

**INCOME TAX RULES AND REGULATIONS  
CITY OF BARBERTON  
ORDINANCE NO. 217-2000  
DECEMBER 11, 2000**

**ARTICLE I**

Section 880.01 of the ordinance deals with the purposes for which the tax collected will be used.

**ARTICLE II**

**DEFINITIONS**

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

**ADMINISTRATOR** - The Tax Administrator being the individual appointed by the Director of Finance to administer and enforce the provisions of the ordinance.

**ASSOCIATION** - A partnership, limited liability partnership, limited liability company, or any other form of unincorporated or pass-through enterprise, owned by two or more persons.

**BOARD OF REVIEW** - The board created and constituted as provided in Section 880.15 of the ordinance.

**BUSINESS** - An enterprise, activity, profession, public utility, public service, or undertaking of any nature conducted for profit, or ordinarily conducted for profit, whether by an individual, partnership, association, S-corporation, corporation or any other entity, including but not limited to the renting or leasing of real, personal or mixed property. The ordinary administration of a decedent's estate, either by an executor or administrator, or the mere custody, supervision and management of trust property under a passive trust, whether intervenes or testamentary, unaccompanied by the actual operation of a business, as herein defined, shall not be considered or construed as the operation of a business.

**BUSINESS ALLOCATION** – Business allocation as used in these regulations, means the portion of net profits to be allocated to the City of Barberton, as having been made in the City, either under the separate accounting method, or under the three factor formula of property, payroll, and sales or receipts, provided for in Section 880.04 of the ordinance and Article III-C of these regulations.

**CALENDAR YEAR** – An accounting period of twelve months ending on December 31<sup>st</sup>.

**CITY** - The City of Barberton, Ohio, County of Summit.

**CORPORATION** - A corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency. A Corporation (C-corporation) is any corporation that is not an S-corporation as defined in the federal tax code, 26 U.S.C. 1361.

**S-CORPORATION** - A small business corporation, which has made an election to be taxed as a pass-through entity similar to a partnership, as defined in the federal tax code, 26 U.S.C. 1361. All rules and regulations, for tax purposes, pertaining to partnerships, with some exceptions, shall apply to S-corporations.

**DIRECTOR** – The Director of Finance of the City of Barberton, Ohio, County of Summit.

**DOMICILE** – The permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

**EMPLOYEE** - One who works for wages, salary, commissions or other compensation in the service of and under the control of an employer. Any person upon whom an employer is required to withhold for either Federal income tax or social security tax, or on whose account payments are made under the Ohio Workers' Compensation law, shall prima facie be an employee.

**EMPLOYER** - An individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other compensation basis, whether or not such employer is engaged in business. It does not include a person who employs only domestic help for such person's private residence.

**FISCAL YEAR** - An accounting period of twelve (12) months, or less, ending on any day other than December 31st. Only fiscal years accepted by the Internal Revenue Service for Federal income tax purposes may be used for City of Barberton income tax purposes.

**GROSS INCOME** - All monies derived from any source whatsoever, including the following items and any item not listed as an exception in Article III (E) of these regulations and Section 880.06 of the ordinance:

(A) All salaries, wages, commissions, and other compensation and income from whatever source received by residents of the City of Barberton, including distributive shares of a any pass-through entities such as S-corporation, unincorporated business or association against which Barberton municipal income tax has not been levied. Other compensation shall include monies derived from gaming, wagering, lotteries (including the Ohio State Lottery, or any other State Lottery) without regard to any losses incurred, unless the taxpayer is deemed to be a “professional gambler”, where gambling is the taxpayer’s business activity for federal tax purposes.

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

(C) Stock options granted in connection with the performance of services rendered and not designated as capital gains.

(D) The portion attributable to the city of the net profits of all unincorporated businesses, associations, professions, corporations, S-corporations, or other entities from sales made, work done, services performed or rendered, and business or other activities conducted in the City of Barberton. Such portion shall be determined as provided in Section 880.04 of the ordinance and Article III-C of these regulations.

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

**INCOME FROM PASS-THROUGH ENTITY** – Means partnership income of partners, distributive shares of shareholders of an S-corporation, membership interest of members of a Limited Liability Company, or other distributive or proportionate ownership shares of other pass-through entities.

**INTERNET** - Means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.

**JOINT ECONOMIC DEVELOPMENT DISTRICT** – Districts created under Ohio Revised Code Sections 715.70 and 715.71, as amended from time to time.

**LIMITED LIABILITY COMPANY** – Means the Limited Liability Company formed under chapter 1705 of the Ohio Revised Code or under the laws of another state.

**NET LOSS** - The excess of ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes; and in the case of an S-corporation or an unincorporated entity, without deduction of any form of compensation paid to stockholders, partners, members or other owners, or for taxes imposed by the ordinance and federal, state, or other taxes based on income, over the gross receipts adjusted for returns and allowances, trade discounts, sales taxes and excise taxes based on sales.

(A) Net losses from self-employed business, profession or rental property may not be used to offset W-2 income.

(B) A net loss in another city may never offset a gain in the City of Barberton. However, activities in the same city may offset each other.

(C) A net operating loss may be carried forward to offset future gains for a period not to exceed five (5) years.

(D) Taxpayers who are entitled to allocate profits must also allocate losses accordingly. If an operating loss is not filed in a timely manner, the carry-forward privilege is nullified. No portion of a net loss may be carried back to prior years.

**NET PROFIT** - The net gain from the operation of a business, profession, enterprise, or other activity excluding capital gains and losses, after provision for all necessary and ordinary expenses paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, and adjusted to the requirements of the ordinance and these rules and regulations, but excluding Federal and other taxes based on income and the tax imposed by the ordinance. Net profits shall include any amount or value received, realized, or recognized in a sale or other disposition of tangible personal or real property used in business, in excess of book value, to the extent of depreciation allowed or allowable. The balance shall be treated as a capital gain.

**NON-RESIDENT** - A person who is not a resident as herein defined.

**OCCASIONAL ENTRANT** – A non-resident individual who works in Barberton, for a non-resident employer, 12 or fewer days per year.

**ORDINANCE** - The Income Tax Ordinance No. 217-2000 enacted by Council of the City of Barberton effective December 11,2000, and any amendments and supplements thereto.

**PERSON** - Every natural person, partnership, fiduciary, association, corporation, or other entity. Whenever used in any section, phrase or clause prescribing a violation and imposing a penalty, the term "Person" as applied to any unincorporated entity, shall mean the owner, partner, or members thereof; as applied to S-corporations shall mean the stockholders thereof, and as applied to C-corporations shall mean any of its officers, employees, or trustees charged with the responsibility of filing returns and making payments to the City of Barberton. The dissolution, termination, or bankruptcy of a corporation or business trust shall not discharge responsible officers', employees', or trustees' liability for a prior failure of the corporation or business trust to file returns or remit taxes due. (ORC. 5747.07 (G)).

**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, whether in person or through one or more of his employees regularly in attendance.

**RESIDENT** - A person domiciled in the City of Barberton.

The presumption that one is domiciled in the City of Barberton exists under the following conditions: While living in the city, a person has maintained no other residence that qualifies as their domicile. Maintaining another residence means that there is another residential unit ready and waiting for the taxpayer's return. If another person has the right to the unit, which restricts the taxpayers use (i.e., the unit is rented or leased), the unit does not qualify. If another property is maintained, the domicile is that property which is held out as the "home" address for the following: federal and state income taxes, employment records, banking and credit purposes, automobile registration, automobile insurance, college registration, military records, children's education records and voting registration.

