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Effective January 1, 2016

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ARTICLE 1:00 PURPOSE

- 1:01 The first chapter of the various income tax ordinances set forth the purpose for which the tax collected will be used. They are not repeated here, other than for personal information, they have no effect on the Rules and Regulations.

ARTICLE 2:00 DEFINITIONS

- 2:01 As used in these Rules and Regulations, the following terms, phrases and words shall have the meaning ascribed to them in these Rules and Regulations. In all definitions contained in these regulations, the singular shall include the plural and the masculine shall include the feminine and the neuter with regard to the terms, phrases, words and their derivatives used herein. For terms not defined in these rules and regulations, refer to the local ordinance.
- 2:02 Allowable Employee Business Expense Deduction means the amount of the individual's employee business expenses reported on the individual's Form 2106 that the individual deducted for Federal Income Tax purposes for the taxable year, subject to the limitation imposed by Section 67 of the Internal Revenue Code. Allowable employee business expenses are ordinary and necessary expenses required for employment. An ordinary expense is one that is common and accepted in the field of trade, business or profession. A necessary expense is one that is helpful and appropriate for the business. An expense does not have to be required to be necessary. To deduct non-reimbursed employee business expenses, an employee must follow the procedures as required by the Internal Revenue Code for deduction of such expenses. Any deduction that may be allowed for municipal tax purposes will be limited to the amount actually allowed and deducted for federal purposes, with appropriate allocation of any deduction attributed to expenses incurred in the performance of services in more than one location or municipality.
- 2:03 Association means any partnership, limited partnership, limited liability corporation and limited liability partnership, Subchapter S Corporation (hereinafter referred to as an 'S Corporation') as defined in the Federal Tax Code or any other form of unincorporated business or enterprise. The term 'association' and the term 'unincorporated business' are interchangeable terms.
- 2:04 Business means an enterprise, cooperative activity, profession, trade or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, proprietorship, partnership, association, corporation or any other entity, excluding, however, all non-profit corporations or non-profit associations which are exempt from the payment of Federal Income Tax due to their non-profit status.
- 2:05 Business Deductions are the ordinary and necessary expenses actually incurred in the operation of the business. See Article 3:08.

- 2:06 Central Collection Agency means the City of Cleveland Division of Taxation (and is also referred to as the Division of Taxation).
- 2:07 Central Collection Agency Member means any municipality which has designated the Division of Taxation, 205 W. St. Clair Ave., Cleveland, OH 44113, as the agency for collecting its income tax.
- 2:08 City as used herein means a Municipal Corporation.
- 2:09 Corporation means a corporation, joint stock company, 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. The term ‘corporation’ as used in these Rules and Regulations does not include S Corporations as defined by the Federal Income Tax Code or any other entity defined as an association or unincorporated business entity.
- 2:10 Correspondence is defined as a letter generated by the Tax Administrator, or his/her designee, to a taxpayer regarding his or her specific municipal income tax matter. Billing statements and other computer program generated notices are not considered correspondence.
- 2:11 Deferred Compensation means income, including qualifying wages, that is earned by an employee for services rendered or performed in one year but not paid to the employee until a future year. Deferred compensation is considered to be earned income and it is taxable to an employee in the year of deferral.
- 2:12 Dishonored Check means any check received in payment of taxes, penalty, interest or service charge that is returned unpaid by the bank or payer for any reason whatsoever.
- 2:13 Employee means one who works for wages, salary, commission or other type of compensation in the service of an employer and shall also include temporary, provisional, casual or part-time employment. Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished, but also as to the details and means by which that result is accomplished. Any person for whom an employer is required to withhold for Federal Income Tax purposes shall, prima facie, be deemed an employee.
- 2:14 Employer means an individual, proprietorship, association, corporation or other entity including nonprofit associations or corporations that employs one or more persons on a salary, wage, commission or other compensation basis, whether or not such employer is engaged in business as herein before defined. The term ‘employer’ includes the State of Ohio, its political subdivisions and its agencies, instrumentalities, boards, bureaus, departments, and any and all other governmental units as well as other governmental subdivisions, agencies, instrumentalities, boards, bureaus, departments to the extent that any such body withholds tax on a mandatory or voluntary basis. No rights, duties, or obligations are imposed with respect to any such body not otherwise authorized by law.

The term ‘employer’ shall be further defined to be an individual, partnership, association, corporation or any other entity which books or contracts for individuals and/or groups to perform or entertain at its place of business or rents facilities for the purpose of providing such entertainment.

The term ‘employer’ does not include any person who employs only domestic help for such person’s private residence.

- 2:15 Fiscal Year means an accounting period of twelve 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 municipal income tax purposes.
- 2:16 Gross Receipts means the gross receipts or sales as indicated on a taxpayer’s Federal Income Tax return as filed with the Internal Revenue Service.
- 2:17 Ordinance means the ordinance enacted by each legislative authority or the taxing authority of the member municipalities of the Central Collection Agency, and any amendments and/or supplements effective on the date each member municipality income tax ordinance was effective (see effective date list) and continuing until repealed. Hereinafter, this will be referred to as “the effective period of ordinance.”
- 2:18 Other compensation shall mean:
- (a) Tips, bonuses, or gifts of any type, and including compensation received by domestic servants, casual employees and other types of employees. These payments are normally reported on form 1099 MISC.
 - (b) If the income appears as part of Medicare wages on a W-2 form and is not shown to be an exception in accordance with this definition, it shall be considered other compensation and is therefore taxable to the individual. This includes but is not limited to:
 - (i) Payments made by an employer to an employee during periods of absence from work are taxable when paid and at the tax rate in effect at the time of payment, regardless of the fact that such payments may be labeled as sick leave or sick pay, sick pay paid by the employer to the employee, severance pay, supplemental unemployment benefits described in Section 3402(o)(2) of the Internal Revenue Code, vacation pay, terminal pay, supplemental unemployment pay, wage and salary continuation plans, payments made for the release of liability related to termination of employment;
 - (ii) Tips, bonuses, fees, gifts in lieu of pay, gratuities;
 - (iii) Strike pay; grievance pay;
 - (iv) Employer paid premiums for group term life insurance to the extent taxable for Federal Income Tax purposes;
 - (v) Car allowances, personal use of employer-provided vehicle;
 - (vi) Incentive payments, no matter how described, including, but not limited to, payments to induce early retirement;

