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#### 193.01 DEFINITIONS.

For purposes of this chapter, the following words and phrases shall have the following meanings ascribed to them respectively.

- (a) “Administrator” means the individual designated by this chapter, whether appointed or elected, to administer and enforce the provisions of this chapter.
- (b) “Association” means a partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
- (c) “Business” means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, including but not limited to, the renting or leasing of property.
- (d) “Corporation” means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, foreign country or dependency.
- (e) “Employee” means an individual whose earnings are subject to the withholding of federal income tax or social security tax.
- (f) “Employers” means an individual, partnership, limited partnership, association, corporation, governmental body, unit or agency, or any other entity who or that employs one or more persons on a salary, wage, commission or other compensation basis.

(g) “Gross receipts” means the total income from any source whatsoever.

(h) “Net profits” means the net gain from the operation of a business, profession or enterprise, after provision for all cost and expense incurred in the conduct thereof, including reasonable allowance for depreciation, depletion, amortization and reasonable additions to reserve for bad debts, either paid or accrued in accordance with recognized principles of accounting applicable to the method of accounting regularly employed, and without deduction of federal taxes based on income, and without deducting taxes imposed by this chapter.

(i) “Nonresident” means an individual, partnership, limited partnership, corporation, association or other entity domiciled outside the City.

(j) “Other entity” means any person or unincorporated body not previously named or defined including, inter alia, fiduciaries located within the City.

(k) “Person” means every natural person, partnership, limited partnership, corporation, fiduciary or association. Whenever used in any clause prescribing and imposing a penalty, “person,” as applied to any association, means the partners or members thereof, and as applied to corporations, the officer thereof.

(l) “Resident” means an individual, partnership, limited partnership, corporation, association or other entity domiciled in the City.

(m) “Taxpayer” means a person, whether an individual, partnership, limited partnership, corporation, association or other entity, required hereunder to file a return or to pay a tax hereunder.

The Singular shall include the plural and the masculine shall include the feminine and the neuter.

(n) “Third party sick pay” means payments received by an employee from either an individual, partnership or corporation who or that has received a premium or other payment from the employer to insure that such payments be made to the employee for periods of time such employee was sick or on temporary disability and not physically working for the employer and the payments are to be considered either wages, salary or other compensation and taxable under this chapter. (1979 Code 98.01)

## 193.02 PURPOSE.

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

(1979 Code 98.02)

### 193.03 IMPOSITION.

Subject to the provisions of Section 193.16, an annual tax shall be imposed on and after January 1, 2013, at the rate of one percent (1%) per annum, on the following:

(a) On all qualifying salaries, wages, commissions and other compensation, as defined in section 718.03 of the Ohio Revised Code (Am. Sub. H.B. 95, 125<sup>th</sup> Ohio General Assembly, effective January 1, 2004), earned or received on and after January 1, 2013, by resident individuals of the City.

(b) On all qualifying salaries, wages, commissions and other compensation, as defined in section 718.03 of the Ohio Revised Code (Am. Sub. H.B. 95, 125<sup>th</sup> Ohio General Assembly, effective January 1, 2004), earned or received on and after January 1, 2013, by nonresident individuals of the City for work done or services performed or rendered in the City.

(c) On the net profits attributable to the City, earned or received on and after January 1, 2013, of all resident S corporations and resident unincorporated businesses, professions and other activities derived from work done, rentals or services rendered or performed, and business or other activities conducted in the City. (1979 Code 98.03)

(d) On the portion of the distributive share of the net profits earned or received on and after January 1, 2013, of a resident individual, S corporation shareholder, partner, or owner of a resident unincorporated business entity not attributable to the City, and not levied against the unincorporated business entity. (Ord. 1995-136. Passed 12-19-95.)

(e) On the net profits attributable to the City earned or received on and after January 1, 2013, of all nonresident S corporations and nonresident unincorporated businesses, professions or other activities, derived from work done, rentals or sales made, or services performed or rendered, and business or other activities conducted in the City.

(f) On the portion of the distributive share of the net profits earned or received on and after January 1, 2013, of a resident individual, S corporation shareholder, partner, or owner of a nonresident unincorporated business entity not attributable to the City, and not levied against the unincorporated business entity.

(g) On the net profits earned or received on and after January 1, 2013, of all corporations derived from work done, sales made, or services performed or rendered, and business or other activities conducted in the City.

(h) Business allocation percentage formula.

(1) Except as otherwise provided in paragraph (d) of this section, net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as

having a taxable situs in the City for purposes of municipal taxation in the same proportion as the average ratio of the following:

(A) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. As used in this subsection, real property includes property rented or leased by the taxpayer, and the value of such property shall be determined by multiplying the annual rental thereon by eight.

(B) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed.

(C) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

(2) In the event the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted to produce that result.

(3) As used in subsection (h)(1) hereof, "sales made in the City" means:

(A) All sales of tangible personal property which is delivered within the City regardless of where title passes, if shipped or delivered from a stock of goods within the City.

(B) All sales of tangible personal property which is delivered within the City, regardless of where title passes, 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 result from that solicitation or promotion.

(C) All sales of tangible personal property which is shipped from a place within the City to purchasers outside the City, regardless of where title passes, if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(i) The portion of a net operating loss sustained in any taxable year subsequent to the effective date of this section as allocable to the City may be applied against the pro rata portion of the profit of succeeding years allocable to the City until exhausted, but in no event for more than five taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.

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

(k) On all third party sick pay earned or received on and after January 1, 2013, by resident individuals of the City or by nonresident individuals who receive such payments as a result of their employment within the corporate limits of the City. (1979 Code 98.03)

(l) On the gross lottery winnings received by resident individuals on and after January 1, 2013 from a lottery commissioned, conducted, or administered by, but not limited to, the State of Ohio, any other state, United States territory, government-benefit multi-state lottery association, or other similar agency.

#### 193.04 EFFECTIVE DATE.

(a) The tax shall be levied, collected and paid with respect to salaries, wages, commissions and other compensation earned or received on and after January 1, 2013, and with respect to the net profit of businesses, professions and other activities earned or received on and after January 1, 2013. However, where the fiscal year of the businesses, professions or other activity differs from the calendar year, the tax shall be applied to that part of the net profits for the fiscal year as shall be earned or received on and after January 1, 2013, to the close of the taxpayer's fiscal year basis.

(b) If by operation of law, the commencement date for the levy, collection and payment of the tax provided for by this chapter is postponed, the alternate date for the commencement of the levy, collection and payment of the tax shall be the beginning of the first month after the legal impediment is removed. (1979 Code 98.04)

#### 193.05 RETURN AND PAYMENT.

(a) Each taxpayer whose earnings or profits are subject to the tax imposed by this chapter shall, whether or not a tax is due thereon, on or before April 15, 2014, and on or before April 15 of each year thereafter, make and file a final return with the Tax Administrator on a form obtainable from the Tax Administrator, setting forth the aggregate amount of gross salary, wages or other compensation, and gross and net profits earned or received by the taxpayer during the preceding year or period and subject to the tax, together with other pertinent information as the Tax Administrator may require. However, when the final return is made for a fiscal year or other period different from the calendar year, the return shall be made within 105 days from the end of the fiscal year or other period.

(b) The return shall also show the amount of the tax imposed on the earnings and profits. The taxpayer making the return shall, at the time of the filing thereof, however, pay to the City Treasurer the amount of taxes shown as due thereon. However, where any portion of the tax has been paid by the taxpayer pursuant to the provisions of this section and Section 193.06, credit for the amount paid shall be deducted from the amount shown to be due, and only the balance, if any, shall be due and payable at the time of filing the final return.

(c) On written request by the taxpayer made on or before the original due date for filing the annual income tax return, the Tax Administrator may extend the time for filing the annual return for a period no earlier than the period specified in section 718.05 of the Ohio Revised Code.

(d) Within three months from the final determination of any federal tax liability affecting the taxpayer's City tax liability, the taxpayer shall make and file an amended City return showing income subject to the tax based on the final determination of federal tax liability, and pay any additional tax shown due thereon or make a claim for refund of any overpayment. (1979 Code 98.05; Ord. 1992-49. Passed 10-6-92.)

(e) Where an employee's entire earnings for the tax period are paid by an employer or employers, and the one percent (1%) tax thereon has in each instance been withheld and deducted by the employer or employers from the taxable amount of the entire earnings of such employee-taxpayer, and where the employer of such employee has filed a return or returns in which such employee's entire and only earnings are reported to the Administrator, and where such employee has no taxable income other than such earnings and the tax so withheld has been paid to the Administrator, the Administrator is hereby authorized to accept such report or returns provided by the employer, unless otherwise specified, as the return required of any such employee. (Ord. 2008-086. Passed 11-4-08)

#### 193.06 COLLECTION AT THE SOURCE.

(a) Each employer within or conducting business within the City who employs one or more persons on a salary, wage, commission or other compensation basis, excluding exempted incomes set forth in Section 193.14 and section 718.03 of the Ohio Revised Code, shall deduct at the time of this payment of salary, wage, commission or other compensation, the tax levied under Section 193.03 of:

(1) All qualifying salaries, wages, commissions, or other compensation of employees who are residents of the City; and

(2) That part of qualifying salaries, wages, commissions or other compensation paid for services rendered within the City by employees who are not residents of the City.

(b) Each employer shall, unless otherwise provided, within thirty days following the close of the calendar quarter, make a return and pay to the Tax Administrator the amount of taxes deducted.

(c) The employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not the taxes have in fact been withheld.

