, shall serve during the life of the Ordinance.

**CHAPTER 39.20  
APPLICABILITY**

This Ordinance is inapplicable to any person or corporation upon whom or which it is beyond the legal power of Council to impose the tax; it is likewise inapplicable as to any property, income or profits (or part thereof) as to which it is beyond the legal power of Council to levy the tax.

**CHAPTER 39.31  
CONSTRUCTION; SEPARABILITY OF PROVISIONS**

This Ordinance shall not apply to any person, firm, corporation or to any property as to whom or which it is beyond the power of City Council to impose the tax herein provided for. If any sentence, clause, section or part of this Ordinance, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality,

illegality or invalidity shall affect only such sentence, clause, section or part of this Ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this Ordinance. It is hereby declared to be the intention of the Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

**CHAPTER 39.32  
SPLIT PAYROLLS**

(A) In the case of hourly employees, only the first full pay for hourly employees earned after (THE EFFECTIVE DATE OF THIS ORDINANCE), and all payrolls thereafter, will become subject to withholding under this Ordinance.

(B) All salaried employees paid on a calendar month will be subject to withholding under this Ordinance as of (THE EFFECTIVE DATE OF THIS ORDINANCE).

**CHAPTER 39.33  
LEFT BLANK INTENTIONALLY**

**CHAPTER 39.34  
IMPOSITION OF TAX**

(A) Subject to the provisions of Chapter 39.36 herein, an annual tax for the purposes specified in Chapter 39.01 shall be imposed on and after (THE EFFECTIVE DATE OF THIS ORDINANCE), at the rate of one percent (1.0%) or the rate of three quarters percent (.75%) from November 20, 2001 to the effective date of this ordinance per annum upon the following:

(1) On all salaries, wages, commissions, lottery proceeds in excess of \$5,000 and other compensation earned during the effective period of the Ordinance by residents of the City. Permitted are deductions for employee business expenses as reported on Federal Schedule 2106 and allowable against such income.

(2) On all salaries, wages, commissions and other compensation earned by non-residents for work done or services performed or rendered in the City. Permitted are deductions for employee business expenses as reported on Federal Schedule 2106 and allowable against such income.

(3)(a) On the portion attributable to the City of the net profits of all resident unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City. Partnerships and limited partnerships are excluded, such income shall be taxed to those receiving it.

(b) On the portion of the distributive share of the net profits of a resident member or owner of a resident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity.

(4)(a) On the portion attributable to the City of the net profits of all non-resident unincorporated businesses, professions or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in the City, whether or not such unincorporated business entity has an office or place of business in the City.

(b) On the portion of the distributive share of the net profits earned during the effective period of this chapter of a resident member or owner of a non-resident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity.

(5) On the portion attributable to the City of the net profits earned during the effective period of this Ordinance of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the City, whether or not such corporations have an office or place of business in the City.

(B) The portion of the net profits attributable to the City of a taxpayer conducting a business, profession or other activity both within and without the boundaries of the City shall be determined as provided in section with the rules and regulations adopted by the Administrator pursuant to this chapter.

(C) Operating loss carry-forward:

(1) The portion of a net operating loss sustained in any taxable year subsequent to November 20, 2001 allocable to the City may be applied against the portion of the net profit of succeeding year(s) allocable to the City until exhausted, but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.

(2) The portion of net operating loss sustained shall be allocated to the City in the same manner as provided herein for allocating net profits to the City.

(3) The Administrator shall provide by rules and regulations the manner in which net operating loss carry-forward shall be determined.

(D) Consolidated returns:

(1) Filing of consolidated returns may be permitted, required or denied in accordance with the rules and regulations prescribed by the Administrator.

(2) In the case of a corporation that carried on transactions with its stockholders or which other corporations related by stock ownership, interlocking directories or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the City constituting a portion only of its total business, the Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City. If the Administrator finds net profits are not properly allocated to the City by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directories or transactions with such division, branch, factory, office, laboratory of activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the City.

(E) Exceptions. The following shall not be considered taxable:

(1) Poor relief, unemployment insurance benefits, supplemental unemployment benefits, old age pensions or similar payments received from local, state or federal governments or charitable or religious organizations:

(2) Proceeds of insurance, annuities, workers' compensation insurance, social security benefits, pensions, compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits;

(3) Compensation for damage to property by way of insurance or otherwise;

(4) Interest and dividends from intangible property;

(5) Military pay and allowances received as a member of the armed forces of the United States;

(6) Income of persons under the age of 18 years;

(7) Any charitable, educational, fraternal or other type of non-profit association or organization enumerated in Section 718.01 of the Ohio Revised Code which is exempt from payment of real estate taxes; however, any association or organization in this category not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the taxes levied under this chapter on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit. Where such non-profit association or organization conducts income-producing business both within and without the corporation limits, it shall calculate its profits allocable to the City under the method or methods provided above.

(8) Income of partnerships and limited partnerships. Such income is taxes to the partners.

(F) The fact that any taxpayer is not required to file a federal tax return does not relieve such taxpayer from filing this municipality's tax return.

## **CHAPTER 39.35 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY**

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

(B) Every individual taxpayer who resides in the City who receives net profits, salaries, wages, commissions or other personal service compensation for work done or services performed or rendered outside the City, if it be made to appear that he has paid a municipal income tax on the same income taxable under this chapter to another municipality, shall be allowed a credit against the tax imposed by this chapter of the amount so paid by him in his behalf to such other municipality. The credit shall not exceed the tax assessed by this chapter on such income earned in such other municipality or municipalities where such tax is paid.

(C) A claim for refund or credit under this section shall be made in such manner as the Administrator may by regulation provide.

### **CHAPTER 39.36 COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE**

(A) This chapter shall continue elective insofar as the levy of taxes is concerned and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of said taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this chapter shall have been fully terminated.

(B) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in previous Chapters, as through the same were continuing.

### **CHAPTER 39.37 ALLOCATION OF FUNDS**

The funds collected under the provisions of this chapter shall be deposited in the Income Tax Refund, and these funds shall be disbursed in the following order, to wit:

(A) Such part thereof as shall be necessary to defray all costs of collecting the taxes and the cost of administering and enforcing the provisions thereof.

(B) The remaining funds after deduction of moneys allocated in (A), shall be located to the General Fund or as voted upon by the majority of the legislative authority.

### **CHAPTER 39.38 EFFECTIVE PERIOD OF TAX**

The income tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation and with respect to the net profits of businesses, professions or other activities earned after November 20, 2001.

**CHAPTER 39.39**  
**PROVISIONS REPEALED**

Any and all provisions contained in Ordinance No. 3557 and not specifically in this ordinance re-enacted are hereby repealed; it being the intention of the legislative authority that the provisions of this ordinance shall be and are enacted to replace former Ordinance No. 3557.