**TAXABLE INCOME** – Gross income minus the deductions and credits allowed by the tax ordinance. To include but not limited to: salaries, wages, commissions or any other compensation paid by an employer before any deductions and/or the net profits from the operation of a business, profession or other enterprise or activity including rental property. The term "other compensation" including the following and any item not listed in Article III (E) as an exception: tips, tax shelter plans, gifts of any type for services rendered, vacation and holiday pay, wage continuation benefits, directors' fees, jury duty fees, stock options granted in connection with the performance of services and not designated as capital gains, property in lieu of cash, sick or long-term disability pay, bonuses, incentive payments in whatever form including employee fringe benefits, company closing benefits, supplemental unemployment benefits, earnings designated as deferred compensation or compensation paid by an employer in whatever form for services rendered regardless of nomenclature, employer paid premiums for group-term insurance in excess of fifty thousand dollars (\$50,000), strike benefits, depreciation recapture, ordinary income shown on Federal form 4797, and a resident partners' or members' or stockholders' distributive share of a non resident pass-through entity (whether received as wages paid or a draw from a drawing or capital account and whether received or accrued). The term "other compensation" shall also include income received from gaming, wagering, lotteries (including the Ohio State or any other State lottery) or other schemes of chance without regard to any losses that may have been incurred.

**TAXABLE YEAR** - The calendar year, or fiscal year, upon the basis of which the net profits are to be computed under the ordinance and in the case of a return for a fractional part of a year, the period for which such return is required to be made. Unless approved by the Director of Finance and/or the Tax Administrator, the taxable year of an individual shall be a calendar year.

**TAXPAYER** - A person, whether an individual, partnership, association, corporation or other entity, required by the ordinance to file a return or pay a tax. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

## **ARTICLE II-1**

### **COMMENCEMENT AND DURATION OF THE TAX**

The tax imposed by the ordinance is effective and shall continue to be effective until repealed and all of said taxes levied under the ordinance are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of the ordinance shall have been fully terminated, subject to the limitations contained in sections 880.13 and 880.14 of the ordinance. (Note: hereinafter this will be referred to as "the effective period of the ordinance").

**ARTICLE III**  
**IMPOSITION OF TAX**

**A Basis.**

**1. Residents:**

a). In the case of residents of the City, an annual tax of two percent (2%) is imposed on all salaries, income, wages, commissions, and other compensation received (including earnings deposited by the employee into deferred compensation or medical coverage plans) during the effective period of the ordinance. For the purpose of determining the tax on the income or earnings of residents, the source of the income or earnings and the place or places in or at which any services were rendered, are immaterial. All such income or earnings wherever received or paid are taxable, except that tax shall not be levied on expenses reported in accordance with federal guidelines for Federal Form 2106, subject to audit and approval by the City Tax Administrator.

b). The following items as well as any item not listed as an exception, in Article III (E) of these regulations, are subject to the tax imposed by the ordinance:

(1) Salaries, wages, bonuses and incentive payments received by an individual, whether directly or through an agent, and whether in cash or in property for services rendered during the tax period as:

(a) An officer, director, member, stockholder, or partner of a C or S-corporation or association (including charitable and other nonprofit organizations).

(b) An employee (as distinguished from a partner or member) of a partnership, limited liability partnership, limited liability company or any form of unincorporated business enterprise owned by two or more persons.

(c) An employee (as distinguished from a proprietor) of a business, trade, or profession conducted by an individual owner.

(d) An officer or employee (whether elected, appointed, or commissioned) of the United States Government or any of its agencies or of the State of Ohio or any of its political subdivisions or agencies thereof or any foreign country or dependency except as prohibited by law.

(e) An employee of any other entity or person, whether based upon hourly, daily, weekly, semimonthly, monthly, annual, unit of production or piece work rates or other basis; and whether paid by an individual, partnership, association, corporation (including charitable and nonprofit corporations), governmental administrations, subdivisions, section or unit, or any other entity.

## RULES AND REGULATIONS

## ARTICLE III CONT'D

(2) Commissions earned by a taxpayer, whether directly or through an agent, and whether in cash or in property for services rendered during the effective period of the ordinance, regardless of how computed or by whom or wherever paid.

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

(b) The amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation, if the employer deducts such expenses or advances as such from his gross income for the purpose of determining his net profits taxable and the employee is not required to include such receipts as income on his federal income tax return. These are employee business expenses reported on federal form 2106.

The proper procedure used in determining the allowable employee business expenses to apply against gross wages, which are related to the expenses, is to subtract an amount equal to two percent (2%) of the adjusted gross income shown on the federal income tax return from the total expenses shown on federal form 2106. The difference will be the allowable employee business expenses. Since itemized deductions are not allowed by the city, the amount of expenses shown on federal form 2106 will be subject to audit. If taxes were withheld and paid to other municipalities, they will have to be reduced by an amount equal to the tax calculated on the amount of the allowable employee business expense used to reduce the income in those municipalities at the appropriate tax rate in effect.

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

(3) Fees, unless such fees are properly includible as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity or association owned or partly owned by said individual and such net profits are subject to the tax under Article III (A) (4) of these regulations.

(a) Fees paid to duly ordained or licensed clergy:

(1) Fees shall include marriage fees, baptismal offerings, sums received for saying masses for the deceased, services at funerals and other monies received by clergymen, evangelists or religious workers for services performed spiritual or otherwise.

(2) In all cases where a definite amount has been set up or stipulated as a customary fee for a particular service, and the amount received is in excess of such stipulated amount, such excess shall be considered a gift and shall not be deemed taxable.

(3) When no definite amount has been set up or stipulated as a customary fee for a particular service, such amount as is received for any services rendered shall be deemed a fee and as such shall be taxable.

(4) Other compensation and income, as reported on W-2's or 1099's including but not limited to tips, bonuses, moving expense reimbursements, lump sum distribution from qualified pension and profit sharing trusts not made pursuant to employees retirement, profit sharing, "non-competition" covenants, portions of stock options that are not considered capital gains by the City of Barberton, lottery winnings, sports winnings, or gifts of any type (except as stated in Article III (A) (1) (b) (3) of these regulations) in connection with services rendered, and including compensation paid to domestic servants, casual employees and other types of employees.

(5) Payments made to an employee by an employer as sick leave, vacation pay, or any other type of payments made under a wage or salary continuation plan, including "sub" pay (such as pay received from unions by individuals in lieu of wages), during periods of absence from work are taxable when paid.

(6) Payments made to an employee by an employer as separation or severance pay-outs (including, but not limited to separation pay, termination pay, and early retirement incentives) and reportable as earned income (including, but not limited to, sick pay and vacation pay) are taxable when paid if applicable tax has not previously been paid. On going retirement benefits, such as pension payments, are exempt from Barberton income tax. Payouts representing deferred amounts will be taxed (at the cities current tax rate) proportionate to the amounts earned in Barberton.

(7) The employer's cost of group-term life insurance in excess of \$50,000 coverage is taxable to the employee as compensation.

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

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

d. Proceeds of insurance, annuities, Workers' Compensation, Social Security benefits, pensions, compensation for damages for personal injuries, and like reimbursements shall not be considered as income subject to tax or withholding.

e. At the time a contractor or subcontractor applies for a Building Permit, he or she must supply a Barberton Tax Identification Number to the Building Department as evidence of registration with the Income Tax Department.



f. At the time a deed holder signs for water service in the City of Barberton, he or she shall be required to complete a form as prescribed by the Tax Administrator, giving all information necessary to determine the City Income Tax status for all persons living or working at that address.

g. On all salaries, wages, commissions, and other compensation received for work performed on City property when the property is located in a governmental subdivision where there is no municipal income tax levied.

## 2. Non-Residents:

a. In the case of individuals, who are not residents of the City, there is imposed a tax of two percent (2%) on all salaries, income, wages, commissions, and other compensation received (including deposits made by the employee into deferred compensation or medical coverage plans) during the effective period of the ordinance for work done or services performed or rendered within the City. Whether such compensation or remuneration is received directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial. Tax shall not be levied on expenses reported in accordance with federal guidelines for Federal Form 2106, subject to audit and approval by the City Tax Administrator.

b. 12-day occasional entry rule:

A non-resident individual, working for a non-resident employer, who works in Barberton 12 or fewer days per year shall be considered an occasional entrant, and shall not be subject to Barberton municipal income tax for those 12 days. For purposes of the 12-day calculation, any portion of a day worked in Barberton shall be counted as one day worked in Barberton.