- (vii) Contributions by an employee or on behalf of an employee, from gross wages, into an employee or third party trust or pension plan as permitted by any provision of the Internal Revenue Code that may be excludable from gross wages for Federal Income Tax purposes such as 401K, 403(b), and 457 plans;
 - (viii) Nonqualified Deferred Compensation Plans or programs described in Section 3121(v)(2)(C) of the Internal Revenue Code.
 - (c) Trust payments made pursuant to an employee's retirement.
 - (d) Where compensation is paid or received in property, its fair market value at the time of receipt shall be subject to tax and withholding.
 - (i) Board, lodging or similar items received by an employee in lieu of additional cash compensation shall be included in earnings at their fair market value.
 - (ii) Restricted stock awards that vest over a period of time are taxable at their fair market value at the time they become vested and included in Medicare wages, as shown on the employee's IRS form W-2.
- 2:19 Partnership means a general or limited partnership, or a limited liability company partnership, or any other entity treated as a partnership for Federal Income Tax purposes.
- 2:20 Personal Services means economic services involving either the intellectual or manual personal effort of an individual, as opposed to the salable product of the person's skill.
- 2:21 Place of Business means any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance. A taxpayer does not have a place of business outside of the member municipality solely by consigning goods to an independent entity for sale outside of said municipality.
- 2:22 Rental Income means payments received from the use or occupancy of property. Rental income includes, but is not limited to, lease cancellation payments, advance rent, interest, expenses paid by a tenant in lieu of rent, and property or services provided in lieu of rent. The value of the property or services paid in lieu of rent should be reported as rental income. All ordinary and necessary expenses, i.e., depreciation, property taxes, and repairs are deductible from rental income as properly reported and deducted for federal purposes.
- 2:23 Salaries, Qualifying Wages, Commissions and Other Compensation shall include salaries, qualifying wages, commissions, bonuses, incentive payments, fees and tips or other earned income including distributive share income from an unincorporated business entity or association, that may accrue or be received by an individual, whether directly or through an agent and whether in cash or in property for services rendered.
- 2:24 Tax Administrator means the Commissioner of the Division of Taxation charged with direct responsibility for administration of an income tax levied by the municipality under this chapter.

2:25 Unincorporated Businesses means all businesses not specifically incorporated as a C corporation for Internal Revenue Service purposes. All unincorporated businesses are taxable as partnerships for municipal tax purposes. S Corporations are defined as unincorporated businesses under these Rules and Regulations.

ARTICLE 3:00 IMPOSITION OF TAX

3:01 Resident Employee

- A. The location of the place from which payment subject to municipal income tax is made or where payment is received is immaterial.
- B. The following are items subject to the tax imposed by the rate and income taxable sections of the member municipalities' ordinances:
 - 1. All income, salaries, qualifying wages, bonuses, other compensation and incentive payments earned by an individual whether directly or through an agent, and whether in cash or in property, and whether received or deferred, as well as the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident (as provided in RC Chapter 718), for services rendered during the taxing period as:
 - a. An officer, director or employee of a corporation (including charitable and other non-profit organizations), joint stock associations, or joint stock company, or any other type of entity;
 - b. An employee (as distinguished from a partner, member or owner) of a partnership, limited partnership, S Corporation, Limited Liability Partnership and Limited Liability Corporation or any form of unincorporated enterprise;
 - 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 of a corporation created and owned or controlled by the United States Government, or any of its agencies; or of the State of Ohio or any of its political subdivisions or agencies thereof; or any foreign country or dependency except as provided in the section of the ordinance indicating sources of income not taxable;
 - e. An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, annual, unit of production or piecework rates; and whether paid by an individual partnership, association, corporation (including charitable and other non-profit corporations and associations), governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision, section or unit or any other entity.

2. Commissions earned by a taxpayer whether directly or through an agent and whether in cash or in property for services rendered during the effective period of the ordinance, regardless how computed or by whom or wheresoever paid.
 - a. If the amounts received as a drawing account exceed the commissions earned and the excess is not subject to the demand of the employer for repayment, the tax is payable on the amounts received as a drawing account.
 - b. Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expenses or advances as such from his gross income for the purpose of determining his net profits taxable under Federal law, and the employee is not required to include such receipts as income (or has directly off-setting business expenses) on his Federal Income Tax return.
 - c. If commissions are included in the net earnings of the trade, business, profession, enterprise, or activity, carried on by an unincorporated entity of which the individual receiving such commission is owner or part owner and therefore subject to the tax on the net profits provision of the ordinance, they shall not be taxed under provisions relating to salaries, qualifying wages, or commissions earned.
3. Fees, unless such fees are properly included as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity owned or partly owned by said individual (i.e. fees which are taxable are those fees received by a director or officer of a corporation).
4. Other compensation and other income.
5. Vacation, sickness, or any other types of payments made under a wage or salary continuation plan including 'sub pay' received from a union or other third party in lieu of wages during periods of absence from work are taxable when paid. Payments made by an employer to an employee during periods of absence from work are taxable when paid and at the tax rate in effect at the time of payment. Sick leave or sick pay, vacation pay, terminal pay, supplemental unemployment pay, and severance pay may not be excluded from taxable income.

Payments made to an employee under a wage continuation plan, either directly or by an insurance company or another third party may not be excluded from taxable income. Such payments are attributable to the city of employment. However, payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer are not to be included in qualifying wages or taxable income.

6. Where compensation is paid or received in property, its fair market value at the time of receipt shall be subject to the tax and to withholding. Board, lodging and similar compensation shall be included in earnings at fair market value.
7. Group term life insurance protection not paid by the employee if the coverage paid by the employer exceeds \$50,000.
8. Stock options given as compensation. When exercised, regardless of the treatment by the Internal Revenue Service, the employer is required to withhold on the difference between the fair market value and the amount paid by the employee.

Employers must withhold municipal income tax on the exercise of stock options (qualified or nonqualified) if the employee acquired the option as compensation or in lieu of wages.

An employer, agent of an employer, or other payer is not required to withhold municipal income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock option has been issued or of such corporation's successor entity."

9. Losses from the operation of a business or profession are not deductible from qualifying wages and employee income. Rental and business losses may not be used to offset qualifying wages and wage income.
10. 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 taxable compensation.
11. Intrastate, over-the-road drivers and others with similar situations reporting to a terminal, office, etc. in a member municipality shall allocate to the taxing municipality where the terminal, warehouse, or office is located that portion of income earned or received in said municipality.
12. Income generated from any illegal Federal, State or municipal transaction.

3:02 Non-Resident Employee

- A. In the case of non-residents of the taxing municipality there is imposed under the ordinance, a tax (see tax rate schedule) on all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the non-resident for work done, services performed or rendered, or activities conducted in the municipality, including any net profit of the non-resident, but excluding the non-resident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the non-resident.

- B. The items subject to tax under the rate and income taxable section of the ordinance are the same as those listed and defined in Article 3:01B, hereof. For the methods of computing the extent of such work or services performed within a taxing municipality, in cases involving compensation for personal services partly within and partly without said taxing municipality, See Article 8:02 hereof.

3:03 Unincorporated Business

Unincorporated entities owned by one or more persons of the same taxing municipality and having all income apportioned to said municipality or having any income apportioned to other municipalities not levying a similar tax, shall disregard the method of apportionment provided for in the ordinance and pay to the resident municipality, the tax on the entire net profits thereof. Payment of the tax by the entity on the entire net profits thereof shall constitute payment of all the tax due from the nonresident owners or members thereof on their distributive shares of the entity net profits.

3:04 Resident's Distributive Share of Profits of an Unincorporated Business Entity, Not Attributable to Resident Taxing Municipality

There is imposed an annual tax (see tax schedule) for a resident individual who is a member, partner, shareholder owner or part owner, of an unincorporated business entity or S corporation on the shareholder's distributive share of net profits of the S corporation to the extent the distributive share would be allocated to this state under divisions (B)(1) and (B)(2) of RC 5733.05 if the S corporation were a corporation subject to taxes imposed under RC Chapter 5733, or RC Chapter 718, and the tax shall apply to the distributive share of a shareholder of an S corporation in the hands of the shareholder of the S corporation.