(d) The return shall be on a form prescribed by the Tax Administrator. The employer, in collecting the tax, shall be deemed to hold the same as trustee for the benefit of the City until payment is made by the employer to the City, and any tax collected by the employer from his employees shall, until the same is paid to the City, be deemed a trust fund in the hands of the

employer. However, no person shall be required to withhold the tax on the wages or other compensation paid to domestic servants employed exclusively in or about the person's residence. If a resident of the City receives salaries, wages, commissions or other compensation which are subject to withholding tax imposed by a municipality other than Findlay, the employer may reduce the tax to be withheld and paid to the City by the amount of tax withheld and paid to the other municipality. (1979 Code 98.06)

#### 193.07 DECLARATIONS.

- (a) Any taxpayer who anticipates taxable income which is not subject to Section 193.06 or who engages in any business, profession, enterprise, or activity subject to the tax imposed by Section 193.03, shall file a declaration setting forth the estimated income or the estimated profit from the business activity, with the estimated tax due thereon, if any. However, if a person's income is wholly from wages from which the tax will be withheld and remitted to the City of Findlay in accordance with Section 193.06, the person need not file a declaration.
- (b) The declaration may simply state that the figures used in making the declaration are the figures used in making the estimate declaration for federal income tax, provided it is understood that the figures may be modified so that the declaration required by this section shall set forth only such income as is taxable under the provisions of this chapter.
- (c) The declaration for a person, to be filed on or before April 15 of the tax year, shall be accompanied by payment of at least twenty-two and one-half percent of the estimated annual tax, and at least a similar amount must be paid on or before July 31 and October 31 of the tax year, and January 31 of the subsequent tax year. The estimate may be amended at any time. A final return must be filed and any balance which may be due must be paid on or before the due date set forth in Section 193.05. If the taxpayer has paid more than the amount of tax to which the City of Findlay is entitled, a refund of the amount so overpaid shall be made, or the same may be applied toward the declaration of tax due for the ensuing year. Claims for refunds shall be made on forms prescribed or approved by the Tax Administrator and within the time provided in Section 193.11.
- (d) Except as otherwise provided herein, the declaration, to be filed on the fifteenth day of the fourth month of the tax year, shall be accompanied by payment of at least twenty-two and one-half percent of the estimated annual tax, and at least a similar amount must be paid on or before the fifteenth day of the sixth, ninth, and twelfth months of the tax year. The estimate may be amended at any time. A final return must be filed and any balance which may be due must be paid on or before the due date set forth in Section 193.05. If the taxpayer has paid more than the amount of tax to which the City of Findlay is entitled, a refund of the amount so overpaid shall be made, or the same may be applied toward the declaration of tax due for the ensuing year. Claims for refunds shall be made on forms prescribed or approved by the Tax Administrator and within the time prescribed in Section 193.11.

(e) In any case where a taxpayer has failed to file a declaration, the Tax Administrator, or his duly authorized agent, may estimate the income on behalf of the taxpayer and shall issue a statement of said estimate to the taxpayer. (Ord. 2002-104. Passed 11-19-02.)

#### 193.08 ADMINISTRATION.

(a) The City Treasurer shall receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; shall keep an accurate record thereof; and shall report all moneys so received. All cashiers handling tax moneys shall be subject directly to the City Treasurer, and shall give daily accountings to the City Treasurer.

(b) There is created the position of Income Tax Administrator who is designated to administer and enforce the provisions of this chapter. The position of Income Tax Administrator shall be appointed by the Mayor subject to confirmation by a majority of the members elected to Council. The office of Income Tax Administrator shall be under the Mayor's office, and shall report directly to the Mayor and the City Income Tax Board as provided in this chapter. The Income Tax Administrator shall enforce payment of all taxes owing the City, shall keep accurate records for a minimum of six years showing the amount due from each taxpayer required to file a declaration or make any return, including taxes withheld, and shall show the dates and amounts of payments thereof. Removal of the Income Tax Administrator shall be by an affirmative vote of a majority of the members elected to Council, and only on receiving a recommendation for removal by the Mayor.

(c) The Tax Administrator shall attend all meetings of the City Income Tax Board when requested by any member of the Board, and further shall provide any information requested by the Board that may be deemed necessary by the Board in order to make an accurate appraisal of the operations of the Tax Department to the City Income Tax Board. Information provided to the Board shall be subject to the provisions of Sections 193.09(e).

(d) There is established the City Income Tax Board comprised of the Mayor as chairman, the City Treasurer, City Auditor, City Director of Law and the chairman of the Finance Committee of Council. The Board's functions and duties shall be to make a quarterly review for the performance of the City Income Tax Department to Council including, but not limited to, collections, estimates, delinquencies, legal actions in process and contemplated, and budget. The Board shall also make an annual review of the income tax ordinance and rules and regulations, and make recommendations as to needed changes. The Board shall also perform other duties as delineated in this chapter.

(e) The Tax Administrator is charged with the enforcement of the provisions of this chapter, and is empowered to adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the reexamination and correction of returns. No rule or regulation as adopted or promulgated by the Tax Administrator shall become effective until the rule or regulation has been approved by the City Income Tax Board and Council. After



approval of rules and regulations by the City Income Tax Board, it shall submit the same in writing to the Clerk of Council, and no such rule or regulation shall become effective until approved by Council, or until 60 days after the rule or regulation has been submitted to the Clerk of Council, and during the 60 day period, Council has not disapproved the rule or regulation.

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

(g) Subject to the consent of the City Income Tax Board, or pursuant to the rules and regulations, the Tax Administrator shall have the power to compromise any interest or penalty, or both, imposed by this chapter.

(h) A Department of Taxation is created with the office of the Tax Administrator of the City. The Department of Taxation shall have deputies, clerks and other employees as may be from time to time determined by Council. The Tax Administrator shall make all appointments of personnel, and purchase all equipment, supplies and materials for the Department of Taxation. The Department of Taxation shall be charged with the administration and operation of this chapter, under the direction of the Tax Administrator. The Tax Administrator shall prescribe the form and method of accounts and reports for the Department, as well as the forms for taxpayer's returns and declarations, and shall be charged with the internal examination and audit of all such accounts, and shall exhibit accurate records showing the amount received from each taxpayer, and the date of receipt. The Tax Administrator shall also make written report to Council quarterly of all moneys collected hereunder during the preceding quarter. (1979 Code 98.09)

#### 193.09 INVESTIGATIVE POWERS OF THE INCOME TAX ADMINISTRATOR.

(a) The Income Tax Administrator, or his duly authorized agent or employee, is authorized to examine the books, papers, records and federal or state income tax returns of any employer, or any taxpayer or person subject to the tax, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due. Every employer, supposed employer, taxpayer or supposed taxpayer is directed and required to furnish to the Tax Administrator, or his duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations as are authorized.

(b) The Income Tax Administrator, or his duly authorized agent or employee, is authorized to examine any person, employer or employee under oath concerning any income which was or should have been returned for taxation, and for this purpose, may compel the production of books, papers and records, and the attendance of all persons before him, whether as parties or witnesses, wherever he believes such persons have knowledge of such income.

(c) The refusal of an examination by any employer, employee or person subject or presumed to be subject to the tax shall be deemed a violation of this chapter.

(d) Tax returns and all audit papers and information connected therewith are confidential, and shall be carefully preserved so that they shall not be available for inspection by anyone other than the proper agents of the City for official purposes.

(e) Any information gained as a result of the filing of any tax returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes, and except in accordance with proper judicial order. Any person divulging such information shall be guilty of a misdemeanor of the first degree. Each disclosure shall constitute a separate offense. In addition to the above penalties, any employee of the City who violates the provisions of this section relative to the disclosures of confidential information shall be immediately dismissed from the service of the City.

#### 193.10 INTEREST AND PENALTIES.

(a) All taxes imposed and all moneys withheld or required to be withheld by employers under the provisions of this chapter, and remaining unpaid after they become due shall bear interest at the rate of one and one-half percent (1.5%) per month or fraction thereof.

(b) In addition to interest as provided in subsection (a) hereof, penalties based on the unpaid tax are imposed as follows:

(1) For failure to pay taxes due, other than taxes withheld, ten dollars (\$10.00) or one and one-half percent (1 ½ %) per month or fraction thereof, whichever sum is greater.

(2) For failure to remit taxes withheld from employees, five percent (5%) per month or twenty-five dollars (\$25.00), whichever is greater.

(c) Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith, and the tax paid within the time prescribed by the Tax Administrator; and provided, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, provided an amended return is filed, and the additional tax is paid within three months after the final determination of the federal tax liability.

(d) In addition to any other interest or penalties provided herein, there shall be a penalty of ten dollars (\$10.00) imposed for the failure to file a return when due. (1979 Code 98.11)

#### 193.11 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

(a) All taxes imposed by this chapter shall be collectible, together with any interest, penalties, and reasonable administrative costs thereon, by a civil action at law. All additional assessments

shall be made and all civil actions to recover municipal income taxes and penalties and interest thereon shall be brought within three years after the tax was due or the return was filed, whichever is later.

(1) Reasonable administrative costs associated with the delinquent tax collection, include, but are not limited to, fees no greater than thirty-five percent (35%) of the total delinquent amount, including tax, court costs, interest, and penalties of any post-judgment account assigned by the Tax Administrator to a collection agency and fees no greater than thirty-five percent (35%) of the total delinquent amount, including tax, interest, and penalties of any pre-judgment account assigned by the Tax Administrator to a collection agency.

(b) Taxes erroneously paid shall not be refunded unless a claim for a refund is made. Claims for refund of municipal income taxes shall be brought within the time limitation provided in subsection (a) hereof.

(c) Amounts of less than five dollars (\$5.00) shall not be collected or refunded.

#### 193.12 ALLOCATION OF FUNDS.

Effective January 1, 2011, funds collected under the provision of this chapter shall be deposited in the City Income Tax Administration Fund, and the funds shall be disbursed as follows.

(a) The part necessary to defray all costs of collecting the taxes, and the cost of administering and enforcing the provisions hereof.

(b) One million two hundred thousand dollars (\$1,200,000.00) per year shall be disbursed, appropriated, and allocated to the Capital Improvements/Flood Mitigation Account for 2011 and 2012.