Beginning with the thirteenth day, the employer of said individual shall begin withholding Barberton income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to Barberton in accordance with Section 880.08 of the Income Tax Ordinance and Article VI of these Rules and Regulations. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in Barberton by the individual for the first twelve days.

If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the City of Barberton.

The 12-day occasional entry rule does not apply to entertainers or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events.

Income tax withheld by a non-resident employer and paid to Barberton as a result of the employer being subject to the \$150 de minimus provision cannot be refunded to an individual under the 12-day occasional entry provision, since they are two distinct provisions.

c. The items subject to tax under Section 3 of the ordinance are the same as those listed and defined in Article III (A)(1) of these Regulations. For the methods of computing the extent of such work or services performed within the City, in cases involving compensation for personal services partly within and partly outside the City, see Article VI, (A) (6) of these regulations and Section 880.04 of the ordinance.

3. When a resident or nonresident receives compensation for services for sales of real estate or insurance from an employer whose situs is the City of Barberton, that total compensation is taxable at Barberton's tax rate and is payable to the City of Barberton. The site of the property sold or residence of the purchaser of insurance has no bearing on the taxing of the compensation.

4. Resident Businesses:

a. In the case of resident unincorporated businesses, professions, enterprises, S-corporations, undertakings or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of two percent (2%) on the net profits earned, accrued or received during the effective period of the ordinance attributable to the city under the separate accounting method or formula provided in Section 3 of the ordinance, derived from work done or services performed or rendered and business or other activities conducted in the city.

b. The tax imposed on resident associations, S-corporations, or unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof, but the tax imposed on an unincorporated resident entity owned by one person is upon the individual owner. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III, A (4) (e) and (f) below.

c. The tax imposed by Section 3 of the ordinance is imposed on all resident unincorporated entities, S-corporations, or associations having net profits attributable to the City under the method of allocation provided for in the ordinance, regardless of where the owner or owners of such resident unincorporated business entities, S-corporations or associations reside.

d. Resident unincorporated entities, S-corporations or associations owned by two or more persons, all of whom are residents of the City, shall disregard the method of allocation provided for in the 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, a personal return shall be required.

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

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

5. Nonresident Business or Association:

a. In the case of nonresident unincorporated businesses, associations, S-corporations, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of two percent (2%) on the net profits earned, accrued or received during the effective period of the ordinance attributable to the City, under the separate accounting method or formula provided for in Section 3 of the ordinance.

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

c. Nonresident unincorporated entities, S-corporations or associations, owned by two or more persons all of whom are residents of the City, may elect to disregard the method of allocation provided for in the ordinance and pay the tax on the entire net profits. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of the net profits; however, a personal return shall be required.

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

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

6. Imposition of Tax on Net Profits of Corporations:

a. In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the City, there is imposed an annual tax of two percent (2%) on the net profits earned, received or accrued during the effective period of the ordinance attributable to the City under the separate accounting method or formula provided for in Section 3 of the ordinance.

b. In determining whether a corporation is conducting a business or other activity in the City, the provisions of Article III (C) of these regulations shall be applicable.

B. Amplification:

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

1. Net Profits:

a. Net Profits as used in the ordinance and these regulations means net profits derived from any business, profession or other activity or undertaking carried on for profit or normally carried on for profit.

b. Net Profits as disclosed on any return filed pursuant to the provisions of the ordinance shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service, providing such method does not conflict with any provisions of the ordinance or these regulations.

2. Gross Receipts:

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

b. From gross receipts there shall be deducted allowable expenses to arrive at the net profit subject to tax.

3. Expenses:

a. All ordinary and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed but no deduction may be claimed for salary or withdrawal of a proprietor or of the partners, members, or other owners of an unincorporated business, S-corporation, enterprise or association.

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

(2) 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.

(3) 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.

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

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

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

#### 4. Other Income or Losses:

a. Capital gains and losses from sale, exchange or other disposition of property used in the trade or business shall not be taken into consideration in arriving at net profits earned. However, any amount or value received, realized or recognized on a sale or other disposition of tangible personal property or real property used in business, in excess of book value, shall be treated as taxable income under the ordinance to the extent of depreciation allowed or allowable. The balance shall be treated as a capital gain.

(1) Definition of Property Used in the Trade or Business: For purposes of this Article, the term "property used in the trade or business" means property used in the trade or business of a character which is subject to the allowance for depreciation and real property used in the trade or business, held for more than six (6) months, which is not:

(a) Property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year;

(b) Property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or

(c) A copyright, a literary, musical, or artistic composition, or similar property held by the taxpayer.

b. In general, nontaxable income and expense incurred in connection therewith are not to be considered in determining net profits. Income from intangibles, by way of dividends, interest and the like, shall not be included if such income is subject to taxation under the intangible personal property laws of the State of Ohio or is specifically exempt from taxation under said laws.

c. Income derived from the operation of oil and/or gas wells shall be taxable, and expenses incurred in connection therewith shall be considered in determining net profits.

d. The Tax Administrator, upon submission by the taxpayer of satisfactory evidence showing the amount of expenses attributable to nontaxable income, shall permit the taxpayer to include in schedule X expenses attributable to nontaxable income" of his return an amount agreed to by the taxpayer and the Tax Administrator. In lieu of such evidence, five percent (5%) of nontaxable income shall be considered to be expenses attributable to nontaxable income.

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

(1) Where the gross monthly rental of any real properties, regardless of number and value, aggregates in excess of \$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:

(a) Provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$100.00 per month.

(b) Provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds \$100.00 per month.

(c) Provided further that the person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds \$100 per month.

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

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

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

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

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

(7) Nonresidents of the City are subject to taxation only if the real property is situated within the City. Nonresidents, in determining whether gross monthly rentals exceed \$100.00 shall take into consideration only real estate situated within the City.

(8) To be considered nontaxable as ground rents, the property must be under a perpetual leasehold by the term of which the lessor performs no services of any type, including the payment of taxes on the property.

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

f. Income from patents or copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to taxation under the intangible personal property laws of the State. Income in the form of royalties is taxable if the taxpayer activities produced the publication or other product, the sale of which produces the royalties.

g. Net operating losses may be carried forward for five (5) years. No portion of a net operating loss shall be carried back against net profits of a prior year. Losses shall not be allowed (in whole or in part) to be allocated to Barberton as a loss carry forward if the loss occurred during a time period in which gross receipts (in whole or in part) were not allocated and reported to Barberton.

#### C. Allocation of Business Profits:

If the books and records of a taxpayer conducting a business or profession both within and outside the City disclose with reasonable accuracy what portion of its net profits is attributable to business conducted within the City, the separate accounting method may be used. In the absence of such records, the business allocation percentage method will be used.

##### 1. Separate Accounting Method:

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

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

c. In determining the income allocable to the City from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or outside the City.

**2. Business Allocation Percentage Method:**

a. STEP 1: Ascertain the percentage which the average net book value of real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.

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

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

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

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

2) Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs or other amounts required to be paid by the terms of a lease or other arrangement.

b. STEP 2: Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within the City is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees, within and outside the City, during the period covered by the return.

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



(2) Wages, salaries and other compensation shall be computed on the cash or accrual basis in accordance within the method of accounting used for income tax purposes.

(3) In the case of an employee who performs services both within and outside the City the amount treated as compensation for services performed within the City shall be deemed to be:

(a) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the City;

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

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

(d) General Executive Officers; Personal service compensation paid to general executive officers of the taxpayer for acting as such should not be included in the computation of the payroll factor.