The calculation of any net profits or net operating losses associated with the resident's distributive share shall be calculated in accordance with the requirements proffered in RC Chapter 718 and the local ordinance.

3:05 Corporations

- A. In the case of C Corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the taxing municipality, there is imposed on an annual tax (see tax rate schedule) on the net profits earned during the effective period of the ordinance attributable to said taxing municipality under the formula or separate accounting method provided for in the ordinance.
- B. In determining whether a C Corporation is conducting a business or other activity in a taxing municipality, the provisions of Article 4:00 of these regulations shall be applicable.
- C. C Corporations which are required by the provisions of Section 5727.38 of the Ohio Revised Code to pay an excise tax in any taxable year as defined by the ordinance, may

exclude that part of their gross receipts upon which the excise tax is paid from their net profits for the taxable year. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to tax imposed by the ordinance.

3:06 Effective Period of Tax

- A. The tax imposed by the rate and income taxable section of the ordinance shall be levied, collected and paid with respect to salaries, qualifying wages, bonuses, incentive payments, commissions, fees, other income and other compensation earned during the effective period of the ordinance.
- B. The tax imposed by said rate and income taxable section of the ordinance, with respect to net profits of trade, businesses, professions, enterprises, undertakings and other activities is on the net profits earned during the effective period of the ordinance.

3:07 Amplification

In amplification of the definitions contained in Article 2:00 of these regulations but not in limitation thereof, the following additional information respecting net business profits is furnished.

A. Net Profits

- 1. 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.
- 2. Net profits as disclosed in 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 (provided such method does not conflict with any provisions of the ordinance).
- 3. Income exempted from tax by the RC Chapter 718 and the local ordinance is not to be included in net profits subject to the tax.

B. Expenses

- 1. All ordinary and necessary expenses of doing business, including reasonable compensation paid to employees, shall be allowed but no deduction may be claimed for salary, payment, or withdrawal of a proprietor or of the partners, members, or other owners of an unincorporated business or enterprise, when such salaries, payments or withdrawals are not required to be reported as wages for Federal Income Tax purposes on Federal Form W-2.

- a. 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 by insurance or otherwise, of property used in the trade or business, but the amount may not exceed that recognized for Federal Income Tax purposes. Provided, however, that loss on the sale, exchange or other disposition of depreciable property or real estate, used in the taxpayers business shall not be allowed as a deductible expense.
- b. Current amortization of emergency facilities under the provision of the Internal Revenue Code, if recognized as such for Federal Income Tax purposes, may be included as a deduction expense thereunder.
- c. 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.
- d. Bad debts of a reasonable amount may be allowed in the year ascertained worthless and charged off, or 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.
- e. 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 the taxes on and other expenses of said property are not deductible. The following taxes are not deductible from income:
 - (1) the tax under the ordinance;
 - (2) Federal, State or other taxes based upon income;
 - (3) gift, estate or inheritance taxes; and
 - (4) taxes or assessments for direct benefits or improvements to property that tend to appreciate the value thereof.
- f. In general, non-taxable income and expenses incurred in connection therewith are not to be considered in determining net profits.
- g. If the taxpayer reports income that is non-taxable under the ordinance and such amounts are deducted in order to reconcile the taxing municipality's tax return with the taxpayer's Federal Income Tax return, expenses attributable to this non-taxable income shall not be allowed. In the absence of records showing the actual expenses attributable to such non-taxable income such amount shall be deemed to be equal to five percent of such non-taxable income.
- h. Corporate contributions not to exceed ten (10) percent of the taxable income before the deduction is made to qualified charitable organizations recognized as such by the Internal Revenue Service will be permitted as a business expense. This regulation is to be effective beginning with fiscal or calendar year 1969.
- i. Capital gains and losses from sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned. Any amount received on a sale or other disposition of tangible personal property and/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 allowable under the ordinance. The balance shall be treated as capital gain. Gains or losses from involuntary conversion shall not be taken into consideration in arriving at net profits.

ARTICLE 4:00 DETERMINATION OF APPORTIONMENT OF TAX

A taxpayer's request to use an alternative apportionment method shall be in writing, and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed in the ordinance.

4:01 Separate Accounting Method

- A. The net profits allocable to a taxing municipality from business, professional, or other activities conducted in said taxing municipality by corporations or unincorporated entities (whether resident or non-resident) shall be determined from the records of the taxpayer if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within said taxing municipality.
- B. If the books and records of the taxpayer are used as the basis for apportioning net profits rather than the apportionment 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 his taxing municipality are apportioned with reasonable accuracy.
- C. In determining the income apportioned to a taxing municipality from the books and records of a taxpayer an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without said taxing municipality.

4:02 Apportionment Method (To be used if unable to conform to Article 4:01 hereof)

- A. Step 1:
Ascertain the ratio which the average original cost of real property and tangible personal property, including leasehold improvements, owned or used by the taxpayer in the business or profession and situated within said taxing municipality during the taxable period is of the average original cost of all of the real and tangible personal property, including leasehold improvements, owned or used by the taxpayer in the business or profession during the same period wherever situated.
 - 1. The ratio of the taxpayer's real property and tangible personal property within a taxing municipality is determined by dividing the average original cost of such property within the taxing municipality (without deduction of any encumbrances)

by the average original cost of all such property within and without the taxing municipality. In determining such percentage, property rented to the taxpayer as well as real and tangible personal property owned by the taxpayer must be considered.

- a. Real and tangible personal property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the gross annual rental thereon by eight.
- b. Gross annual rental 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 paid 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 paid as additional rent 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 ratio which the total wages, salaries, commissions, other income and other compensation paid during the taxable period to individuals employed in the business or profession for services performed by employees within the taxing municipality is to the total wages, salaries, commissions, other income, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under section 718.011 of the Revised Code.

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 qualifying wages for purpose of this computation.
2. Qualifying Wages, salaries, other income, and other compensation shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire taxable income or loss of the taxpayer.
3. In the case of an employee who performs services both within and without the taxing municipality, the amount treated as compensation for services performed within the taxing municipality 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 taxing municipality.
 - b. In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received is that which the value of his services within the taxing municipality bears to the value of all his services.

- c. In the case of an employee compensated on a time basis, the proportion of the total amount received by him for time worked within the taxing municipality to his total working time.

C. Step 3:

Ascertain the ratio which total gross sales or receipts of the business or profession from sales and rentals made and services performed during the taxable period in the municipality to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed. (i.e. line 1 of the entity's Federal Tax Return as filed). Income not taxable and deducted on Schedule X is not to be included in Schedule Y.

- D. The business apportionment ratio determined in Step 3 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits allocable to the taxing community

4:03 Operating Loss Carry Forward

- A. Any net operating loss carry forward shall be calculated and deducted in the same manner as provided in RC Chapter 718.

“Pre-2017 net operating loss carry forward” is defined in the local ordinance.

The portion of loss based on income taxable under the ordinance, sustained in any taxable year subsequent to the effective date of the income tax ordinance, and allocable to the taxing municipality may be applied against the portion of the profit of succeeding year(s) allocable to said taxing municipality until exhausted, but in no event for more than five years. No portion of a net operating loss shall be carried back against net profits of prior years.