(c) The balance shall be disbursed, appropriated, and allocated as follows.

(1) Eighty-four percent (84%) to the General Fund.

(2) Sixteen percent (16%) to the General Capital Improvement Fund.

(d) A special windfall tax collection provision is hereby enacted and defined as being business income tax collections that exceed the Auditor's estimate for business income tax collections for that calendar year. In such event, fifty percent (50%) of the windfall collections shall be allocated and go to the rainy day fund, and the other fifty percent (50%) shall be allocated and go to the Capital Improvements Fund. When the balance in the Rainy Day Fund reaches one million dollars (\$1,000,000.00), all windfall collections received thereafter are hereby allocated to the Capital Improvements Fund.

[Ord. 2010-071. Passed 11-16-10]

### 193.13 BOARD OF REVIEW.

- (a) The Board of Review, consisting of three electors of the City, one to be appointed by the Mayor, one to be appointed by the City Treasurer, and one to be appointed by the City Director of Law, is created. No member shall be appointed to the Board who holds other public offices or appointments. The members of the Board shall serve without pay.
- (b) A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules, and shall keep a record of its transactions. All appeals to the Board of Review shall be subject to the provisions set forth in section 718.11 of the Ohio Revised Code (Am. Sub. H.B. 95, 125<sup>th</sup> Ohio General Assembly, effective January 1, 2004).
- (c) The Board shall hear and pass on appeals from any ruling or decision of the Tax Administrator.
- (d) All hearings of the Board shall be conducted privately and the provisions of Section 193.09 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.
- (e) Any person dissatisfied with any ruling or decision of the Tax Administrator which is made under the authority conferred by this chapter may appeal therefrom to the Board within thirty days from the announcement of such ruling or decision by the Tax Administrator, and the Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any ruling or decision, or any part thereof.
- (f) The taxpayer or the City may appeal the Board of Review's decisions as provided in sections 718.11, 5717.011 [5717.01.1], and 5703.056 [5703.05.6] of the Ohio Revised Code (Am. Sub. H.B. 95, 125<sup>th</sup> Ohio General Assembly, effective January 1, 2004).
- (g) Each member of the Board shall hold their term for the duration of this chapter and if any members are unable to complete their term, then the office which appointed the member shall name another elector to fill the unexpired term. (1979 Code 98.14)

### 193.14 EXEMPTIONS.

The provisions of this chapter shall not be construed as levying a tax on the following:

- (a) Funds received from local, state or federal governments because of service in the armed forces of the United States by the person rendering such service, or as a result of another person rendering such services. (1979 Code 98.15)
- (b) (1) Poor relief, unemployment insurance benefits, or similar payments received from local, state, or federal governments or charitable or religious organizations; proceeds of insurance other

than third party sick pay; annuities; Worker's Compensation insurance; social security benefits; pension income including, but not limited to, distributions from Internal Revenue Code (IRC) Section 457 plans, IRC Section 401 (a) qualified pension and profit sharing plans, individual retirement accounts (IRAs), simplified employee pensions (SEPs), IRC Section 403(b) plans, governmental plans, and non-qualified deferred compensation plans; compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits or wages; alimony (payments are not deductible); except as provided in Section 3 paragraph (l) of the Ordinance, gambling winnings (losses are not deductible); patent and copyright income and royalties (if the income is derived from intangible property).

(A) Employer contributions on behalf of an employee to a non-qualified deferred compensation plan, which may be considered wages subject to social security and medicare withholding, shall not be considered wages subject to the tax imposed by this chapter. (Ord. 1995-136. Passed 12-19-95.)

(c) Dues, contributions and similar payments received by charitable, religious, educational or literary organizations or labor unions, lodges and similar organizations.

(d) Receipts from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide charitable, religious and educational organizations and associations.

(e) Any association, organization, corporation, club or trust which is exempt from federal taxes on income by reason of its charitable, religious, educational, literary, scientific or other such purposes.

(f) Gains from involuntary conversions, cancellation of indebtedness, interest on federal obligations, items of income which are preempted by the Ohio Constitution, statutes or case law from taxation by municipalities, and income of a decedent's estate during the period of administration (except income from the operation of a business).

(g) Earnings and income of all persons under sixteen years of age, whether residents or nonresidents.

(h) This chapter shall not apply to any person, firm, corporation or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for.

(i) Mentally handicapped and developmentally disabled employees earning less than minimum wage while employed at a government sponsored sheltered workshop shall be exempt from the levy of the tax provided herein. (1979 Code 98.15)

#### 193.15 REFUNDS.

If it appears that any taxpayer has paid more than the amount of the tax to which the City is entitled under the provisions of this chapter, a refund of the amount so overpaid shall be made, provided a proper claim for refund of the overpayment of tax has been filed by the taxpayer. (1979 Code 98.16)

#### 193.16 TERM.

This chapter shall continue and be effective for an indefinite duration. Provided, that the portion of tax herein authorized in excess of one percent (1%), that is one-quarter (1/4) of one percent (1%), shall continue in effect through December 31, 2012.

#### 193.17 TAX CREDIT TO RESIDENTS.

Repealed. (Ord. 2008-086. Passed 11-4-08.)

#### 193.99 PENALTY.

(a) Any person who:

- (1) Fails, neglects or refuses to make any return or declaration required by this chapter; or
- (2) Makes any incomplete, false or fraudulent return; or
- (3) Willfully fails, neglects or refuses to pay the tax, penalties or interest imposed by this chapter; or
- (4) Willfully fails, neglects or refuses to withhold the tax from his employees or remit such withholding to the Administrator; or
- (5) Refuses to permit the Administrator, or any duly authorized agent or employee, to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
- (6) Fails to appear before the Administrator and to produce his books, records, papers or federal income tax returns relating to income or net profits of a taxpayer upon order or subpoena of the Administrator; or

(7) Refuses to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or

(8) Fails to comply with the provisions of this chapter or any order or subpoena of the Administrator; or

(9) Gives to an employer false information as to his true name, correct social security number and residence address, or fails to promptly notify an employer of any change in residence address and date thereof; or

(10) Fails to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and this Municipality's income tax withheld, or to knowingly give the Administrator false information; or

(11) Attempts to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter; shall be guilty of a misdemeanor of the first degree for each offense.

(b) Prosecutions for an offence made punishable under this section or any other provision of this chapter shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

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

## Rules & Regulations

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Article I: Definitions

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

A. Administrator means the individual designated by the Ordinance to administer and enforce the provisions of the Ordinance, regardless of the particular title assigned such individual.

B. Association means a partnership, general partnership, limited partnership, limited liability company (recognized or taxed as a partnership by the Federal Internal Revenue Service), limited liability partnership, or cooperative; or a form of unincorporated entity owned by two or more persons. Association also means a limited liability company owned by only one entity that is not an individual. A limited liability company owned by one individual is not an association.

C. The Board means the Board of Review provided for by Section 13 of the Ordinance.

D. Business means an enterprise, cooperative activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit whether by an individual, partnership, association, corporation or any other entity. The ordinary administration of a decedent's estate by the executor or administrator, and the mere custody, supervision and management of trust property under passive trust, whether intervivos or testamentary, unaccompanied by the actual operation of a business or unaccompanied by the management or control of lottery winnings as herein defined shall not be construed as the operation of a business.

An activity or undertaking is considered a business if the deductions are allowable for federal income tax purposes under Internal Revenue Code sections 162, 212(1), and 212(2); and if it is determined that the taxpayer entered into and/or continued the activity with the objective of making a profit. In determining the taxpayer's objective, the factors that shall be taken into consideration include, but are not limited to: (1) the manner in which the taxpayer carries on the activity, (2) the expertise of the taxpayer or his advisors, (3) the time and effort expended by the taxpayer in carrying on the activity, (4) expectation that assets used in the activity may appreciate in value, (5) the success of the taxpayer in carrying on other similar or dissimilar activities, (6) the taxpayer's history of income or losses with respect to the activity, (7) the amount of occasional profits, if any, which are earned, (8) the financial status of the taxpayer, and (9) elements of personal pleasure, personal use, or recreation.

If, in the case of an audit, the Federal Internal Revenue Service determines or accepts that the taxpayer's activity or undertaking is a business, the activity or undertaking shall be considered a business by the City of Findlay subject to the provisions of these Rules and Regulations. Except



in the case of an audit, the mere fact that the Federal Internal Revenue Service has not disputed a taxpayer's claim that an activity or undertaking is a business does not obligate the City of Findlay to conclude that the activity or undertaking is a business. Subject to the provisions set forth in Articles V and XI of these Rules and Regulations, the City shall use comparable guidelines as specified in U. S. Treasury Department Final Regulation §1.183-1(c) regarding the presumption that the taxpayer is engaged in an activity with the objective of making a profit.

E. Business Allocation as used in these regulations, means the portion of net profits to be apportioned to the City of Findlay as having been made in the City of Findlay as provided for in Section 3 of the Ordinance.

F. City means City of Findlay.

G. Corporation means an Internal Revenue Code Subchapter C corporation, an Internal Revenue Code Subchapter S corporation, a limited liability company (recognized or taxed as a corporation by the Federal Internal Revenue Service), a corporation, or other incorporated entity organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency. A limited liability company owned by one individual is not a corporation.

H. Employee means one who works for wages, salary, commission or other types of compensation in the service of an employer. Any person upon whom an employer is required to withhold for either federal income or Social Security or on whose account payments are made under the Ohio Workers' Compensation law shall prima facie be an employee.

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

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

K. Gross Receipts means total income from any source whatsoever. In the case of S corporations, general partnerships, limited partnerships, limited liability companies, limited liability partnerships, and other associations, gross receipts shall include income from rentals and leases of real and tangible personal property.