(1) General executive officers including chairman, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, comptroller, director and their officers charged with and performing general executive duties of the corporation. An executive officer whose duties or services are primarily restricted to one place of business of the taxpayer, whether within or outside Barberton, is not a general executive officer.

(2) In the case of unincorporated entities, an executive officer shall be deemed to be a partner, co-owner, proprietor or other active participant in the profit of the enterprise.

c. STEP 3; Ascertain the percentage which the gross receipts of the taxpayer derived from sales made, work done and services rendered in the City is of the total gross receipts, wherever, derived, during the period covered by the return.

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

(a) All sales made through retail stores located within the City to purchasers within or outside the City except such of said sales to purchasers outside the city that are directly attributable to regular solicitations made outside the City personally by the taxpayer or his employees.

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

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

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

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

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

d. STEP 4: Add the percentage determined in accordance with steps 1, 2, and 3, or such of the aforesaid percentages as may be applicable to the particular taxpayer's business, and divide the total so obtained by the number of percentages used in ascertaining said total. The result so obtained is the business allocation percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely outside the City. A factor is excluded only when it does not exist anywhere.

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

### 3. Substitute Method:

a. Except as provided, the Tax Administrator is without authority to adjust the business allocation percentage formula to effect a fair, equitable and proper allocation. This power is conferred upon the Board of Review. (See Article XIII of these regulations.)

b. Generally the formula will result in a fair apportionment of the taxpayer's net profits within and outside Barberton. However, due to the peculiar circumstances of certain business, the formula may work a hardship in some cases or result in a tax evasion in others, thus not to do justice to the taxpayer or the City. Accordingly, in such cases, the Board of Review, created by Section 880.15 of the ordinance, in its discretion, 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.

c. The jurisdiction of the Board of Review to make such substitution may be invoked by either the taxpayer or the Tax Administrator. Application shall be made to the Board for this purpose; (a) by the taxpayer, within thirty (30) days after filing its return or report; and (b) by the Tax Administrator, within thirty (30) days after receiving such return or report. Application shall be in writing, shall state the specific grounds upon which the substitution is requested and the relief sought to be obtained. A copy thereof shall be served at the time of filing upon the taxpayer or the Tax Administrator, as the case may be. No specific form need be followed in making such application other than is provided herein or in the Rules of the Board of the Review.

D. Consolidated Returns:

1. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership provided such group files consolidated returns for Federal income tax purposes. For a subsidiary corporation to be included in a consolidated return 80% of its stock must be owned by the other members of the affiliated group. A consolidated return must include all companies, which are so affiliated.

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

a. Permission in writing is granted by the Administrator to file separate returns.

b. A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year.

3. If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income from the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group, but separate returns must be filed for the period after it ceases to be a member. If a corporation has been a member of the affiliated group for less than one month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one month. If a subsidiary is a member of a consolidated group for only part of a taxable year, the income considered to be earned in such fractional part of the year shall be that portion of the net income for the entire year which the number of days it was a member of the group bears to the total number of the days in the taxable year.

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

5. All subsidiary corporations must agree in writing to the filing of the consolidated return, as they will be liable for the tax, as well as the Parent Corporation.

6. In consolidating the net income, the taxable income of each corporation shall be computed in accordance with the provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of the affiliated group.

7. In determining expenses that are not allowable because they are allocable to nontaxable 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 nontaxable income.

E. Exceptions--The following shall not be considered taxable:

1. Poor relief, unemployment insurance benefits, pensions or similar payments including disability benefits received from local, state or federal governments or charitable, religious or educational organizations.

2. Proceeds of insurance, annuities (however, employee's share of premium is taxable if it was not previously taxed), worker's compensation insurance, social security benefits, pensions, compensatory damages for personal injuries but not including damages for loss of profits.

3. Compensation received for damage to property by way of insurance or otherwise.

4. Interest or dividends from intangible property.

5. Military pay and allowances received as a member of the armed forces of the United States and members of their reserve components, including the Ohio National Guard.

6. Income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property, or tax exempt activities

a. Any association or organization falling in the category listed in the preceding paragraph, not exempt from the payment of real estate taxes, is required to file declarations and final returns and remit the tax levied under the ordinance on all business activities of a type ordinarily conducted for profit.

b. Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by a bona fide charitable, religious or educational organization.

c. Where such nonprofit association or organization conducts income-producing businesses both within and without the City, it shall calculate its profits allocable to the City under the method or methods provided above.

7. Salaries, wages, commissions, and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from interstate commerce.

8. Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose income taxes (i.e. Section 718 of the Ohio Revised Code).

9. Dividends and other income of domestic corporations received from their affiliates or subsidiaries, if such affiliates or subsidiaries do not own any property and do no business within the United States.

10. Salaries, wages and other compensation paid by an employer or employers before any deductions (except the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of the ordinance) of a person 17 years of age or younger for the entire year, who is a full time student in an accredited elementary, middle, high school, college or trade school.

11. Alimony and child support received.

12. Rental, housing or automobile allowances (officially designated by the employing organization before payment is made) of a duly ordained, licensed or commissioned clergyman up to the amount expended for such purpose. Unused portion of such allowance at the end of the calendar or fiscal year will be taxed as other compensation.

13. Gains from the involuntary conversion, cancellation of indebtedness, interest in Federal obligations, and income of a decedent's estate during the period of administration (except such income from the operation of a business).

**ARTICLE IV**  
**TAX SHARING AGREEMENTS**

The Director of Finance, or his authorized representative, is hereby authorized to enter into agreements with the United States Commissioner of the Internal Revenue Service, Internal Revenue Service District Director, the State of Ohio Tax Commissioner, and the heads of other state and local taxing authorities providing for the disclosure and exchange, for tax collection purposes only, of returns or return information in there respective jurisdictions.

**ARTICLE V**  
**RETURN AND PAYMENT OF THE TAX**

**A. Date and Requirements for Filing**

1. On or before April 30th of each year, following the effective date of the ordinance and each year thereafter, every person subject to the provisions of Section 3 of the Ordinance shall, except as hereinafter provided, make and file with the Administrator, a return or exemption certificate on a form prescribed by and obtainable upon request from the Administrator, whether or not a tax shows due. The fact that a taxpayer is not required to file a federal tax return does not relieve him from the responsibility of filing a Barberton return.

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

3. Any taxpayer that received taxable income not subject to withholding under the ordinance must file a return.

4. Any taxpayer having income, wages, or other compensation, for which a return must be filed, and also having net profits from a business covering the same or a different period, is required to file only one return.

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

6. Except as provided for herein, the tax is on the partnership or association as an entity, whether resident or nonresident, and a return is required disclosing the net profits allocable to the City and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity or association is required to make a return and pay the tax in accordance with Article III (A) (4) (f) of these regulations.

7. Where a nonresident employee's entire earnings for the tax period are paid by an employer or employers and the two percent (2%) tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire earnings of such nonresident employee-taxpayer, and where the employer of such nonresident employee has filed a report or return, listing, names of employees, wages and deductions for each, and paid to the Director of Finance, such nonresident employee need not file a return.

8. An employee who is permitted to deduct 2106 business expenses from gross wages, salaries, or commissions must file, in a manner prescribed by the Tax Administrator, a return in order to claim such deductions even though all or part of such wages, salaries, or commissions are subject to withholding (See Article XI (B) (3) of these Regulations).

9. Generally, a husband and wife should file a joint return but may elect to file separate returns.

B. Information required and reconciliation with federal returns:

1. a. Every person subject to the provisions of Section 3 of the ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, wages, commissions, and other personal service compensation, net profits from business or other activities, including the rental from real and personal property, and other income taxable under the Ordinance, received for the period covered by the return and such other pertinent facts and information in detail as the Administrator may require.

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

2. In returns filed hereunder there shall be set forth the amount of tax imposed by the Ordinance on all taxable income. Any credits due, as described in Article V, paragraph D (1) of these regulations, may then be deducted and the balance of tax, or overpayments if any, set forth.