The loss may continue to be carried forward in subsequent years only when in each year following that in which the loss occurred, the taxpayer has offset the profits of such years up to the entire amount of such profit by the amount of carry forward loss needed to offset such profit. Any amount of carry forward loss not so used is lost for subsequent years.

When succeeding losses are experienced, the first year loss can be carried forward for five years, and the second, third, etc... need not be claimed until the first year loss has been used up. However, in such cases the five-year limitation is followed.

For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty per cent of the amount of the deduction otherwise allowed by division A of this section.

- B. Effective January 1, 2016, in the case of a fiscal year pre-2017 net operating loss, the net operating loss deduction will be that portion of the operating loss that the number of months of the fiscal year after the effective date of the ordinance bears to the total number of months in such fiscal year.
 - 1. A short fiscal year (fiscal year of less than twelve months) in cases where there has been a change in accounting period, where a new taxpayer selects a short fiscal year, or where a new taxpayer operates in the taxing municipality for less than his full accounting period, shall be considered as a full taxable year.
- C. In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:
 - 1. Each year in which the net operating loss was sustained.
 - 2. Method of accounting and apportioning used to determine portion of net operating loss apportioned to the taxing municipality.
 - 3. Amount of net operating loss used as a deduction in prior years.
 - 4. Amount of net operating loss claimed as a deduction in the current year.
- D. The net operating loss of a business which loses its identity through merger, consolidation, or some other means shall be allowed as a carry forward loss deduction to the surviving business entity to the extent permitted by the Internal Revenue Code.

ARTICLE 5:00 RENTALS FROM REAL PROPERTY

5:01 Rentals From Real Property

- A. Rental income received by the taxpayer is to be included in the computation of net profits from business activities under the applicable municipal ordinance.
- B. In determining the amount of gross monthly rental income of any real property, periods during which (by reason of vacancy or any other cause) rental income is not received shall not be taken into consideration by the taxpayer.
- C. Rental income received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- D. Real property, as the term is used in this regulation, shall include commercial property, residential property, farm property, oil and gas wells, easements, licenses, concession agreements, and any and all other types of real estate.
- E. In determining the net profit from rental property, the deductible expenses shall be of the same nature, extent and amount as allowed by the Internal Revenue Service for Federal

Income Tax purposes. Passive losses as defined by the Internal Revenue Service Code are not deductible in this determination.

- F. Owners of rental property who are non-residents of a taxing municipality, whether individuals or business entities, are subject to tax only on the net profit from real property located in said taxing municipality.
- G. Owners of rental property who are residents of a taxing municipality are subject to tax on the net income from rentals regardless of the location of the real property owned excepting that, if any such property is located in and subject to a municipal income tax by another taxing municipality, credit shall be claimed for the tax due or paid such other taxing municipality in accordance with the applicable municipal ordinance.
- H. Associations and corporations and any other form of business entity engaged in the business of owning or managing real estate are taxable only on the portion of income derived from property located in a taxing municipality.
- I. Any person receiving rental income from any property must file a return whether or not there is any tax due.

ARTICLE 6:00 EXEMPTIONS

6:01 General

No person or item of income shall be exempt from the imposition of this income tax unless specifically excluded or exempted by the laws of the United States or the State of Ohio, the municipality's ordinance or these Rules and Regulations. Upon request of the Tax Administrator, any person who claims exemption from tax under the ordinance shall provide detailed information to show the basis of such claim. The information shall be furnished on a form supplied by the Tax Administrator and be returned within thirty days after receipt of the request.

ARTICLE 7:00 CONSOLIDATED AND AMENDED RETURNS

7:01 Consolidated Returns

- A. If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income for the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date each subsidiary became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group; but for the period after it ceases to be a member, separate returns must be filed.

If a corporation has been a member of the affiliated group for less than one month of the taxable year of the group, it may be considered as not being part of that group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one month.

If a subsidiary is a member of the consolidated group for only part of a taxable year, the income considered to be earned in such fractional part of the year shall be that portion of the net income for the entire year which the number of days it was a member of the group bears to the total number of days in the taxable year.

- B. In determining the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during a taxable year, the property fraction (step 1 of the formula) shall be determined on the basis of the average original value of the property during the period such corporation was a member of the group. The rental portion of the fraction, however, shall be computed at eight (8) times the annual rent. The gross receipts and wage fractions shall be based on the actual figures.
- C. 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.
- D. In determining expenses that are not allowable because they are allocable to non-taxable income, such calculations shall be based on the consolidated net income. As an example, inter-company dividends that are eliminated in consolidation will not be taken into consideration in determining non-taxable income.

7:02 Amended Returns

Where necessary, an amended return must be filed in order to report additional income and pay additional tax due, claim a refund of tax overpaid, or correct a mathematical / clerical error in the original return, subject to the requirements and/or limitations contained in the ordinance. Such amended return shall be on a form obtainable on request from the Tax Administrator. A taxpayer may not change the method of accounting, filing status or method of apportionment of net profits after the due date for filing the original return. A taxpayer may not amend a return that was previously filed correctly in an effort to change the taxpayer's status from separate to consolidated or consolidated to separate if the original return status was deemed proper, even when the taxpayer could have elected either status during its original filing.

ARTICLE 8:00 PAYMENT OF TAX

8:01 Withholding Collections at Source

- A. It is the duty of each employer who employs one or more persons on a salary, qualifying wage, commission, or other compensation basis to deduct each time any such compensation is paid to or earned and deferred by an employee subject to the ordinance, the tax at the current rate from such salary, qualifying wage, bonus, incentive payment, commission or other compensation due by said employer to said employee, together with the tax at the current rate from the tips or gratuities reported to said employer by each said employee for Social Security, Medicare or Federal Income Tax purposes and shall make a return and pay to the Tax Administrator the amount of taxes so deducted.

1. All withholdings shall be in compliance with the Ordinance of the member municipality and Section 718 of the Ohio Revised Code.

- B. All employers within or doing business within a taxing municipality 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 taxing municipality were performed at a place of business of any such employer situated outside said taxing municipality.

Employers who do not maintain a permanent office or place of business in the taxing municipality, but who are subject to tax on net profits under the ordinance, are considered to be employers within a taxing municipality subject to the requirement of withholding.

- C. All individuals, businesses, employers, brokers or others doing business who engage persons either on a commission basis or as independent contractors, subcontractors, or contract employees who are not subject to withholding should indicate the total amount of earnings, payments, commissions and bonuses to residents of the taxing municipality (or to non-residents who do business in the taxing municipality) on copies of Federal Form 1099 or successor form, or should attach a list which should indicate social security numbers, names, addresses and amounts paid.

- D. 1. Professional Athletes

In the case of employees who are non-resident professional athletes, the deduction and withholding of personal service compensation shall attach to the entire amount of compensation earned for games that occur in the taxing municipality. In the case of a non-resident athlete not paid specifically for the game played in a taxing municipality, the following apportionment formula must be used:

The compensation earned and subject to tax is the total income earned during the taxable year, including incentive payments, signing bonuses, reporting bonuses, incentive bonuses, roster bonuses and other extras, multiplied by a fraction:

- a. The numerator of the fraction is the number of duty days the athlete spent in the taxing municipality during the taxable year, and the denominator of which is the total number of duty days the athlete must perform for the employer during the entire calendar year.