L. Net Profit means a net gain from the operation of a business, profession, enterprise or other activity carried on with a profit objective or ordinarily carried on with a profit objective after provision for all ordinary, reasonable, and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, without deduction of taxes imposed by this Ordinance, federal, state, and other taxes based on income exclusive of the amount of Ohio franchise taxes computed on the net worth basis; and in

the case of an association, without deduction of salaries paid and guaranteed payments and other similar amounts paid, issued, or accrued to partners, former partners, members, former members, and other owners; and in the case of a real estate investment trust and regulated investment company, without deduction of dividends to, distributions to, or amounts set aside for or credited to the benefit of investors allowed as a deduction in the computation of federal taxable income; and otherwise adjusted to the requirements of this Ordinance.

Net profit for a taxpayer other than an individual means “adjusted federal taxable income” as defined in section 718.01 of the Ohio Revised Code (Am. Sub. H.B. 95, 125<sup>th</sup> Ohio General Assembly, effective January 1, 2004). Unless otherwise provided, net profit for an individual means the profit required to be reported on schedules C, E, and F for federal incomes tax purposes without deductions for adjustments to federal gross income as, but not limited to, a health savings account, moving expenses, self-employment tax, self-employed SEP, SIMPLE, and qualified plans, charitable contributions, and self-employed health insurance.

See also definition of “Business” and Article III(A)(7).

M. Non-resident means an individual domiciled outside the City of Findlay and does not meet the definition of “resident” under this Article of the Rules and Regulations.

N. Non-resident Unincorporated Business Entity means one not having an office or place of business within the City of Findlay.

O. Persons means every natural person, partnership, fiduciary, association, corporation, or other entity. Whenever used in a clause prescribing or imposing a penalty, the term PERSON as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to a corporation not having any partner, member or officer within this municipality, or any employee or agent of such unincorporated entity or within this municipality, any employee or agent of such unincorporated entity or corporation who can be found within the corporate limits of Findlay. A monetary penalty can be imposed on an entity that is not an individual.

P. 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.

Q. Resident means an individual domiciled in Findlay.

The criteria to be used in determining residence or domicile shall include, but are not limited to: (1) mailing address, (2) voter registration, (3) location of school attended by children, (4) driver’s license address, (5) automobile registration, (6) residence specified on Ohio Income Tax Return by school district, (7) county in which personal property tax return is filed, if any, and (8) other evidence which is related to residency/domicile.

R. Resident Unincorporated Business Entity means an unincorporated business entity having an office or place of business within Findlay.

S. Taxable Income means qualifying wages, salaries and other compensation paid by an employer or employers before deductions of any kind, and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of the Ordinance and these regulations.

T. Taxable Year means the calendar year, or the fiscal year, used as the basis on which 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.

U. Taxpayer means an individual, association, corporation or other entity required by the Ordinance to file a return and/or to pay a tax.

V. Gross Lottery Winnings means the gross proceeds, receipts, payments, or winnings from a lottery commissioned, conducted, or administered by, but not limited to, the State of Ohio, any other state, United States territory, government-benefit multi-state lottery association, or other similar agency.

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

## Article II: Purpose

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

## Article III: Imposition of Tax

### A. Bases

#### 1. Resident employee

a. In the case of residents of the City of Findlay an annual tax of 1.25% is imposed on all qualifying salaries, wages, commissions, and other compensation, as defined in section 718.03 of the Ohio Revised Code (Am. Sub. H.B. 95, 125<sup>th</sup> Ohio General Assembly, effective January 1, 2004), earned or received during the effective period of the Ordinance. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 3, paragraph A of the Ordinance, the source of the earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings wherever earned or paid are taxable.

b. The following are items which are subject to the tax imposed by Section 3, paragraph A of the Ordinance:

.1 Salaries, wages, bonuses and incentive payments earned or 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:

.01 An officer, director or employee of a corporation (including charitable and other non-profit organizations), joint stock association, or joint stock company;

.02 An employee (as distinguished from a partner or member) of a partnership, limited partnership, or association;

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

.04 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 Section 3 of the Ordinance.

.05 An employee of any other entity or person, whether based on hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates; whether paid by an individual, partnership, association, corporation (including charitable and other non-profit corporations), governmental administration, agency, authority, board, body, branch, bureau, department, division, sub-division, section or unit, or any other entity.

.2 Commissions earned or received 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 wheresoever paid.

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

.02 Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employee deducts such expenses of advances as such from his gross income for the purpose of determining his net profits taxable under federal law, and the employee is not required to include such receipts as income on his federal income tax return.

.3 Fees, unless such fees are properly includable as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity owned or partly owned by said individual and such net profits are subject to the tax under Section 3, paragraph C of the Ordinance.

.4 Other compensation, including tips, bonuses or gifts of any type, and including compensation paid to domestic servants, casual employees and other types of employees.

.5 Payments made to employees by an employer as vacation pay, accumulated sick leave pay, severance pay, back pay, retroactive pay increases, or other supplemental wages are taxable. Payments made to an employee by an employer under a wage continuation plan during periods of disability or sickness are taxable as in third party sick pay and third party disability where the premium is paid by the employer.

c. Where compensation is paid or received in property, its fair market value at the time of payment or receipt, shall be subject to the tax imposed by this Ordinance and Article VI of these Rules and Regulations. Except in the case of a home or parsonage furnished by a church or an integral agency of a church to a duly ordained, commissioned, licensed, or designated minister, board, lodging, utilities, and similar items received by an employee in lieu of additional cash compensation shall be subject to the tax.

.1 The gross parsonage or housing allowance paid by a church or an integral agency of a church to a duly ordained, commissioned, licensed, or designated minister shall be subject to the tax. A deduction or exclusion shall be allowed to the minister for personal home expenses and utilities as reported for federal income tax purposes and properly allocable to the income and expenses subject to these Rules and Regulations.

.2 Board and lodging provided by the employer on the employer's premises shall not be considered wages or compensation if the employee is required to accept the board and lodging as a condition of employment.

.3 Meals provided by the employer on the employer's premises for the convenience of the employer shall not be considered wages or compensation to the employee.

2. Non-resident Employee:

a. In the case of individuals who are not residents of Findlay, there is imposed under Section 3, paragraph B of the Ordinance, a tax of 1.25% on all qualifying salaries, wages, commissions, and other compensation, as defined in section 718.03 of the Ohio Revised Code (Am. Sub. H.B. 95, 125<sup>th</sup> Ohio General Assembly, effective January 1, 2004), earned or received during the effective period of the Ordinance for work done or services performed or rendered within Findlay whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place for which payment is made is immaterial.

b. The items subject to tax under Section 3, paragraph B of the Ordinance are the same as those listed and defined in Article III(A)(1). For the methods of computing the extent of such work or services performed within Findlay, in cases involving compensation for personal services partly within and partly without Findlay, see Article VI(A)(6).

3. Imposition of Tax on Net Profits of Associations, General Partnerships, Limited Partnerships, Limited Liability Companies (recognized or taxed as partnerships by the Federal Internal Revenue Service), Limited Liability Partnerships and other unincorporated entities:

a. In the case of associations, general partnerships, limited partnerships, limited liability companies (recognized or taxed as partnerships by the Federal Internal Revenue Service), limited liability partnerships, and other unincorporated entities that conduct business in, operate in, engage in, prosecute in, or carry on activities in Findlay, irrespective of whether such association has an office or place of business in Findlay, there is imposed an annual tax of 1.25% on the net profits earned, accrued, or received during the effective period of the Ordinance. The income attributable to Findlay shall be determined using the formula or separate accounting method provided for in Section 3 of the Ordinance and Article III(B) of the Rules and Regulations derived from sales made, work done, or services performed or rendered and business or other activities conducted in Findlay.

b. In the case of a non-resident individual who is the sole owner of a limited liability company, sole proprietorship, or other unincorporated entity that conducts business in, operates in, engages in, prosecutes in, or carries on activities in Findlay, irrespective of whether such individual maintains an office or place of business in Findlay, there is imposed an annual tax of 1.25% on the net profits earned, accrued, or received during the effective period of the Ordinance. The income attributable to Findlay shall be determined using the formula or separate accounting method provided for in Section 3 of the Ordinance and Article III(B) of the Rules and Regulations derived from sales made, work done, or services performed or rendered and business or other activities conducted in Findlay.

.1 A net loss sustained by an association, a non-resident individual, or other unincorporated entity shall be allocated to Findlay in the same manner as provided in Article III(A)(3)(a) or (b) for allocating net profits to Findlay.

.2 In such case where the entire net profits of an association or other unincorporated entity are fully attributable to Findlay, the tax imposed on the entity shall constitute all the tax due from the entity's owners, partners, or members for their distributive shares of the net profits. Provided, however, the tax due must be paid by the association or other unincorporated entity and received by the Administrator. A tax return and payment of tax shall be required from any individual, owner, partner, or member having income subject to Findlay tax, other than their distributive share of the net profits from the association. [For tax on that part of a resident owner's distributive share of net profits not taxed against the entity by Findlay, see Article III(A)(4)].

4. Imposition of Tax on Resident Individual's Distributive Share of Profits of an Association, General Partnership, Limited Partnership, Limited Liability Company (recognized or taxed as a partnership by the Federal Internal Revenue Service), Limited Liability Partnership, or Other Form of Unincorporated Entity, Not Attributable to Findlay: (See Article XVII for Credits)

a. A resident individual who is the sole owner of a limited liability company, sole proprietorship, or other unincorporated entity shall disregard the business allocation formula set forth in paragraph (B)(2) of this Article and section 718.02 of the Ohio Revised Code and pay

the tax on the entire net profits of the business entity regardless of whether such entity has an office or place of business in Findlay or conducts business, derives sales, performs services, or performs work in Findlay.

b. In the case of a resident individual who is a partner in a general partnership, limited liability partnership, or limited partnership, a member in a limited liability company (recognized or taxed as a partnership by the Federal Internal Revenue Service) or part owner of an association, or other form of unincorporated entity, there is imposed an annual tax of 1.25% on such individual's distributive share of net profits earned, accrued or received during the effective period of the Ordinance that is not attributable to Findlay under the method of allocation provided for in Section 3 of the Ordinance and Article III(B) of the Rules and Regulations, and not otherwise taxed against the entity by Findlay.