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

C. Extensions:

1. Upon written request of the taxpayer and submission of a fully completed form EX or a copy of the applicable federal extension Form 4868, 7004, 2758, etc. on or before the April 30th deadline for filing the return, and for good cause, the Administrator may extend the time for filing such return for a period of not to exceed six (6) months or one (1) month beyond any extension requested of or granted by the Federal Internal Revenue Service.

2. If the taxpayer is not required to file a federal return, a request for an extension of filing time must be in writing stating the reason for the request.

3. The request for extension applies to the filing date of the tax return and not to the payment of any tax liability. Therefore, a tentative return or fully completed form EX accompanied by payment of the estimated tax liability must be filed. No penalty will be assessed in those cases in which the final return is filed and the final tax paid within the period as extended provided all other filing and payment requirements of the ordinance and these regulations have been met.

4. Information returns, schedules and statements needed to support tax returns are to be filed within the time limits set forth for filing the tax returns.

5. No extensions will be considered if the account is delinquent, nor for any reason will extensions be granted for filing the "Declaration of Estimated Tax" and the payment of the estimated taxes declared.

D. Payment with Return.

1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Director of Finance the amount of taxes shown as due thereon. However, if any portion of the tax shown due have been deducted at the source, pursuant to the provisions of Section 880.08 of the ordinance, or where any portion of said tax has been paid by the taxpayer, pursuant to the provisions of Section 880.09 of the ordinance, or where an income tax has been paid to another municipality, a credit for the amount so paid in accordance with Section 880.17 of the ordinance, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.

2. Any taxpayer, which has overpaid the amount of tax to which the City of Barberton is entitled under the provisions of Section 880.07 (E) of the ordinance, may have such overpayment applied against any subsequent liability. At the election of the taxpayer as indicated on the return, any overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than five dollars (\$5.00) shall be collected, refunded, or carry forward. Any refund requested would first satisfy any previous year's delinquent liability (including assessments) in the order in which such delinquent taxes and assessments became due, with any balance remaining being refunded.

3. If penalty and interest charges have been assessed according to Article X of these regulations, all payments made will first be applied toward the assessment and then toward the tax due.



E. Amended Returns:

1. Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 880.13 and 880.14 of the ordinance. Such amended returns shall be on a form obtainable, upon request, from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

2. An amended return must be filed within three (3) months from the final determination of any Federal tax audit affecting the taxpayer's City tax liability. The taxpayer shall pay any additional tax shown due as a result of such final determination or make claim for refund of any overpayment. See Article XI (B) (1) of these regulations.

**ARTICLE VI**

**COLLECTION OF TAX AT THE SOURCE**

A. Duty of Withholding.

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within the City, who employs one or more persons whether as an employee, officer, director or otherwise, to deduct each time any compensation is paid the tax of two percent (2%) from:

a. The gross amount of all salaries, income, wages, bonuses, incentive payments, fees, commissions or other forms of compensation paid to residents of the City, regardless of the place where the services are rendered; and

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

2. All employers within or doing business within the City are required to make the collections and deductions specified in this Article, regardless of the fact that the services on account of which any particular deduction is required, as to residents of the City, were performed outside the city.

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

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

5. Commissions and fees paid to professional men, brokers, and others who are independent contractors and not employees of the employer, are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file returns and pay the tax pursuant to the provisions of Sections 3 and 4 of the Ordinance and Articles V and VII of these regulations.

6. Where a nonresident receives compensation for personal services rendered or performed partly outside the City, the employer shall deduct, withhold and remit the tax on that portion of the compensation, which is earned within the City in accordance with the following rules of apportionment:

a. If the nonresident is a salesman, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within the City bears to the total volume of business transacted by him, except as clarified in Article III (A) (3).

b. The deducting and withholding of personal service compensation of other nonresident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee, which the total number of his working days within the City is of the total number of working days.

c. The fact that nonresident employees are subject to call at any time does not permit the allocation of pay for time worked within the City on a seven-day per week basis. The percentage of time worked in the City will be computed on the basis of a forty-hour week unless the employer notified the Administrator that a greater or lesser number of hours per week is worked.

d. If it is impossible to apportion the earnings as provided above, because of 1.) The peculiar nature of the service of the employee, or 2.) The unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly. With respect to each employee, or group of employees with similar or identical circumstances, the employer shall furnish the Administrator a detailed statement of the facts and method used.

e. The occasional entry into the City of Barberton of a nonresident employee, who performs the duties for which he is employed entirely outside the City but enters the City for the purpose of reporting, receiving instructions, accounting, etc., incidental to his duties outside the City, shall not be deemed to take such employee out of the class of those rendering their service entirely outside the City.

f. Wage continuation plans paid by the employer for purpose of health, rest, recuperation or other regard are deemed to have the same tax status as the primary job assignment or job location of the employee and are taxable on the same ratio as the normal earnings of such employee for his primary job assignment.

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

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

9. An employer whose records show that an employee is a nonresident of the City and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside the City by such employee. Provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Administrator notifies such employer in writing that such employee is a resident of the City. All employees are required to notify the employer of any change of residence and the date thereof.

10. A Barberton employer, required to withhold the tax from a resident of the City of Barberton for work done or services performed in another municipality, and who does so withhold and remit to such other municipality, shall be relieved from the requirements of withholding the Barberton tax from such residents of the City except where the rate of tax for such other municipality is less than the rate of tax imposed by the Barberton income tax ordinance. In such case, the employer shall withhold and remit the difference to the City of Barberton.

11. Subject to the approval by the Director of Finance and/or the Board of Review, the Administrator shall have the authority to permit the filing of individual returns and payment thereon of employers of less than four (4) employees and to enter into agreements with other taxing municipalities permitting an employer to withhold the entire tax on the wages of a taxpayer working in more than one taxing municipality either for the taxing municipality in which the employer has his principal place of business or the taxing municipality in which the employee resides.

12. If not currently required to withhold Barberton income tax, then a non-resident employer, agent of such employer, or other payer not situated in Barberton shall not further be required to withhold Barberton income tax from remuneration paid to employees of the employer until the collective tax liability of the employees initially exceed \$150.00.

Independent contractors of a non-resident employer shall be deemed employees for work performed in Barberton on behalf of the employer, and are subject to the collective tax liability provisions as if they were employees, and are not excluded from taxation by Section 718.03 ORC.

When the collective tax liability exceeds \$150.00, the employer is required to begin withholding the appropriate income tax for Barberton on behalf of all employees performing work in Barberton. The withheld income tax shall be remitted to Barberton in accordance with Section 880.08 of the Income Tax Ordinance. After exceeding \$150.00 de minimus amount, the employer shall continue to have no responsibility for remitting any portion of the initial \$150.00 liability that was not withheld.

Once the collective tax liability has exceeded \$150.00, the employer must withhold income tax for Barberton (i.e., for work performed in Barberton) for the remainder of that calendar year and for subsequent years, even if the liability in subsequent years does not exceed \$150.00. However, if the tax liability for each of the three consecutive years (subsequent to that year in which the employer became liable for withholding the income tax) does not exceed \$150.00, the employer will be considered as not having performed work in Barberton in regard to further tax liability, and will again be subject to Article VI (A) (12) of these regulations.