- 1. A duty day shall consist of all days for which attendance by the athlete is mandatory. These days shall include non-game days spent in the CCA municipality during which any mandatory team activity occurs. Optional team activities and off days shall not be considered a duty day.

2. Entertainers

- a. Any person who shall employ or contract for the services of any entertainer, entertainment act, sports event, promotional booth, special event, band, orchestra, rock group, theatrical performance, lecturers, speakers, etc. (this is not an exhaustive list of the types of entertainers required to withhold, report or pay over a municipal income tax) shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report and pay over to the Tax Administrator the tax at the applicable rate on the gross amount so paid on the completion of the engagement, said reports to be on forms provided by the Tax Administrator.
- b. Any person who, acting as a promoter, booking agent or employer, engages the services of or arranges the appearance of any entertainer, entertainment act, sports event, band, orchestra, rock group, theatrical performance, etc., in the taxing municipality, and who makes any payment arising from said appearance shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report and pay over to the Tax Administrator the tax at the applicable rate, on the gross amount so paid on the completion of the engagement, said reports to be on forms provided by the Tax Administrator.
- c. Any person who rents facilities to any entertainer, entertainment act, sports event, promotional booth, special event, band, orchestra, rock group, theatrical performance, etc. for use in performing services in the taxing municipality, and who makes any payment arising from said use of facilities shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report and pay over to the Tax Administrator the applicable tax at the applicable rate hereof based on the gross amount so paid on completion of the engagement, said reports to be on forms provided by the Tax Administrator.
- d. The income of non-resident entertainers is the entire amount received for performances, engagements or events that occurred in the taxing

municipality. In the case of a non-resident entertainer who is not paid specifically for a performance, the following apportionment formula must be used:

The income earned and subject to the tax is the total annual compensation multiplied by a fraction, the numerator of which is the number of performances the entertainer performed (or was available to perform as, for example with understudies) in the taxing municipality, and the denominator of which is the total number for performances which the entertainer was obligated to perform under contract or otherwise during the taxable year.

- e. Entertainers who have had this tax withheld from their earnings may submit a list of their expenses incurred within the municipality for their performance within that municipality. Expenses that occur outside of the municipality, including overhead, may not be deducted from the earnings. Upon receipt and verification of expenses, the Tax Administrator shall refund any excess taxes withheld to the Entertainer.

3. Employee Reports

In apportioning the earnings of an employee, an employer may accept the written reports of his employee as to any of the items set forth in Article 8:01D.4 hereof. However, the employer shall be responsible for any material error in allocation as to employment within the taxing municipality.

4. Facts and Circumstances Allocation

If it is impossible to apportion the earnings as provided above, because of (a) the peculiar nature of the services of the employee or (b) the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly. With respect to each such employee (or group of employees similarly or identically circumstanced) the employer shall furnish the Tax Administrator a detailed statement of facts.

- E. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions (but not then on the commissions).
- F. An employer required to withhold the tax on compensation by an employee shall, in determining the amount on which the tax is to be withheld, ignore any expense amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided such expenses are incurred in earning compensation, including commission, and are not deducted as a business expense by the employee under Article 3:00 of these regulations.

- G. No person shall be required to withhold tax on wages or other compensation earned for services performed as an employee of a foreign government or international organization as defined by the International Organizations Immunities Act, 22 U.S.C. 288-288f.

8:02 Collection at Source – Return and Payment of Tax Withheld and Status of Employers

- A. Every employer is deemed to be a trustee of the taxing municipality in collecting and holding the tax required under the ordinance to be withheld, and the funds so collected by such withholding are deemed to be trust funds. The dissolution, bankruptcy, merger or spin-off or reorganization of any such employer does not discharge an employer's liability for a prior failure of such business to file a return or pay taxes due.

An officer, agent or employee of an organization may be prosecuted for an offense committed by such organization, and shall be jointly and severally liable to the taxing municipality together with the organization for taxes of the organization's employees if he acts with the kind of culpability required for the commission of the offense, and any of the following apply:

1. In the name of the organization or on its behalf, he engages in conduct constituting the offense or causes another to engage in such conducts or tolerates such conduct when it is of a type for which he has direct responsibility;
2. He has primary responsibility to discharge a duty imposed on the organization by law and such duty is not discharged.

The liability of the officer, agent or employee described herein shall not be discharged by the dissolution, bankruptcy, merger or spin-off or reorganization of the organization or employer.

Any tax deducted and withheld is to be considered paid to the taxing municipality whether or not the employer actually remits the tax to the taxing municipality, for purposes of determining employee payments or credits unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.

- B. If more than the amount of tax required to be deducted by the ordinance is withheld from an employee's pay, such excess may be refunded by the employer or the Tax Administrator, depending upon the circumstances and the time when the over-withholding is determined as follows:

1. Current Employees
 - a. If the over-withholding is discovered in the same quarterly period the employer shall make the necessary adjustment directly with the employee and the amount to be reported on the quarterly Form CCA-102 as withheld shall be the corrected amount.

- b. If the over-withholding is discovered in a subsequent quarter of the same calendar year, the employer may make proper adjustment with the employee. In such case, Form CCA-102 for the quarter in which the adjustment is made shall reflect the total amount actually withheld for the quarter and the amount of the adjustment deducted there from.
- c. If the over-withholding is discovered in the following year, the employer shall notify the Tax Administrator of such over-withholding and the circumstances thereof. Upon proper verification, the Tax Administrator shall refund to the employee the amount of such excess withholding.

2. Former Employees

- a. In case too much has been withheld from an employee who is no longer employed by the employer, the employer shall notify the Tax Administrator of the amount and circumstances of such over-withholding, and the Tax Administrator, after verification, shall then refund to the employee the amount of such excess withholding.
- b. If an error is discovered by the employee, such employee shall file a claim with the Tax Administrator and, upon verification thereof by the employer, the Tax Administrator shall refund to the employee the amount of such excess withholding.

C. The information returns shall be filed with the Agency in the following manner:

- 1. Employers who must withhold CCA tax for 250 or more employees are required to file on magnetic media.
- 2. Employers who must withhold CCA tax for 100 or more employees and are filing W-2 information on magnetic media with the SSA are required to file on magnetic media with CCA.
- 3. All other employers who must withhold CCA tax are required to file a copy of the W-2 issued to the employee clearly showing all information required on Federal Form W-2.

Employers required to file on magnetic media must obtain specifications for filing from the CCA Information Systems Department.

ARTICLE 9:00 INTEREST AND PENALTIES

- 9:01 In addition to any other charges for interest and/or penalties which may be applicable, a charge of fifty dollars (\$50.00) shall be added to the outstanding amount due for any dishonored check. This charge is to offset the cost of additional bookkeeping and

processing and is made irrespective of any charge which may be levied against the maker by his bank. Notice by the Tax Administrator to the taxpayer that a check has been returned unpaid is not required nor is this notice of the above charge required. The tender of payment shall not be considered as received as long as this charge has not been paid.