.1 The distributive share of a net loss sustained by an association or other unincorporated entity shall be reported by the resident individual owner, partner, general partner, or member in the same manner prescribed in Article III(A)(4)(b).

.2 If an association has an office or place of business in Findlay or conducts business, derives sales, performs services, or performs work in Findlay or is otherwise required to report income under the Ordinance, no tax is imposed on the distributive shares of the association's income to partners, general partners, and/or members that are not individuals. [See Article III(B) for proper allocation methods.]

#### 5. Imposition of Tax on Net Profits of C Corporations, S Corporations, and Resident Individual Shareholders' Distributive Shares of S Corporations.

a. In the case of C corporations and S corporations, whether domestic or foreign, that conduct business in, operate in, engage in, prosecute in, or carry on activities in Findlay, irrespective of whether such entity has an office or place of business in Findlay, there is imposed an annual tax of 1.25% on the net profits earned, accrued, or received during the effective period of the Ordinance. The income attributable to Findlay shall be determined using the formula or separate accounting method provided for in Section 3 of the Ordinance and Article III(B) of the Rules and Regulations derived from sales made, work done, or services performed or rendered and business or other activities conducted in Findlay.

.1 A net loss sustained by any corporation shall be allocated to Findlay in the same manner as provided in Article III(A)(5)(a) for allocating net profits to Findlay.

.2 In such case where the entire net profits of an S corporation are fully attributable to Findlay, the tax imposed on the entity shall constitute all the tax due from the entity's owners and shareholders for their distributive shares of the net profits. Provided, however, the tax due must be paid by the entity and received by the Administrator. A tax return and payment of tax shall be required from any individual or entity having income subject to Findlay tax, other than their distributive share of the net profits from the S corporation.

b. In the case of a resident individual who is a shareholder of an S corporation, there is imposed an annual tax of 1.25% on such individual's distributive share of net profits earned, accrued, or received during the effective period of the Ordinance that is not attributable to Findlay under the method of allocation provided for in Section 3 of the Ordinance and Article III(B) of the Rules and Regulations, and not otherwise taxed against the entity by Findlay to the extent the S corporation's income is apportioned to Ohio (S.B. 180, 125<sup>th</sup> Ohio General Assembly). (See Article XVII for Credits)

.1 The distributive share of a net loss sustained by an S corporation shall be reported by the resident individual shareholder in the same manner prescribed in Article III(A)(5)(b).

.2 If an S corporation has an office or place of business in Findlay or conducts business, derives sales, performs services, or performs work in Findlay or is otherwise required to report income under the Ordinance, no tax is imposed on the distributive shares of the S corporation's income to shareholders that are not individuals. [See Article III(B) for proper allocation methods.]

c. Corporations which are required by the provision of Section 5727.38 to 5727.41, inclusive, of the Revised Code of Ohio, 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. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to the tax imposed by the Ordinance.

#### 6. Amplification:

In amplification of the definitions contained in Article I of these regulations but not 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. See also Article I and section 718.01 of the Ohio Revised Code.

.2 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). Net profits, shown on returns filed pursuant to the Ordinance must be reconciled with the income reported to the Federal Internal Revenue Service to arrive at "adjusted federal taxable income" as defined in section 718.01 of the Ohio Revised Code (Am. Sub. H.B. 95, 125<sup>th</sup> Ohio General Assembly, effective January 1, 2004).

##### b. GROSS RECEIPTS

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



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

c. EXPENSES

.1 All ordinary, reasonable, and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed but no deduction may be claimed for salary of a proprietor, for salary, withdrawal, guaranteed payments, or similar amounts for the partners, general partners, former partners members, former members, or other owners of an association or other unincorporated business enterprise, or for dividends, distributions, or amounts set aside for or credited to the benefit of investors of a real estate investment trust or regulated investment company.

.01 If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty, not compensated for by insurance or otherwise, of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the federal income tax return.

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

.03 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.

.04 Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the 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.

.05 Only taxes directly connected with the business may be claimed as a business deduction. The following taxes are not deductible from income: (1) the tax under the Ordinance; (2) federal or other taxes based on income exclusive of the amount of Ohio franchise tax computed on the net worth basis; (3) gift, estate, or inheritance taxes; and (4) taxes for local benefits or improvements to property which tend to appreciate the value thereof.

.06 In general, non-taxable income and expenses incurred in connection therewith are not to be considered in determining net profits. Income from intangibles, by way of dividends, interest and the like, shall not be included if such income is subject to taxation under the intangible personal property laws of the State of Ohio or is specifically exempt from taxation under chapter 718 of the Ohio Revised Code.

.07 If, under methods permitted by the Administrator pursuant to paragraphs (B)(1) and (B)(3) of this Article, the taxpayer reports income that is non-taxable under the Ordinance, and such amounts are deducted in order to reconcile the return with the taxpayer's federal income tax return, expenses attributable to this non-taxable income shall not be allowed. Expenses not deductible in the method prescribed in paragraph (B)(2) of this Article is the amount equal to five percent of intangible income not taxable under section 718.01(A)(1)(a) of the Ohio Revised Code (Am. Sub. H.B. 95, 125<sup>th</sup> Ohio General Assembly, effective January 1, 2004), but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code.

.08 Unless otherwise provided in section 718.01 of the Ohio Revised Code (Am. Sub. H.B. 95, 125<sup>th</sup> Ohio General Assembly, effective January 1, 2004), capital gains and capital losses from the sale, exchange, or other disposition of property shall not be taken into consideration in arriving at net profits earned unless otherwise provided and unless said gains or losses are derived as a normal part of a business operation such as, but not limited to, a licensed real estate broker or real estate sales agent. Any amount received on a sale, exchange, or other disposition of tangible personal property used in business, in excess of book value, shall be treated as taxable income under the Ordinance to the extent of depreciation allowable under the Ordinance. The balance shall be treated as a capital gain. Any amount received and recognized on a sale, exchange, or other disposition of real estate 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, provided the sale, exchange, or other disposition of the real property was initiated on or after January 1, 2002. The balance shall be treated as a capital gain. Only an ordinary loss recognized from the sale, exchange, or other disposition of tangible personal property used in business or of real estate used in business shall be considered in determining income that is taxable by Findlay.

## 7. Rentals from Real Property

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

b. Where the gross monthly rental of any real properties, regardless of number and value, aggregate in excess of \$300 per month, it shall be prima facie evidence that the rental, ownership, management, or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to tax; provided that in the 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 \$300 per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds \$3,600 per year; and provided further that the person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds \$300 per month.

- c. In determining the amount of gross monthly 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.
- d. Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- e. Real property, as the term is used in this regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.
- f. In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for federal income tax purposes.
- g. Residents of this municipality are subject to such taxation on the net income from rentals (to the extent above specified), regardless of the location of the real property owned.
- h. Non-residents of the municipality are subject to such taxation only if the real property is situated within this municipality. Non-residents, in determining whether gross monthly rentals exceed \$300 shall take into consideration only real estate situated within this municipality.
- i. Unless otherwise provided in section 718.02 of the Ohio Revised Code (Am. Sub. H.B. 95, 125<sup>th</sup> Ohio General Assembly, effective January 1, 2004), S corporations, general partnerships, limited partnerships, limited liability companies, limited liability partnerships, and other associations, subject to provisions of Article III(A) and Article III(B), must include in gross receipts income from rentals and leases of real and tangible personal property.

## 8. Patents and Copyrights

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

## B. Allocation of Business Profits

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

### 1. Separate Accounting Method

- a. In the event the method of allocation or apportionment set forth in paragraph (B)(2) of this Article or section 718.02 of the Ohio Revised Code does not produce an equitable result and only upon approval of the Administrator, the net profits allocable to Findlay from business, professional, or other activities conducted in Findlay by a non-resident individual, corporation,

association, or other unincorporated entity may be determined from the records of the taxpayer, if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of the net profits is attributable to that part of the business activities conducted within Findlay.

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 Administrator to determine whether the net profits attributable to Findlay are apportioned with reasonable accuracy.

c. In determining the income allocable to Findlay 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 Findlay.

d. If income is not reportable pursuant to provisions set forth in Article III(A)(4)(b)(.2) or Article III(A)(5)(b)(.2), then a comparable method must be used to exclude the values of property, wages, and sales as provided in Article III(B)(2)(a), (b), and (c).

## 2. Business Allocation Percentage Formula

a. STEP 1: Ascertain the percentage which the original cost of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within Findlay is of the original cost of all real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.

.1 The percentage of taxpayer's real and tangible personal property within Findlay is determined by dividing the original cost of such property within Findlay by the original cost of all such property within and without Findlay. In determining such percentage, property rented to the taxpayer as well as real and tangible personal property owned by the taxpayer, and inventory must be considered.

.01 The value of real property rented by the taxpayer shall be determined by multiplying gross annual rents payable by eight (8).

.02 Gross rents means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or possession of property and includes:

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

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

.2 If income is not reportable pursuant to provisions set forth in Article III(A)(4)(b)(.2) or Article III(A)(5)(b)(.2), then the value referenced in this step of the business allocation percentage method must be excluded from the denominator.

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

.1 Salaries and reasonable compensation paid to owners or credited to the account of owners, members, 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 with the method of accounting used in the computation of the entire net income of the taxpayer.

.3 In the case of an employee who performs services both within and without Findlay the amount treated as compensation for services performed within the City shall be deemed to be:

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

.02 In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services within Findlay bears to the value of all his services; and

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

.4 If income is not reportable pursuant to provisions set forth in Article III(A)(4)(b)(.2) or Article III(A)(5)(b)(.2), then the value referenced in this step of the business allocation percentage method must be excluded from the denominator.