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

1. The deductions from salaries, wages and other compensation made by employers are to begin with the compensation earned on and after the effective date of the ordinance. The employer (in addition to any return required to be filed with respect to his own earnings or net profits) shall, on or before the fifteenth day of each month, make a return and pay to the Director of Finance the tax withheld during the preceding month. Provided, however, upon approval of the Director of Finance shall have the authority to approve the filing of returns and payment of the tax withheld on a quarterly basis.

a. The Administrator may authorize any employer to file returns and remit the tax withheld on a quarterly basis provided that such authorization does not jeopardize the interest of the city. Quarterly payments will normally be approved for employers whose annual City income tax return shows that taxes withheld for the city averaged less than \$100 per month.

b. Any employer who wishes to file and remit on a quarterly basis may request the authority for quarterly filing from the Administrator. Request must be in writing, stating the name and City of Barberton Withholding Account Number of the employer; the address to which withholding form should be mailed, the estimated amount of tax to be withheld each quarter and the name and title of the person responsible for complying with the withholding requirements of the ordinance.

c. In considering such a request, the Director of Finance will base his decision on the facts, so that the City's best interests of are served. He shall refuse such request if he has reason to believe that the employer is a below average credit risk, engaging in seasonal or transitory business in fact or as to location, or for any other reason known to him which might place a

burden upon the City or where such request is contrary to the policy of the city. The Administrator will notify the employer, in writing, of the decision made upon his request.

d. If the request is granted the notice will specify the effective date of the authorization. In such case the employer shall, on or before the last day of each month following the calendar quarters ending March 31, June 30, September 30, and December 31, make a return and pay to the Director of Finance the tax withheld during the preceding calendar quarter. Once this approval is granted, the employer may continue on such basis unless notified in writing by the Administrator that approval to file quarterly is withdrawn.

e. The Director of Finance may withdraw the authorization from quarterly filing and payments whenever he has reason to believe that the conditions for granting such authorization have changed, were judged incorrectly, were not met or when it is to be the best interest of the City to do so. Notice of the withdrawal shall be made in writing and may be served in person or mailed to the address where the returns are mailed. Proof of mailing furnished by the U.S. Post Office, shall be presumptive proof of receipt by the addressee. In such case, the employer must begin to file monthly.

2. If more than the amount of tax required to be deducted by the ordinance is withheld from any employee's pay, such excess shall be refunded by the employer and an adjustment made on the next withholding deposit equal to the amount refunded. In those cases in which too much has been withheld by the employer from an employee and remitted to the Director of Finance and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain a refund by application to the Administrator except that refunds will not be made unless claimed within three (3) years after the year for which the tax was withheld as provided in Section 16 of the ordinance and Article XI of these regulations. If less than the amount of tax, required to be deducted, is deducted and withheld by the employer in any pay period or pay periods, the deficiency shall be deducted in subsequent pay periods. In those cases in which less than the required amount has been deducted and there has been a termination of the employee-employer relationship, the taxpayer (employee) shall be billed for the amount of tax due.

3. Every employer is deemed to be a trustee for the City in collecting and withholding the tax required under the ordinance to be withheld and the funds so collected by such withholding are deemed to be trust funds.

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

5. On or before the 31st 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 City income tax has been withheld, clearly showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of City of Barberton income tax withheld from such employee.

6. For convenience of employers, the information return referred to in paragraph 5 above may be made in one of two ways at the election of each employer, as follows:

a. Those employers using Form W-2 furnished commercially, may submit a copy of such commercial Form W-2 providing the copy furnished to the City clearly shows the information required in paragraph 5 above.

b. Where the furnishing of this information as indicated above will create a distinct hardship, the employer, upon written request to the Administrator may be permitted to furnish a list of all employees subject to the tax, which list shall show the information required in paragraph 5 above. Such list may be compiled on any mechanical equipment used by the employer, provided the listing is legible. The employers name must be indicated on each sheet, each sheet must be numbered, and the total number of sheets comprising the complete report indicated on the first page.

c. The gross compensation to be reported for each employee shall be for the full twelve (12) calendar months of the year or such portion thereof as the employee reported on was employed.

7. In addition to the Withholding Statements, and at the time they are filed, each employer shall file with the Administrator a Reconciliation of Returns, comparing the returns of Income Tax Withheld to the Total amount of taxes withheld as disclosed by the Withholding Statements.

8. On or before February 28th of each year, each individual, business or business entity required to file Form 1099-MISC with the Internal Revenue Service, must also file a copy of such Form 1099-MISC with the Administrator and a list of all subcontractors and/or non-employees paid an amount less than the amount required before a Form 1099-MISC need be completed, showing name, address, social security number or Federal ID number and total amount paid during the year.

#### C. Fractional Parts of Cent.

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

**D. Domestic Servants.**

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

E. Employers for limited engagements, who make a payment for said engagements as set forth in Section 5 of the Ordinance shall withhold and remit to the City municipal income tax at the current rate on the gross amount so paid.

F. Every contractor performing work for the City or on city owned property located in a non-taxing district, shall be bound by the requirement for Section 5 of the Ordinance, and shall assure that all of its subcontractors performing work for the city adhere to the same provisions.

**ARTICLE VII**

**DECLARATIONS**

**A. Requirements of Filing:**

1. A declaration of estimated tax shall be filed by every taxpayer who may reasonably be expected to have taxable income, the tax on which is not or will not be withheld in full, by an employer or employers. The declaration must be filed only if the estimate of tax that will not be withheld exceeds one hundred dollars (\$100.00). Where required such declaration shall be filed within four (4) months after the beginning of the taxable year.

2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year, after taking into consideration known factors which might alter anticipated income. This provision is further subject to the provisions in Article VII (F) (1).

3. If a taxpayer neglects to file a Declaration, the Administrator, by authority of Section 7 (C) of the Ordinance and Article VIII (C) of these regulations shall make and file a declaration based on the taxpayer's final return filed for the preceding year.

**B. Date of Filing:**

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

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

3. Request for extension of time will not, for any reason, be granted for filing the Declaration of Estimated Tax.

C. Form for Filing

1. Such declaration shall be filed upon a form or forms furnished by, or obtainable upon request from, the Administrator. Credit shall be taken for City of Barberton tax to be withheld from any portion of such income. In accordance with the provisions of section 14 of the Ordinance, credit may be taken for tax to be paid or to be withheld and remitted to another taxing municipality or Joint Economic Development District.

D. Date of Payments:

1. The estimated tax may be paid in full with the declaration when filed or in equal installments on or before the last day of April, July, and October of the current year. The final payment is to be made on or before the last day of January of the following year, for calendar year taxpayers.

2. Fiscal year taxpayers may pay their estimated tax in full with the declaration when filed or in equal amounts on or before the fifteenth day of the fourth, seventh, tenth, and thirteenth month after the beginning of the fiscal period.

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

E. Amount of Each Installment:

1. The original declaration filed on or before April 15th must be accompanied by at least one-fourth (1/4) of the estimated tax shown thereon.

2. The taxpayer will be billed an amount equal to one-fourth of the tax shown on the declaration for each of the remaining payment dates.

3. The mere fact that a taxpayer does not receive a billing does not relieve him of his responsibility and payment of the required amount.

F. Amended Declaration:

1. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration at any time. Such amendment may be made on the regular declaration form obtainable from the administrator or upon notification by the taxpayer. An amendment must be filed on or before each quarterly payment date if there is a change of twenty percent (20%) or more to the original estimate. If upon the filing of the taxpayer's final return, it appears that the taxpayer did not pay at least ninety percent (90%) of his tax liability, as shown on said return, on or before January 31st, or the date fixed by regulations, whichever is applicable, the difference between ninety percent (90%) of said taxpayer's liability



and the amount actually paid shall be subject to interest and penalty charges according to Section 9 of the ordinance and Article X of these regulations. However, any taxpayer whose declared and paid tax is equal to or greater than the tax paid in the prior year shall not be assessed any interest or penalty charges for any taxes found to be due in the current year.

**G. Final Returns Required:**

1. The filing of a declaration does not relieve the taxpayer of the necessity of filing a final return even though there is no change in the declared tax liability. A final return must be filed to obtain refund of any overpayment of five dollars (\$5.00) or more.

**ARTICLE VIII**

**DUTIES AND POWERS OF  
THE DIRECTOR OF FINANCE AND THE TAX ADMINISTRATOR**

**A. Collection of Tax and Retention of Records:**

1. It shall be the duty of the Director of Finance to receive the tax imposed by the ordinance in the manner prescribed herein from the taxpayers, to keep an accurate record, thereof, and to report all monies so received.