9:02 Exceptions

- A. 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 thirty days of notification.
- B. 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 months after the final determination of the Federal tax liability.

ARTICLE 10:00 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

10:01 Unpaid Taxes Recoverable as Other Debts

- A. All taxes imposed by the ordinance shall be collectible, together with any interest and penalties thereon, as other debts of like amount are recoverable, including, but not limited to, collection by civil or criminal suit. Employers who are required, under Section 8:01 (Collection at Source) of these Rules and Regulations, to withhold and remit the taxes required to be withheld at the source, and who fail to withhold and/or remit, become liable to the municipality in a civil or criminal action to enforce the payment of the debt created by such failure.
- B. No additional tax liability determination shall be made by the Tax Administrator after three years from the time the tax was due or the return was filed, whichever is later. Provided, however, there shall be a six year statute of limitations on such additional tax liability determinations in the case of a return that omits a substantial portion of income, or the filing of a false or fraudulent return to evade payment of the tax, or failure to file a return.

No tax liabilities of Ten Dollars (\$10.00) or less due to any CCA member will be due, except in cases of taxes withheld by an employer.

- C. In those cases in which the Commissioner of the Internal Revenue Service and the taxpayer have executed a waiver by the Federal Statute of Limitations, the period within which an assessment may be made by the Tax Administrator is extended to one year from the time of final determination of Federal Income Tax liability.

10:02 Refund of Taxes Erroneously Paid

- A. No refund or credit shall be made to any taxpayer until he has filed a complete and final return, complied with all provisions of the ordinance, and has furnished all information required by the Tax Administrator.

No refund or credit will be made for amounts of Ten Dollars (\$10.00) or less to a taxpayer of any CCA member.

Based on the three-year statute of limitations, Taxpayers required to file an annual return must use April 15th as the due date of return. Taxpayers not required to file a return other than a request for refund must use the employer's due date of the return and/or payment date, whichever is later.

- B. Overpayments will be either refunded or credited to the taxpayer's current year liability at his option unless there is a prior outstanding obligation. Where no election has been made by the taxpayer, overpayments of the tax for any year shall be applied as follows:

1. To taxes, penalty and interest owed for any periods in the order in which such become due.
2. To his current estimated tax liability.

If the taxpayer chooses to credit the current year's tax overpayment to the next tax year, and thereafter requests a refund of the credited amount, no interest is due on the refunded amount until 90 days after the filing date of the refund request complete with all necessary attachments and documentation.

ARTICLE 11:00 TAXPAYER RELIEF

11:01 Residents of Taxing Municipalities

When a resident of a taxing municipality is subject to a municipal income tax in another municipality on the same income taxable under the ordinance, such resident may claim a credit up to the percentage allowed by the ordinance (see schedule) but the credit must not be calculated on a tax in excess of the rate in effect in the resident municipality.

In the event a resident is entitled to credit for taxes paid another municipality, such resident is required to file a return in such manner as the Tax Administrator may prescribe.

In the event such resident fails, neglects or refuses to file such return or form as is prescribed by the Tax Administrator, he shall not be entitled to such credit and shall be considered in violation of the ordinance for failure to file a return and make payment of taxes due there under.

The Tax Administrator may require all residents of a member municipality subject to this chapter to file an annual return or an annual exemption certificate.

ORC 718 requires that the resident municipality aggregate all net profit and distributive share gains and losses when determining the amount of net profit and distributive share income taxable by the resident municipality. The resident municipality may allow a credit for taxes paid on any income taxed by both the workplace municipality and the resident municipality. To comply with both provisions and to determine the proper amount of credit, the resident municipality must track the source of the net taxable income back to the workplace municipality.

1. Net Operating Loss (NOL) Offset: Losses are allocated against gains based on the same percentage that each individual income represents a total of all taxable income.
 2. When determining the amount of income taxable by the resident municipality, NOLs that have been included in the resident municipality calculation of taxable income in prior years cannot be considered in calculation of taxable income for the resident municipality in the current year.
- A. If an overall gain results from the offsetting, and losses did occur in one or more Ohio municipalities, the losses shall be allocated to the municipalities where net profits and distributive share income were reported and apportioned in Ohio. To determine the loss allocation:
1. Calculate the sum of all net profit and distributive share income for the those municipalities where positive net profit occurred;
 2. Determine each municipality's percentage of the total positive net profits.
 3. Allocate the total prior year net losses carried forward by the resident municipality to each municipality where positive net profit occurred using the percentage obtained in A.2.
 4. Allocate the total reported Ohio current year apportioned losses to each municipality where positive net profit occurred using the percentage obtained in A.2.
 5. If the apportioned losses exceed the gains reported, the resulting NOL shall be carried forward by the resident municipality.
 6. An overall gain will result in residence credit calculation and allowance if taxes were paid in one or more respective municipalities where the net profit and distributive share income was earned or apportioned as provided in B below.
 7. An overall loss will result in zero resident tax credit. The taxpayer will not have taxable income for residence tax purposes on the net profit and distributive share

portions of the taxpayer's income, and therefore no credit shall be allowed and no refund shall be available to the taxpayer.

- B. The income tax credit available to residents for net profit and distributive share income for tax years 2016 and after is determined by multiplying the lower of:
1. the amount of tax withheld or paid to the municipality where the net profit and distributive share income was earned or apportioned;
 2. the amount of net profit and distributive share income actually subject to tax by the municipality in which the net profit and distributive share income was earned or apportioned multiplied by that municipality's tax rate;
 3. the amount of net profit and distributive share income actually subject to tax by the resident municipality multiplied by the residence municipality tax rate;
 4. the amount of net profit and distributive share income actually subject to tax by the resident municipality, multiplied by the workplace municipality's tax rate,

by the percentage of credit allowed in the resident municipality's income tax ordinance. The result is the maximum credit allowed.

ARTCILE 12:00 DUTIES AND AUTHORITY OF THE TAX ADMINISTRATOR

12:01 Duty to Receive Tax Imposed

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

12:02 Duty to Enforce Collection

It shall be the duty of the Tax Administrator to enforce payment of all taxes owed to each employment and resident taxing municipality, to keep accurate records for a minimum of six years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld, and show the date and amounts of payments thereof.

12:03 Authority to Make and Enforce Regulations

- A. The Tax Administrator is charged with the administration and enforcement provisions of the ordinance and is hereby empowered to adopt and promulgate and to enforce these Rules and Regulations in relation to any matter or thing pertaining to the administration and enforcement of the ordinance.

- B. The Tax 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.
- C. Any taxpayer or employer desiring a special ruling on any matter pertaining to the ordinance or these Rule and Regulations should submit to the Tax Administrator in writing all the facts involved and the ruling sought. Promulgation of a special ruling shall be at the sole discretion of the Tax Administrator. An opinion of the Tax Administrator issued under this section may not be appealed.
- D. These regulations, together with all amendments and supplements hereto and all charges herein, will be on file at the office of the Tax Administrator and will be open to public inspection. The Tax Administrator's office is located in the City Hall of the member municipalities and at 205 W St. Clair Ave., Cleveland, OH 44113.

12:04 Authority to Arrange Installment Payments

- A. Except as otherwise provided in these regulations, the Tax 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 Tax 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.
- B. Failure to make deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand, and the provisions of the chapters pertaining to penalties and interest and collections of unpaid taxes of the ordinance shall apply.