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

.1 The following sales shall be considered Findlay's sales:

.01 All sales made through retail stores located within Findlay to purchasers within or without Findlay except such of said sales to purchasers outside Findlay that are directly attributable to regular solicitations made outside Findlay personally by taxpayer's employees.

.02 All sales of tangible personal property delivered to purchasers within Findlay regardless of where title passes if shipped or delivered from an office, store, warehouse, factory, or place of storage located within Findlay.

.03 All sales of tangible personal property delivered to purchasers within Findlay regardless of where title passes even though transported from a point outside Findlay if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within Findlay and the sale is directly or indirectly the result of such solicitation.

.04 All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within Findlay to purchasers outside Findlay regardless of where title passes if the taxpayer is not, through its own employees regularly engaged in the solicitation or promotion of sales at the places of delivery.

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

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

.3 If income is not reportable pursuant to provisions set forth in Article III(A)(4)(b)(.2) or Article III(A)(5)(b)(.2), then the value referenced in this step of the business allocation percentage method must be excluded from the denominator.

d. STEP 4. Add the percentages determined in accordance with steps 1, 2, and 3 or such of the aforesaid percentages as may be applicable to the particular taxpayer's business and divide the total so obtained by the number of percentages used in ascertaining 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 Findlay. 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 Findlay.

### 3. Substitute Method

a. In the event a just and equitable result cannot be obtained under the formula, the Administrator, upon application of the taxpayer, may substitute other factors in the formula or prescribe other methods of allocating net income calculated to effect a fair and proper allocation.

b. Application to the Administrator to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing before the end of the taxable year and

shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. A copy thereof shall be served at the time of filing upon the taxpayer. No specific form need be followed in making such application. Once the taxpayer has filed under a substitute method, he must continue to so file until permitted or instructed to change by the Administrator.

c. If income is not reportable pursuant to provisions set forth in Article III(A)(4)(b)(.2) or Article III(A)(5)(b)(.2), then a comparable method must be used to exclude the values of property, wages, and sales as provided in Article III(B)(2)(a), (b), and (c).

#### C. Operating Loss Carry Forward:

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

2. In the event net profits are allocated both within and without Findlay, the portion of a net operating loss sustained shall be allocated to Findlay in the same manner as provided herein for allocating net profits to Findlay. The portion of a net operating loss to be carried forward shall be determined in the year the net operating loss is sustained, on the basis of the allocation factors applicable to that year. The same method of accounting and allocation must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained.

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

4. In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:

a. Year in which operating loss was sustained.

b. Method of accounting and allocation used to determine portion of net operating loss allocable to Findlay.

c. Amount of net operating loss used as a deduction in prior years.

d. Amount of net operating loss claimed as a deduction in current year.

5. The net operating loss of a business which loses its identity through merger, consolidation, etc., shall not be allowed as a carry-forward loss deduction by the surviving business entity.

6. In the case of a net operating loss in the filing of consolidated returns, see Article III(D).

#### D. Consolidated Returns

1. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership. For a subsidiary corporation to be included in a consolidated return 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 during the taxable year.

c. A corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.

3. If a corporation becomes a member of the group during the taxable year the consolidated return must include the income for the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the 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 of the group, 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, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the group during the entire taxable year of the group if 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.

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 fraction (Step 1 of the formula) shall be determined on the basis of the average net book value of the property during the period such corporation was a member of the group. The rental portion of the fraction, however, shall be computed at 8 times the annual rent. The gross receipts and wage fraction shall be based on the actual figures.



5. All subsidiary corporations must agree in writing to the filing of the consolidated return as they will be liable for the tax as well as will the parent corporation.
6. The net operating loss carryover of a corporation which filed a separate return in a prior year may be carried over to the consolidated return but will be limited in amount to the amount of that same corporation's net income included in the consolidation. The net operating loss carryover from a separate year shall be deducted first before application of the allocation fraction. After application of the allocation fraction the consolidated net operating loss carryover allocated to Findlay shall be allowed.
7. In consolidating the net income, the taxable income of each corporation shall be computed in accordance with provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of the affiliated group.
8. In determining expenses that are not allowable because they are allocable to non-taxable income such calculations shall be based on the consolidate net income. As an example, inter-company dividends which are eliminated in the consolidation will not be taken into consideration in determining non-taxable income.

#### Article IV: Effective Period of Tax

- A. The tax imposed by Section 3, paragraphs A & B of the Ordinance shall be levied, collected and paid with respect to salaries, wages, bonuses, incentive payments, commissions, fees, and other compensation earned or received on and after January, 1, 2010.
- B. The tax imposed by Section 3, paragraphs C, D, E, and F of the Ordinance, with respect to net profits of trades, businesses, professions, enterprises, undertakings and other activities is on the net profits earned, accrued, or received on and after January 1, 2010.

#### Article V: Return and Payment of the Tax

##### A. Date Requirement for Filing:

1. On or before April 15th of the year following the effective date of the Ordinance and each year thereafter, every person or taxpayer subject to the provisions of Section 3, paragraphs A to G, inclusive, of the Ordinance shall, except as hereinafter provided, make and file with the Administrator, a return on a form prescribed by and obtainable upon request from the Administrator, whether or not a tax be due.
2. However, when the final return is made for a fiscal year or other period different from the calendar year, the return shall be made within 105 days.

3. 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 their activities, including the rental from use of real and personal property, and other taxable income 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.

4. Where an employee's entire earnings for the tax period are paid by an employer or employers, and the one and one-quarter percent (1.25%) 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 employee-taxpayer, and where the employer of such employee has filed a return or returns in which such employee's entire and only earnings are reported to the Administrator, and where such employee has no taxable income other than such earnings and the tax so withheld has been paid to the Administrator, the Administrator is hereby authorized to accept such report or returns provided by the employer, unless otherwise specified, as the return required of any such employee.

5. An employee who itemizes his deductions on Schedule A for federal income tax purposes and who claims business and professional expenses on Form 2106 or 2106-EZ that have not been reimbursed by his employer is permitted to deduct such expenses without regard to the limitation specified under provisions of Internal Revenue Code section 67. Only those expenses which are incurred to produce income that is subject to the tax imposed by this Ordinance shall be deductible. In the case of a duly ordained, commissioned, licensed, or designated minister, only expenses that are incurred to earn wages, income, or parsonage allowances that are subject to the tax imposed by this Ordinance are deductible. The employee must file a return to claim the expenses and provide supporting documentation as requested by the Administrator or his duly authorized agent.

6. Any taxpayer who received taxable income not subject to withholding under the Ordinance must file a return.

7. 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.

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

#### B. Information Required and Reconciliation with Federal Returns.

1. In returns filed hereunder, there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation less reasonable allowable expenses incurred subject to the tax earned from each employer, taxable net profits and other pertinent information as the Administrator may require.

2. All individuals, businesses, employers, brokers or others doing business who engage persons, either on a commissions basis or as independent contractors, and are required to file a Federal Form 1099 shall file with the City of Findlay a copy thereof on or before the 28th day of February following any calendar year in which deductions are taken.

3. Where figures of total income, total deductions, and net profits are included, as shown by a federal return, any items of income as are not subject to Findlay's tax and unallowable expenses shall be eliminated in determining net income subject to Findlay's tax. In the absence of records showing the actual unallowable expenses, such expenses shall be determined in accordance with Article III(A)(6)(c)(.1)(.07) of these regulations. The fact that any taxpayer is not required to file a federal tax return does not relieve him from filing Findlay's return.

4. In a change in federal income tax liability, made by the Federal Internal Revenue Service, or by a judicial decision, results in an additional amount of tax payable to Findlay, a report of such change shall be filed by the taxpayer within three (3) months after receipt of the final notice from the Federal Internal Revenue Service or final court decision. See Article XI(B)(1) and B(2).

5. If a change in federal income tax liability results in a reduction of taxes owed and paid to Findlay a claim for refund shall be filed with the Administrator as prescribed in Section 11 of the Ordinance and Article XI(C) of these regulations.

#### C. Extensions

1. Upon written request of the taxpayer, or upon receipt of a copy of the Federal Internal Revenue Service extension request, made on or before the date for filing the return, and for good cause shown, the Administrator may extend the time for filing such return for a period not to exceed six (6) months, or to one (1) month beyond any extension requested of or granted by the Federal Internal Revenue Service. Whenever he deems such necessary, the Administrator may require a tentative return accompanied by payment of the estimated tax. No penalty will be assessed in those cases in which the return is filed and the final tax paid within the period as extended, provided and all other filing and payment requirements of the Ordinance have been met.

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

#### D. Payment with Return

1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown to be due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 6 of the Ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 7 of the Ordinance, or where an income tax has been paid to another municipality, credit for the amount paid in accordance with Section 17, hereof, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing of said return.

2. A taxpayer who has overpaid the amount of tax to which Findlay is entitled under the provisions of the Ordinance may have such overpayment applied against any subsequent liability hereunder, or at his election indicate on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than five dollars (\$5.00) shall be collected or refunded.

#### E. Amended Returns

1. Where necessary an amended return must be filed in order to report additional income and pay and additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 11 and 99. Such amended return shall be on a form obtainable on 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. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's Findlay tax liability, such taxpayer shall make and file an amended Findlay return showing income subject to Findlay's tax based on such final determination of federal tax liability and pay any additional tax shown due thereon or make claim for refund of any overpayment.

### 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 Findlay, who employs one or more persons whether as an employee, officer, or director or otherwise, to deduct each time any compensation is paid the tax of one and one-quarter percent (1.25%) from:

a. The qualifying amount, as set forth in section 718.03 of the Ohio Revised Code, of all salaries, wages, bonuses, incentive payments, fees, commissions, or other forms of compensation paid to residents of Findlay, regardless of the place where the services are rendered or performed; and

b. All compensation set forth in section 718.03 of the Ohio Revised Code paid non-residents for services rendered, work performed, or other activities engaged in within Findlay.