2. It shall be the Duty of the Administrator to enforce payment of all taxes owed the City of Barberton, to keep accurate records for a minimum of five (6) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

**B. Enforcement Provisions**

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

2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the ordinance or these rules and regulations, should submit to the Administrator in writing all the facts involved and the ruling sought.

3. These regulations, together with all amendments and supplements hereto and all changes herein, will be on file at the Office of the Administrator at 104 3<sup>RD</sup> Street NW, Barberton, Ohio, and will be open to public inspection.

4. The Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the ordinance.

5. Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 10 and 11 of the ordinance shall apply.

6. Payments received shall first be applied to delinquent penalties and interest, and then to taxes.

7. Each year, during the month of January, the Director of Finance may cause to be published, in a newspaper of general circulation within the City of Barberton, a list of persons who are delinquent in payment of their City Income Tax, or have otherwise failed to comply with the City Income Tax regulations. Provided, that said persons have been notified by regular mail of the date of publication within 30 days prior to publication.

#### C. Estimation of Tax by Administrator

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

1. If the Administrator determines that any taxpayer subject to the provisions of the ordinance has a tax liability for which he has failed to pay the full amount of tax due, the Administrator shall issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.

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

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

(2) A taxpayer may, within fifteen days after the date the proposed assessment was served or mailed, file a written protest with the Administrator. Within fifteen days after receipt of the protest the Administrator shall give the protestant an opportunity to be heard; provided further that the Administrator may extend the date of hearing for good cause shown. After the hearing the Administrator shall withdraw the assessment or he shall adjust or reaffirm the assessment and

it shall then become final. If no protest is filed as herein provided, such proposed assessment shall become final fifteen (15) days after being served.

b. After a proposed assessment becomes final, notice of such final assessment shall be issued and shall be served in the same manner as a proposed assessment.

(1) A taxpayer shall have thirty (30) days after the date the final assessment was served or mailed within which to file written notice of appeal with the Board of Review. Such written notice of appeal shall be filed in a sealed envelope plainly marked "Appeal to Board of Review" and mailed or delivered to the Administrator who shall, within five days after receipt thereof, deliver such appeal to the Chairman of the Board of Review or, if the Chairman is not available, to the Vice-Chairman.

(2) The Board of Review, upon receipt of a notice of appeal, shall within fifteen days notify the Administrator thereon who will forward within fifteen days to the Board a certified transcript of all actions taken by him with respect to said final assessment. Such transcript shall be open to inspection by the appellant and his counsel.

(3) Any taxpayer against whom a final assessment has been issued and who has filed a notice of appeal shall be granted a hearing by the Board of Review. At such hearing the appellant and the Administrator shall be given opportunity to present evidence relating to the said final assessment. After the conclusion of such hearing, the Board of Review shall affirm, reverse or modify the said final assessment and shall furnish a copy of its decision in respect thereof to the appellant and the Administrator. The appellant's copy of said decision shall be served upon him in the same manner as herein provided for the service of assessments.

c. When any taxpayer subject to the provisions of the ordinance has filed a return indicating the amount of tax due and has failed to pay said tax to the City as required by the ordinance, the Administrator need not issue an assessment but may proceed under the provisions of Section 10 and 11 of the Ordinance.

## 2. Provisions Affecting Employers:

a. If the Administrator determines that an employer subject to the provisions of the ordinance has failed to file a return for tax withheld and has failed to pay to the City the full amount of said taxes, the Administrator shall issue a proposed assessment showing the amount of tax due together with any penalties and interest that may have accrued thereon, and the provisions of paragraph C of Section 7 of the ordinance shall then apply.

b. If the Administrator determines that an employer subject the provisions of the ordinance has failed to withhold tax, the Administrator shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon, and the provisions of Section 7 paragraph C of the ordinance shall then apply.

c. When an employer subject to the provisions of the ordinance has filed a return indicating the amount of tax withheld and has failed to pay said tax to the City as required by the ordinance, the Administrator may proceed under the provisions of Section 10 and 11 of the ordinance and need not issue an assessment as provided in Section 7, paragraph C of the ordinance.

## **ARTICLE IX**

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

#### **A. Investigation by Administrator:**

1. The Administrator or his duly authorized agent, is empowered to examine the books, papers, records and copies of Federal income tax returns of any employer, taxpayer or person subject to the ordinance, for the purpose of verifying the accuracy of any return made to the City; or if no return was made, to ascertain the tax due under the ordinance.

2. An employer or taxpayer shall furnish within ten (10) days following a written request, by the Administrator, or his duly authorized agent, the means, facilities and opportunity for making examinations and investigations authorized by the ordinance.

3. The Director of Finance or his authorized representative is hereby authorized to enter into agreements with the United States Commissioner of the Internal Revenue Service, or Internal Revenue Service District Director, the State of Ohio Tax Commissioner, and the heads of other state and local taxing authorities providing for the disclosure and exchange, for the collection of tax purposes only, of returns or return information in there respective jurisdictions.

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

1. The Administrator or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been returned for taxation, or any transaction tending to affect such income. The Administrator may compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transactions of the taxpayer.

2. The Administrator's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Administrator.

3. The Administrator may order the appearance before him, or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholding, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Administrator is specifically authorized to order the appearance of the local manager or representative of any taxpayer.

4. Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show time and place of the hearing and what books, papers or records the witness is to make available at such hearing.

5. The notice shall be served by the Administrator or his duly authorized agent, by delivering it to the person named in the notice or by leaving the notice at his usual place of business or residence, or by mailing it to the person by registered mail, return receipt requested, addressed to his usual place of business or residence.

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

Refusal of any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Administrator or his duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 11 of the ordinance.

#### D. Confidential Nature of Examinations.

Any information gained as a result of any returns, investigations, hearing or verifications required or authorized by this ordinance shall be confidential, except for official tax collection purposes, or in accordance with the proper judicial order, or in accordance with Section 8 (A)(1) of the ordinance. Any person divulging such information in violation of the ordinance shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than five hundred dollars or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the City of Barberton who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

#### E. Retention of Records.

Everyone required to file a return shall keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon income or net profits or both. Such records shall be retained, to compute tax liability or justify the person's exemption certificate, for a period of five (5) years from the date the return is filed or the withholding taxes are paid.

## **ARTICLE X**

### **INTEREST AND PENALTIES**

#### **A. Interest:**

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

#### **B. Penalties:**

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

1. For failure to pay taxes due (other than taxes withheld) one percent (1%) per month or fraction thereof or twenty-five dollars (\$25.00) whichever is greater.

2. For failure to remit taxes withheld from employees:

a. If paid during the first month after the same becomes due, the penalty shall be five percent (5%) of the unpaid tax or twenty-five dollars (\$25.00) whichever is greater.

b. If paid during the second month after the same becomes due, ten percent (10%) of the unpaid tax or twenty-five dollars (\$25.00) per month, whichever is greater.

c. If paid during the third or more months after the same becomes due, fifteen percent (15%) of the unpaid tax or twenty-five dollars (\$25.00) per month, whichever is greater to a maximum of one hundred fifty percent (150%) of the unpaid tax

d. If an employer fails or neglects to withhold Barberton city tax from employees assigned to perform services for a resident incorporated or unincorporated business as required by the ordinance and remit such required withholding to the City of Barberton, after proper notification from the tax department, by the dates prescribed for payment, a penalty shall be imposed equal to the sum of ten percent (10%) of the delinquent payment plus twice the interest charged per Section 9 (A) of the ordinance. The penalty will apply whether or not the employer actually withheld the tax from the employees' pay.

3. For failure to file an annual return by the due date of such return, a penalty of twenty-five dollars (\$25.00) is imposed, even if no tax shows due on said return.