12:05 Authority to Determine Amount of Tax Due

- A. Such determination of tax may be adjusted upon submission by the taxpayer of actual records from which his tax may be computed.

12:06 Authority to Compel Production of Records

- A. The Tax Administrator, or any authorized employee, is authorized to examine the books, papers, records and Federal Income Tax returns of any employer, taxpayer, or person subject to, or whom the Tax Administrator reasonably believes is subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under the ordinance.
- B. The Tax 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 Tax Administrator.

- C. The Tax Administrator may order the appearance before him, or before his duly authorized agent, of any party whom he believes to have any knowledge of taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Tax Administrator is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
- D. Persons required to attend any hearing shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show the time and place of the hearing and what books, paper or records the witness is to make available at such hearing.
- E. The notice shall be served by the Tax Administrator, or his duly authorized agent, by delivering it to the person named personally, or by leaving the notice at his usual place of business or residence, or by mailing it to the person by first class mail addressed to his usual place of business or residence.

12:07 Refusal to Produce Records

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

12:08 Confidential Nature of Information Obtained

Any information gained as the result of any returns, investigations, verifications or hearings before the Tax Administrator or the Board, required by the ordinance or authorized by these Rules and Regulations shall be confidential and no disclosure thereof shall be made except for official purposes, or as ordered by a court of competent jurisdiction.

12:09 Taxpayer Required to Retain Records

All employers and taxpayers are required to keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits, or both. Such records shall be preserved for a period of not less than six years from the date the final return is filed and paid or the withholding taxes are paid.

ARTICLE 13:00 OTHER PROVISIONS

13:01 Appeals

- A. Right to Appeal: An Appeal may be filed when a Taxpayer:

1. Disputes an Assessment issued by the Tax Administrator regarding an underpayment of municipal income tax.
 2. Disputes a reduction in or elimination of a claim for refund, and the Tax Administrator has issued an Assessment notice.
 3. Disputes any Assessment including denial of alternative apportionment issued by the Tax Administrator.
- B. A Taxpayer may appeal to the Local Board of Tax Review by filing a request with the Board. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty (60) days after receipt of the Assessment notice from the Tax Administrator.
- C. The written appeal should be sent to:
- Central Collection Agency
Tax Administrator
205 W St. Clair Ave.
Cleveland, OH 44113
- D. Time Frame:
1. The Local Board of Tax Review will schedule a hearing to be held within sixty (60) days after receiving the Appeal of Assessment. The Taxpayer will receive, by ordinary mail, a notice instructing the Taxpayer of the date of the Appeal Hearing, the location, and the time of the Hearing.
 2. Should the Taxpayer need additional time to prepare, the Taxpayer must request, in writing, an extension of time. This extension should specify the additional time frame necessary to prepare for the hearing. Such extension request will be sent to the same address and individual as shown in C above. The request for extension must be received no later than five working days prior to any scheduled hearing on this matter.
 3. The Taxpayer has the right to waive the hearing.
 4. The Board may allow a hearing to be continued as jointly agreed to by both the Taxpayer and the Tax Administrator. In such case, the hearing must be completed within one hundred twenty (120) days after the first day of the hearing, unless the parties agree otherwise.
- E. The Taxpayer may appear before the board and may be represented by an attorney at law, a certified public accountant, or other representative.

- F. The Board may affirm, reverse, or modify the Assessment or any part of the Assessment issued by the Tax Administrator.
- G. The Board shall issue a Final Determination on the Appeal within ninety (90) days after the Board's final hearing on the Appeal. A copy of its Final Determination will be sent to all parties to the Appeal, by ordinary mail, within fifteen (15) days after issuing the Final Determination.
- H. The Taxpayer and the Tax Administrator both have the right to appeal the Final Determination by the Local Board of Tax Review pursuant to Section 5717.011 of the Ohio Revised Code.

13:02 Procedural Rules for the Local Board of Tax Review

- A. The Board shall adopt Rules governing its procedures. The rules governing the Local Board of Tax Review shall be in writing, and may be amended as needed by the Local Board of Tax Review. The rules may not conflict with the provisions of Section 718.11 of the Revised Code, or the Ordinance of this Municipality. Such amendment will require a majority vote of the membership of the Board, and the amendments must be approved by the Law Director / Solicitor for compliance to Chapter 718 of the Revised Code or the ordinances of the municipal corporation before such vote may commence.
- B. The Board shall keep a record of its transactions. Such records are not public records open or available for inspection under Section 149.43 of the Revised Code. For this reason, any documentation, copies of returns or reports, final determinations, or working papers for each case under Appeal must be maintained in a secure location under the control of the Tax Administrator. No member of the Local Board of Tax Review may remove any such documentation, copies of returns or reports, final determinations, or working papers from the hearing.
- C. Each member of the Local Board of Tax Review shall sign a "Confidentiality Agreement," witnessed by the Tax Administrator or his/her designee. The original of this "Confidentiality Agreement" shall be maintained by the Tax Administrator, with a copy provided to the member of the Local Board of Tax Review and the law director / solicitor for the municipal corporation. Any disclosure of confidential information by a member of the Local Board of Tax Review, obtained as a result of an Appeal, including returns or reports, testimony provided at any hearing, or other information shall constitute a first degree misdemeanor, and each such disclosure shall constitute a separate criminal charge. The legislative authority or top administrative official who made the appointment for a member who divulged confidential information will immediately terminate the member's appointment to the Board.
- D. A member who has a conflict of interest of any kind with an upcoming hearing, taxpayer or case shall immediately notify the other members of the Local Board of Tax Review, and the legislative authority or top administrative official who appointed the member to

the Board. The Board member will immediately be excused from serving on the matter where a conflict exists.

- E. If a member is temporarily unable to serve on the Board due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the Board in the member's place. The appointment of such an individual shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.
- F. Members of the Local Board of Tax Review appointed by the legislative authority of the municipal corporation may be removed by the legislative authority by a majority vote for malfeasance, misfeasance, or nonfeasance in office. To remove such member, the legislative authority must give the member a copy of the charges against the member and afford the member an opportunity to be publically heard in person or by counsel in the member's own defense upon not less than ten (10) days notice. The decision by the legislative authority on the charges is final and not appealable. If the nature of the charges and subsequent testimony would divulge confidential taxpayer information, all protected confidential information must be redacted prior to any such hearing.
- G. A member of the Board who, for any reason, ceases to meet the qualifications for the position prescribed by Section 718.11 of the Revised Code, or the qualifications established by any Ordinance of the municipal corporation shall resign immediately by operation of law.
- H. Vacancy in an unexpired term shall be filled in the same manner as the original appointment, within sixty (60) days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the Board shall impair the power and authority of the remaining members to exercise all the powers of the Board.
- I. The Board, which consists of three members, shall choose one member to serve as Chairperson, and one person to serve as Secretary. Such election shall be made by majority vote of the membership.
 - 1. The Chairperson of the Board shall conduct the meeting, and be responsible for ruling on all procedure and evidentiary matters. The Ohio Rules of Evidence shall serve as a guideline on evidentiary rulings, but shall not be binding on the Board. The Chairperson will collect the written Final Determination from each member, as well as preparing his/her own Final Determination, and will present the resulting decision to the Board members. The Chairperson will provide the written decision of the Board (Final Determination) to the Secretary for distribution. The Chairperson shall gather all confidential documentation (including any audio recording by the Secretary) and return to the secure location of the Tax Administrator at the conclusion of each hearing.