2. All employers within or doing business within Findlay 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 Findlay, were performed outside Findlay.

3. Employers who do not maintain a permanent office or place of business of Findlay, but who are subject to tax on net profits attributable to Findlay, under the method of allocation provided

for in the Ordinance, are considered to be employers within Findlay and subject to the requirement 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 Administrator, 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 payer, are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and a return and pay the tax pursuant to the provisions of the Ordinance and Articles V and VII of the regulations.

6. Where a non-resident receives compensation for personal services rendered or performed partly within and partly without Findlay, the withholding employer shall deduct, withhold, and remit the tax on that portion of the compensation which is earned within Findlay in accordance with the following rules of apportionment.

a. If the non-resident is a salesman, agent, or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within Findlay bears to the total volume of business transacted by him within and outside Findlay.

b. The deducting and withholding of personal service compensation of other non-resident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee which the total number of his working hours within Findlay is the total number of working hours.

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

7. No tax is imposed on the compensation paid to a non-resident individual employee for personal services performed by the employee in Findlay for twelve (12) or fewer days in a calendar year unless the employer's principal place of business is located in another Ohio municipal corporation that imposes an income tax.

a. As used in this paragraph, a day means any portion of a twenty-four (24) hour calendar day.

b. As used in this paragraph, principal place of business may include, but is not limited to, the employee's post of duty, the physical location of the employer's headquarters, the place where the employer's sales are consummated, the place at which the employee's duties are assigned, the place to which a material portion of the employee's duties are assigned, the employee's residence,

the place from which the employee is dispatched, or the place to which the employee reports or submits payroll and administrative records.

c. The Administrator is authorized to provide any Ohio municipal corporation that imposes a tax all information necessary to administer and enforce the provisions contained herein including, but not limited to, names, addresses, Social Security numbers, and refund amounts.

d. Upon exceeding twelve (12) days in a calendar year, the employee and the employer shall disregard the provisions set forth in paragraph 8 of this Article and in section 718.011 of the Ohio Revised Code and will be subject to all provisions set forth in Section 3 of the Ordinance and in Article III of these Rules and Regulations.

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

9. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount of which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses 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.

10. An employer whose records show that an employee is a non-resident of Findlay 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 Findlay by such employee, provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Administrator notifies said employer in writing that such employee is a resident of this municipality. All employees are required to notify the employer of any change of residence and the date thereof.

11. A Findlay employer required to withhold the tax from a Findlay resident 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 requirement of withholding the Findlay tax from such Findlay resident, except where the rate of tax for such other municipality is less than the rate of tax imposed by this Ordinance. In such case the employer shall withhold and remit the difference to this municipality.

12. 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.

13. Any money withheld from employees' wages by a non-profit organization on a voluntary basis for the purchase of "Tax Shelter Annuities" under the provisions of Internal Revenue Code section 401 shall be considered as income for the determination of wages subject to Findlay Income Tax.

14. Except as otherwise provided in section 718.03 of the Ohio Revised Code and Article XIV of these Rules and Regulations, contributions by employees from their gross wages into employer or third party trusts or pension plans as permitted by provisions of the Internal Revenue Code and which are excludable from gross wages for federal tax purposes are not excludable from gross wages subject to City of Findlay tax.

15. For the purposes of this Article, other compensation shall include the premiums paid by the employer for group term life insurance for protection in excess of the amount specified under provisions of Internal Revenue Code section 79.

16. For the purposes of this Article, wages and other compensation shall include supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code.

17. Pursuant to section 718.03 of the Ohio Revised Code, no exemption is extended to the qualifying wages of an employee who was hired by the employer before April 1, 1986.

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

1. The deductions from salaries, wages, and other compensation required to be made by employers are to begin with the compensation earned on or 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 last day of the month next following each quarterly period, make a return and pay the Administrator the full amount of the tax so deducted or withheld with respect to compensation paid all of his employees subject to the tax under the Ordinance. Provided, however, the Administrator may require an employer to remit withholding taxes at more frequent intervals.

The return required to be filed under this Article shall be made on a form furnished by or obtainable from the Administrator. The Administrator may require employers or their agents to submit information and payments electronically in a manner and in a file format defined by the Administrator.

2. 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 Administrator, depending on the circumstances and the time when the over-withholding is determined as follows:

##### a. Current Employees:

.1 If the over-withholding is discovered in the same period the employer shall make the necessary adjustment directly with the employee and the amount to be reported on the return as withheld shall be the corrected amount;

.2 If the over-withholding is discovered in a subsequent period of the same calendar year the employer may make proper adjustment with the employee. In such case the return for the period in which the adjustment is made shall indicate the total amount actually withheld, the amount of the adjustment deducted therefrom, and the corrected amount reported on the return;

.3 If the over-withholding is discovered in the following year, the employer should notify the Administrator of such over-withholding and the circumstances thereof. Upon proper verification the Administrator shall refund to the employee the amount such excess withholding.

b. Former Employees:

.1 In case too much has been withheld from an employee, if the error is discovered by the employee, such employee shall file a claim with the Administrator, and, upon verification thereof by the employer, the Administrator shall refund to the employee the amount of such excess withholding.

c. Non-residents Employed Outside the City:

.1 Where an employer has withheld the tax from all wages of a non-resident of Findlay and such non-resident has been employed outside of Findlay for all or part of the time, such employee shall file a claim with the Administrator covering such erroneous withholding and the Administrator shall, upon verification thereof by the employer, refund to the employee the amount of such excess withholding.

d. Insufficient Withholding:

.1 If less than the amount of tax required to be deducted is withheld from an employee, such deficiency shall be withheld from subsequent wages. However, if the employee-employer relationship has terminated, the employer shall notify the Administrator of such deficiency and the reason therefor.

3. Every employer is deemed to be a trustee for Findlay 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.

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

5. Regardless of any attempt to delegate the responsibilities required herein, personal liability of the tax, penalties, and interest for failure to file a return or for failure to pay or remit the tax due as required herein shall extend to the employee, officer, or trustee who was responsible for signing, preparing, or submitting the withholding returns, the employee, officer, or trustee who was responsible for issuing or authorizing the payment of the taxes, the employee, officer, or trustee who was responsible for supervising or controlling any or all of the aforementioned duties and functions, the owner of a sole proprietorship or single-member limited liability company, the president, vice president, secretary, treasurer, chief executive officer, or chief financial officer of



a corporation, a shareholder of an S corporation, a partner in a general partnership or limited liability partnership, a general partner in a limited partnership, a member in a limited liability company, or any person who owns more than 50 percent of a corporation.

6. On or before the last day of February, following any calendar year in which such deductions have been made by any employer, such employer shall file with the Administrator, in the form, manner, and method prescribed by the Administrator, an information return for each employee from whom Findlay income tax has been withheld, showing the name, address and Social Security number of the employee, the total amount of compensation paid during the year and the amount of Findlay income tax withheld from such employee.

7. 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.

8. All payments not subject to withholding shall be reported on forms as required by the Administrator.

a. Nothing in this Article shall prevent the Administrator from requiring an employer to report wages, payments, and other information as required in Article VI(B)(6) of employees who were not subject to withholding pursuant to provisions set forth in section 718.03 of the Ohio Revised Code.

b. Nothing in this Article shall preclude an employer, agent, or payer from remitting any and all Findlay tax that was withheld from an employee. See Article VI(B)(2) for tax withheld in error.

9. In addition to such information returns, and at the time the same are filed, such employer shall file with the Administrator a form to enable the Administrator to reconcile the sum total of compensation paid and taxes withheld as disclosed by information return, W-2, or list of employees, and prior returns and remittances made pursuant to the Ordinance.

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 cent ( $1/2\text{¢}$ ) or more in which case it shall be increased to one cent ( $1\text{¢}$ ).

## Article VII: Declarations

### A. Requirement for Filing:

1. A declaration of estimated tax shall be filed by any taxpayer who anticipates taxable income which is not subject to Section 6 of the Ordinance or who engages in any business, profession, enterprise, or activity subject to the tax imposed by Section 3 of the Ordinance.

2. A taxpayer's final return for the preceding year may be used as the basis for computing the declaration of estimated tax for the current year. In the event a taxpayer, other than a resident

individual who did not reside within Findlay on January 1 of the tax year, has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith and within the time prescribed in paragraph (B) of this Article.

**B. Date of Filing:**

1. The declaration shall be filed by the fifteenth day of the fourth month of the tax year.
2. An individual 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 becoming subject to the tax.
3. A taxpayer, other than an individual, conducting a business not previously subject to the tax shall file a declaration within four (4) months after the date the entity becomes subject to the tax.

**C. Form for Filing and Declaration:**

1. The declaration shall be filed on a form approved or prescribed by or obtainable from the Tax Administrator. The declaration may simply state that the figures used in making the declaration are the figures used in making the estimate declaration for federal income tax, provided it is understood that the figures may be modified so that the declaration required by this Article shall set forth only such income as is taxable under the provisions of the Ordinance. Credit shall be taken for Findlay tax to be withheld from any portion of such income. Credit shall also be taken in accordance with the provisions set forth in Section 17 of the Ordinance and Article XVII of the Rules and Regulations.
2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any quarterly payment date as set forth in paragraphs (D) and (E) of this Article.
3. In any case where a taxpayer has failed to file a declaration, the Tax Administrator may estimate the income on behalf of the taxpayer and shall issue a statement of said estimate to the taxpayer.

**D. Date of Payments for Individuals:**

1. The estimated tax, if not paid in full with the declaration, must be paid in equal installments on or before April 15, July 31, and October 31 of the tax year, and January 31 of the subsequent tax year.
2. The declaration must be accompanied by payment of at least twenty-two and one-half percent (22.5%) of the estimated tax.
3. In the event an amended declaration has been filed, the unpaid balance shown thereon shall be paid in equal installments over the remaining payment dates.