**C. Underpayment of Estimated Tax:**

A fifteen percent (15%) penalty shall be assessed for failure to pay estimated taxes, as described in Section 6 of the ordinance and will be applied as follows:

1. If the taxpayer refuses or neglects to make estimated tax payments as required, the penalty assessed will be fifteen percent (15) of the actual tax liability due the City of Barberton.

2. If the taxpayer makes estimated tax payments, but the total amount paid is less than ninety percent (90%) of the actual tax liability, the penalty assessed will be fifteen percent (15%) of the difference between ninety percent (90%) of the actual tax liability and the amount paid.

D. If penalty and interest charges have been assessed according to Section 9 of the ordinance, all payments made will first be applied toward such assessment and then toward the amount of tax due.

**E. Exceptions:**

1. No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within fifteen (15) days from the date the taxpayer was notified of such findings.

2. In the absence of fraud neither penalty nor interest shall be assessed on any additional taxes resulting from a Federal audit for Federal income tax purposes provided an amended return is filed and the additional tax paid within three (3) months after final determination of the Federal tax liability.

**F. Abatement of Penalty and/or Interest:**

The Director of Finance and/or the City Tax Administrator may abate the penalty or interest or both. A taxpayer may appeal to the Board of Review if abatement is refused.

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

**ARTICLE XI**  
**COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENT**

**A. Unpaid Sums--A Legal Debt:**

1. All taxes imposed by the ordinance and not paid when due become, together with interest and penalties thereon, a debt due the City from the taxpayer and are recoverable, as are other debts by suit. Employers who are required, under Section 5 of the Ordinance, to withhold and remit the taxes required to be withheld at the source, and who fail to withhold and/or remit, become liable to the City in a suit to enforce the payment of the debt created by such failure.

2. No additional assessment shall be made by the Administrator after four (4) years from the time the return was due or filed, whichever is later. Provided, however, there shall be a six (6) year period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report 25% or more of gross income shall be considered a substantial omission.

3. In those cases in which the Commissioner of the Internal Revenue Service and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an assessment can be made by the Administrator is extended to four (4) years from the time of a final determination of the Federal tax liability.

4. Those officers or employees having control or supervision of, or charged with, the responsibility of filing returns and making payments for a corporation or association shall be personally liable for failure to file the return or pay the taxes due as required. The dissolution, bankruptcy, or reorganization of any employer does not discharge the officers' or employees' liability for a prior failure of such business to file a return or pay the taxes due.

**B. Refunds and Overpayments:**

1. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was due, or the return was filed, or three (3) months after the determination of the Federal income tax liability, whichever is later.

2. No refund shall be made to any taxpayer until he has complied with all provisions of the ordinance and has furnished all information required by the Administrator or the amount to be refunded is equal to five dollars (\$5.00) or more.

3. Items included on Federal Form 2106 are eligible as deductions, subject to review and approval by the Administrator, and subject to the two percent (2.0%) limitations.

4. Overpayments of five dollars (\$5.00) or more will either be refunded, or credited to the taxpayer's subsequent year's liability, at his option. However, such refund or credit will first satisfy any previous years delinquent liability and /or assessments, in the order in which such taxes and assessments became due, with any balance remaining being refunded or credited.



## RULES AND REGULATIONS

## ARTICLE XI CONT'D

5. Refunds for days worked out of Barberton are available only to nonresidents, and refunds shall be computed by dividing total wages by total days worked in order to determine an average daily wage. The work year shall be considered two hundred sixty (260) or two hundred sixty-one (261) days. Saturdays and Sundays shall not normally be considered days. Worked. Additions, deletions, or other changes to the method for calculating refunds shall be at the discretion of the Administrator.

### C. Limitations:

Amounts of less than five dollars (\$5.00) shall not be refunded or carried forward to subsequent liabilities..

## ARTICLE XII VIOLATIONS--PENALTIES

### A. No person shall:

1. Fail, neglect or refuse to make any return or declaration required by the ordinance;
2. Make any incomplete, false or fraudulent return; or
3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by the ordinance; or
4. Fail, neglect or refuse to withhold the tax from his employees or remit such withholdings to the Director of Finance; or
5. Refuse to permit the Director of Finance or any duly authorized agent or employee to examine his books, records, papers or federal income tax returns relating to the income or profits of a taxpayer; or
6. Fail to appear before the Administrator and to produce his books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or
7. Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
8. Fail to comply with the provisions of the ordinance or any order or subpoena of the Administrator authorized hereby; or
9. Give to any employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or

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

11. Evade or attempt to evade in any manner the payment of the whole or any part of the tax, penalties or interest imposed by the ordinance.

B. Anyone who violates any part of Section 11 (A) ,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.

C. Prosecutions:

All prosecutions under this section must be commenced within three (3) years from the time of the offense, except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitations 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, whichever is later.

D. Failure to Receive Forms -- Not a Defense:

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

E. Immunity:

That the Director of Finance or the Income Tax Administrator is hereby authorized to grant transactional immunity to a taxpayer who refuses to answer or produce information in response to a subpoena or request on the basis of his privilege against self-incrimination. Transactional immunity shall mean, if the taxpayer would have been privileged to withhold an answer or information in any criminal tax proceedings and he gives an answer he shall not be prosecuted or subjected to any criminal penalty in the courts of this state for or on account of any transaction or matter concerning which he have an answer or produced information

**ARTICLE XIII**  
**BOARD OF REVIEW**

**A. Board of Review.**

1. A Board of Review consisting of three (3) electors of the City of Barberton, one to be appointed by the Mayor, one to be appointed by the Finance Director and the third member to be selected by the two (2) so appointed is hereby created. No member shall be appointed to the Board of Review who holds other public office or appointment. All rules and regulations and amendments or changes thereto, which are adopted by the Director of Finance under the authority conferred by the ordinance are subject to appeal to the Board of Review. After adoption, such rules, regulations, amendments and changes shall be open to public inspections.

2. A majority of the members of the Board of Review shall constitute a quorum. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions.

**B. Appeals by Taxpayers.**

1. The Board of Review shall, on hearing, have jurisdiction to affirm, modify or reverse any assessment, ruling or decision, or any part thereof made by the Administrator from which an appeal has been filed as provided in Section 12 of the Ordinance. Such appeal must be made within fifteen (15) days from the announcement of the ruling or decision to which exception is taken by a taxpayer.

The Board of Review must schedule a hearing within thirty days from the date of the appeal. Its decision must be rendered within thirty days from the date of the closing of the record, and shall be in writing and filed with the Income Tax Administrator.

2. A taxpayer dissatisfied with a decision or filing by the Board of Review may appeal to a court of competent jurisdiction within thirty days from the date of filing of the ruling or decision to which exception is taken.

**ARTICLE XIV**  
**USE OF FUNDS**

(See Section 13 of the Ordinance)

## **ARTICLE XV**

### **CREDITS ALLOWED FOR TAX PAID ANOTHER MUNICIPALITY AND JOINT ECONOMIC DEVELOPMENT DISTRICTS**

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

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

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

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

2. A tax credit in the amount of the tax liability up to a maximum of fifty dollars (\$50.00) shall be awarded to disabled or retired resident individuals as per rules and regulations prescribed by the Director of Finance.

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

1. No credit will be given unless the taxpayer claims such credit on his final return or other form prescribed by the Administrator and presents such evidence of the payment of a similar tax to another municipality or Joint Economic Development District as the Administrator may require.

2. A statement satisfactory to the Administrator from the taxing authority of the municipality or Joint Economic Development District to which the taxes are paid that a City of Barberton resident or his employer is paying the tax shall be considered as fulfilling the requirements of this article.

## **ARTICLE XVI**

### **SAVINGS CLAUSE**

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

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

## **ARTICLE XVII**

### **AMENDMENTS AND SUPPLEMENTS**

A. The effectiveness of these regulations authorized by the Ordinance are to be considered effective December 11, 2000.

B. From time to time amendments and supplements to these regulations may be issued by the Administrator, subject to the approval of the Director of Finance.