2. The Secretary of the Board shall be responsible for keeping the minutes of the hearing and may, if approved by the Board, have a record of the hearing made by audio means. Such recording will be treated in the same manner as confidential documentation as outlined in #2 and #3 of this document, and shall not leave the secure area under the control of the Tax Administrator. The Secretary shall also provide written notification regarding scheduled hearings to the Taxpayer and/or his/her representative, and to the Tax Administrator. The Secretary shall distribute the Final Determination of the Board following the guidelines established in ORC 718.11.
 3. The Chairperson and Secretary shall serve in such capacity for the duration of their appointment to the Board, or until a majority of the members vote to terminate such appointments and a new election shall immediately take place.
- J. Fitness for Duty: No member of the Local Board of Tax Review shall arrive at any meeting or hearing under impairment of any kind that could affect his/her ability to perform the functions of his/her position on the Board. Any member observing another member who appears to be under impairment shall immediately call for a postponement of the hearing, and shall notify either the legislative authority or top administrative official who appointed the potentially impaired member to the Board. The legislative authority or the top administrative official shall immediately begin an investigation and determine whether or not the member is fit to serve in his/her capacity as a member of the Board.

13:03 Scheduling and Conducting a Hearing

A. Scheduling the Hearing from an Appeal of a Taxpayer

The Local Board of Tax Review shall schedule a hearing to be held within sixty (60) days after receipt of an Appeal. The Taxpayer may request additional time to prepare, or may waive the hearing. The taxpayer may appear before the Board and/or may be represented by an attorney at law, certified public accountant, or other representative. The Board may allow a hearing to be continued if jointly agreed by the parties. In such case the hearing must be completed within one hundred twenty days after the first day of the hearing, unless the parties agree otherwise.

B. Hearing Procedures

The Chairman shall call the meeting to order. The Chairman shall administer an oath to all witnesses who will testify before the Board.

Both parties shall have the right to:

1. Direct testimony, witness testimony and documentary evidence relevant to the appeal

2. Cross examine adverse witnesses, and;
3. Proffer evidence into the record if its admission has been denied.

The Taxpayer and/or his/her representative shall be provided the opportunity to provide testimony first.

At the conclusion of the presentation of all evidence, both parties shall be provided the opportunity to make closing arguments.

The Secretary of the Board shall be responsible for keeping the minutes of the hearing and may have a record of the hearing made by audio means.

C. Final Determination

The Board shall issue a Final Determination within ninety days after the Board's final hearing on the appeal.

The Secretary shall send a copy of the Board's Final Determination by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the Final Determination.

The Taxpayer or the Tax Administrator may appeal the Board's Final Determination as provided in Section 5717.011 of the Ohio Revised Code.

13:04 Issuing a Final Determination

- A. At the conclusion of the final hearing, each member of the Board shall complete a "Decision of Board Member" form, indicating his/her decision on the Appeal and the reasons for affirming, reversing or modifying the decision of the Tax Administrator. The "Decision of Board Member" form shall be as detailed as possible, citing Ordinance, ORC 718, or other pertinent law regarding the decision.
- B. The Chairperson for the Board shall collect the "Decision of Board Member" forms from the other two members. These forms shall be treated as all confidential information, and shall be stored in the secure location under the control of the Tax Administrator.
- C. The majority decision shall prevail, and the Chairman shall issue the decision of the Board, on the form "FINAL DETERMINATION OF THE LOCAL BOARD OF TAX REVIEW." This Final Determination shall be issued within ninety days after the final hearing date. The original of this form, along with the originals of each member's "Decision of Board Member" form, shall be kept in the secure location under the control of the Tax Administrator. No copies shall be removed from the secure location.

- D. Within fifteen (15) days after the Final Determination is made, the Secretary shall mail, by ordinary mail, a copy of the Final Determination form to all parties to the appeal.
- E. The Taxpayer or the Tax Administrator may appeal the Board's Final Determination as provided in Section 5717.011 of the Revised Code.

13:05 Rules of the Income Tax Board of Review for the City of Cleveland

The Board of Review for Cleveland has established its own rules supplement to the above rules. These rules are meant to supplement Articles 13:01 through 13:04. Each member municipality Board of Review establishes its own rules. Practitioners should check with the member municipality's Board of Review for its particular rules.

RULE I Notice of Appeal: Appeals from final assessments by the Tax Administrator shall be made by filing a written notice of appeal in duplicate with the Board of Review within sixty (60) days after the date final assessment was served. Such written notice of appeal shall be filed in a sealed envelope plainly marked 'Appeal to the Board of Review' and mailed or delivered to the Tax Administrator who shall, within fifteen (15) days deliver such appeal to the Chairman of the Board of Review, or if the Chairman is not available, to the Secretary. The error or errors complained of must be set forth in said notice of appeals in clear and concise language. The notice of appeal also shall contain the correct mailing address of the appellant and his duly authorized representative, if any.

RULE II Payment or Waiver: When a taxpayer appeals from the final assessment of the Tax Administrator, the taxpayer shall either pay the disputed assessment or waive the period of limitation on prosecution set forth in Section 192.41 of the Codified Ordinances of the City of Cleveland, Ohio 1976 by signing the waiver of prosecution form provided by the Tax Administrator. No appeal will be considered perfected without the taxpayer making either the aforementioned payment or waiver.

RULE III Hearings: Hearings in private shall be granted on all appeals unless a public hearing is requested by the taxpayer. At such hearing the appellant and the Tax Administrator in person or by duly authorized representative, shall be given an opportunity to present evidence to the issue or issues raised in the notice of appeal. Such evidence may be tendered orally, under oath, or by affidavit or agreed statement.

RULE IV Notice of Hearing: Notice of hearings shall be given to appellant and the Tax Administrator or his duly authorized representative, if any, at least ten (10) days in advance.

RULE V Continuance: Continuances may be granted by the Board on its own motion, or in its discretion, at the request of either party upon application in writing, reasonably made for good cause.

RULE VI Briefs: In the event the parties desire to file briefs, appellant's brief shall be filed in triplicate, within fifteen (15) days after the matter is heard, and the Tax Administrator shall file his brief in triplicate within ten (10) days thereafter. A reply brief may be filed within five days thereafter. Copies of such briefs shall be furnished to the opposing party or his duly authorized representative.

RULE VII Dismissal: Failure of either party to appeal to comply with these rules or attend any hearing of an appeal may be considered by the Board of Review as an abandonment of the cause, and the Board, in its discretion, may dismiss the same for want of prosecution.

RULE VIII Quorum: All business of the Board of Review shall be conducted by a majority of its members who shall constitute a quorum.

RULE IX Record: The name of the appellant, and the filing and hearing dates shall be made public information. A record of the proceedings by the Board shall be made and preserved, and shall be open to inspection only by an appellant, the Tax Administrator, or his duly authorized representative.

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