4. The fourth estimate payment can be deferred to the last day of February of the subsequent tax year if the payment represents the balance of tax due and is accompanied by the final return filed in good faith and the taxpayer has otherwise complied with provisions set forth in this Article.

E. Date of Payments for Other Entities:

1. The estimated tax, if not paid in full with the declaration, must be paid in equal installments on or before the fifteenth day of the fourth, sixth, ninth, and twelfth months of the tax year.

2. The declaration must be accompanied by payment of at least twenty-two and one-half percent (22.5%) of the estimated tax.

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

4. The fourth estimate payment can be deferred to the last day of second month of the subsequent tax year if the payment represents the balance of tax due and is accompanied by the final return filed in good faith and the taxpayer has otherwise complied with provisions set forth in this Article.

5. In the event the requirements prescribed herein may cause hardship to the taxpayer or to the City, and subject to prior written approval by the Administrator, the taxpayer may disregard the estimate payment requirements and pay the entire amount of tax due for the year when the return is filed, provided the payment is made and the return is filed on or by the original or extended due date as prescribed in Article V.

F. 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 a refund of an overpayment.

G. Penalties and Interest

1. Except as otherwise provided, interest and penalty may be imposed pursuant to Article X for failure to pay the tax in accordance with the provisions set forth in this Article.

2. Penalty and interest shall not be imposed if the taxpayer has paid, in accordance with this Article, an amount greater than or equal to one hundred percent (100%) of the taxpayer's liability for the preceding tax year provided the tax due for the preceding year reflected a liability for a twelve-month period.

## Article VIII: Duties of the Administrator

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

1. It shall be the duty of the City Treasurer 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 owing Findlay, to keep accurate records of a minimum of six (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 the approval of the City Income Tax Board, empowered to adopt, promulgate, and enforce rules and regulations or any amendment thereof relating to any matter or thing pertaining to the administration and enforcement of the 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.
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 11 and 99 of the Ordinance shall apply.
6. The Administrator is hereby empowered and authorized to file small claims cases in Findlay Municipal Court under the supervision and control of the Director of Law against all taxpayers who owe the City either delinquent or unpaid taxes or interest and penalties on said delinquent or unpaid taxes and said amounts falling within the statutory limit of the small claims court.

### C. Estimation of Tax by the Administrator:

1. Whenever the Administrator has been unable to secure information from the taxpayer as to his taxable income for any year, he may determine the amount of tax appearing to be due and assess the taxpayer on the basis of such determination, together with the interest and penalties as prescribed in Section 10 of the Ordinance.

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

D. Subject to the consent of the City Income Tax Board or pursuant to a regulation approved by said Board, the Administrator shall have the power to compromise any interest or penalty or both, imposed by Section 10 of the Ordinance.

#### Article IX: Examination of Books and Records, Information So Obtained Confidential: Penalty

##### A. Investigations by Administrator:

1. The Administrator, or his duly authorized agent, is authorized to examine the books, papers, records and federal income tax returns of any employer, taxpayer or person subject to the Ordinance, or whom the Administrator believes is subject to the provisions of the Ordinance, 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.

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.

##### 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 transaction 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, or any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The 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 the 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 personally, 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 by 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 99 of the Ordinance.

#### D. Confidential Nature of Examinations:

Any information gained as a result of any returns, investigations, verifications or hearings before the Administrator, 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. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than six (6) months, or both.

In addition to the above penalty, any employee of Findlay 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:

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 (6) years from the date the final return is filed and paid or the withholding taxes are paid.

### Article X: Interest & Penalties

A. Interest: Except as provided in paragraph C of this Article, all taxes imposed and all monies withheld, or required to be withheld, by employers under provisions of the Ordinance and remaining unpaid after they have become due shall bear interest, in addition to the amount of the

unpaid tax or withholdings, at the rate of one and one-half percent (1 ½%) per month or fraction thereof.

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

1. For failure to pay taxes due, other than withheld; one and one-half percent (1 ½%) per month or fraction thereof; or ten dollars (\$10.00), whichever is greater. In addition to any other interest or penalties, there shall be a penalty of \$10.00 imposed for failure to file a return whether or not tax is due.

2. For failure to remit taxes withheld from employees: five percent (5%) per month or twenty-five dollars (\$25.00), whichever is greater.

C. Exceptions:

1. No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within the prescribed time.

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 is paid within three (3) months after final determination of the federal tax liability.

3. A taxpayer or employer shall have thirty (30) days after receipt of notice of any proposed imposition of interest and penalties within which to file a written protest or explanation with the Administrator. If no protest or explanation is filed within the prescribed time, the proposed imposition of interest and penalties shall become and be the final assessment. Upon filing of a written protest or explanation, the Administrator shall withdraw the assessment or he shall adjust or reaffirm the assessment and it shall then become final.

## Article XI: Collection of Unpaid Taxes and Refund of Overpayments

A. Unpaid Sums – Civil Suit:

1. In addition to any criminal penalties which may be imposed pursuant to Section 99 of the Ordinance, all taxes imposed by Section 3 of the Ordinance and not paid when due, shall be collectible, together with any interest and penalties thereon, by civil suit. Employers who are required, under Section 6 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 Findlay in a civil suit to enforce the payment of the deficiency created by such failure.

2. No additional assessment shall be made by the Administrator after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be no period

of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or 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 income required to be reported shall be considered to be a substantial omission.

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

#### B. Refund and Overpayments:

1. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date the tax 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.

3. Overpayments will be either refunded or credited to the taxpayer's current year's liability at his option. Where no election has been made by the taxpayer, overpayments of any year's taxes shall be applied as follows:

a. To taxes owed for any previous years in the order in which such taxes became due.

b. To his current tax liability.

#### C. Limitation:

Where the total amount due or refund claimed for a tax year is less than five dollars (\$5.00) such amount shall not be collected or refunded.

#### D. Interest on Overpayment:

1. Interest shall be allowed and paid on any overpayment by a taxpayer from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the complete return is filed, whichever is later, no interest shall be allowed on the refunded overpayment. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by section 5703.47 of the Ohio Revised Code.

#### Article XIII: Board of Review



A. Appeals to the Board of Review shall be subject to provisions set forth in section 718.11 of the Ohio Revised Code.

B. The taxpayer or the City may appeal the Board of Review's decisions as provided in sections 718.11, 5717.011 [5717.01.1], and 5703.056 [5703.05.6] of the Ohio Revised Code.

#### Article XIV: Exemptions

A. The following shall not be considered taxable.

1. Poor relief, unemployment insurance benefits, or similar payments received from local, state, or federal governments or charitable or religious organizations; proceeds of insurance other than third party sick pay; annuities; workers' compensation insurance; Social Security benefits; pension income including, but not limited to distributions from Internal Revenue Code (IRC) section 457 plans, IRC section 401(a) qualified pension and profit sharing plans, Individual Retirement Accounts (IRAs), Simplified Employee Pensions (SEPs), IRC section 403(b) plans, governmental plans, and non-qualified deferred compensation plans; compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits or wages; alimony (payments are not deductible); except as provided in Section 3 paragraph (l) of the Ordinance, gambling winnings (losses are not deductible); patent and copyright income and royalties (if the income is derived from intangible property).

a. Employer contributions on behalf of an employee to a non-qualified deferred compensation plan, which may be considered wages subject to Social Security and Medicare withholding, shall not be considered wages subject to the tax imposed by this Ordinance.

2. Compensation for damages to property by way of insurance or otherwise.

3. Intangible income as defined in section 718.01 of the Ohio Revised Code.

4. Military pay and allowances received as a member of the armed forces of the United States.

5. Any charitable, educational, fraternal or other type of non-profit association or organization enumerated in section 718.01 of the Revised Code of Ohio which is exempt from payment of real estate taxes is exempt from payment of the tax imposed by this Ordinance.

6. 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 taxes levied under this Ordinance on all business activities of a type ordinarily conducted for profit by taxpayers operating for a profit.

7. Mentally handicapped and developmentally disabled employees earning less than minimum wage while employed at a government-sponsored sheltered workshop shall be exempt from the levy of the tax provided herein.

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

#### Article XVI: Collection of Tax After Termination of Ordinance

##### A. Authority to collect after termination of Ordinance:

The tax imposition provisions of the Ordinance are effective until the Ordinance is repealed, subject however, to the provision of Section 11 of the Ordinance with respect to the limitation of time within which an additional assessment may be made.

##### B. Payment of Taxes:

1. Taxes due and unpaid on account of compensation paid or received and on account of profits earned in the last effective year of the Ordinance or any part thereof which remains unpaid on (date), are payable in full on or before the dates specified in Sections 5 and 6 of the Ordinance and Articles V and VI of these regulations, and all final returns and withholding reports must be filed on or before that date, unless extended by the Administrator.

2. For purposes of collection of delinquent or unpaid taxes, actions or proceedings for such collection and/or the collection of interest and penalties thereon, or enforcing any provisions of the Ordinance (including prosecutions under the criminal sections of the Ordinance and including appeals before the Board of Review), the Ordinance remains in full force and effect until such time as all taxes accruing during the term of the Ordinance shall have been fully paid, and all actions, suits, prosecutions, appeals and other judicial or administrative proceedings relative to collection or payment of such taxes, have been finally terminated.

#### Article XVII: Credit Allowed for Tax Paid in Another Municipality

Repealed. (Res. 050-2008. Passed 12-16-08.)

#### Article XCIX: Violations, Penalties

##### A. Any person who shall:

1. Fail, neglect or refuse to make any return or declaration required by the Ordinance; or

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

**B. Prosecutions:**

Prosecutions for an offense made punishable under this Section or any other provision of this Ordinance shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecution may be commenced within six (6) years after the commission of the offense.

**C. 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 from making any information return, declaration or return, from filing such form, or from paying the tax.

#### Savings Clause

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