

RULES AND REGULATIONS

§ 95.01 PURPOSE

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the City, including the payment of interest and principal on notes and bonds which may be lawfully issued for such purposes, there shall be and is hereby levied, as hereinafter provided, a tax on salaries, wages, commissions, and other compensation, on net profits, and on certain other income. (Ord 3218, passed 12-16-74)

§ 95.02 DEFINITIONS

For the purpose of these rules and regulations, the following words and phrases shall have the following meanings ascribed to them respectively, except as and if the context clearly indicates or requires a different meaning. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

- (A) "ASSIGNMENT" The assignment made by a resident of the City of a claim for refund due from another taxing municipality granting credit to nonresidents thereof.
- (B) "ASSOCIATION" A partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
- (C) "BOARD OF REVIEW" The Board created by and constituted as provided in § 95.12 of this chapter.
- (D) "BUSINESS" 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, real, personal or mixed.
- (E) "CORPORATION" A corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.
- (F) "EMPLOYEE" One who works for wages, salary, commission or other type of compensation in the service of an employer.
- (G) "EMPLOYER" An individual, partnership, association, corporation, governmental body, unit, or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission, or other compensation basis.
- (H) "FISCAL YEAR" An accounting period of twelve months or less ending on any day other than December 31.
- (I) "GROSS RECEIPTS" The total income from any source whatsoever.
- (J) "IN THIS CITY" Within the City limits of Bowling Green, Ohio, or any land owned by the City even though outside the City limits.

(K) "NET PROFITS" A net gain from the operation of a business, profession, enterprise, or other activity after provision for all ordinary, reasonable and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal Income Tax purposes, without deduction of taxes imposed by this chapter, federal, state, and other taxes based on income exclusive of the amount of Ohio franchise tax computed on the net worth basis; and in the case of an association, without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of this chapter.

(L) "NON-RESIDENT" An individual domiciled outside this City.

(M) "NON-RESIDENT UNINCORPORATED BUSINESS ENTITY" An unincorporated business entity not having an office or place of business within this City.

(N) "PERSON" Every natural person, partnership, fiduciary, association, or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

(O) "PLACE OF BUSINESS" Any bona fide office (other than a mere statutory office), factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance.

(P) "RECIPROCITY CREDIT" Rescinded Ord 2822 passed 2-2-72.

(Q) "RESIDENT" An individual domiciled in this City.

(R) "RESIDENT UNINCORPORATED BUSINESS ENTITY" An unincorporated business entity having an office or place of business within this City.

(S) "TAX COMMISSIONER" The individual designated by this chapter, whether appointed or elected, to administer and enforce the provisions of this chapter,

(T) "TAXABLE INCOME" Wages, salaries, and other compensation paid by an employer or employers before any payroll deductions; and/or the net profits from the operation of a business, profession or other enterprise or activity as may be adjusted in accordance with the provisions of the chapter; and/or any other income described elsewhere in the chapter.

(U) "TAXABLE YEAR" The calendar year, or the fiscal year upon the basis of which net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

(V) "TAXING MUNICIPALITY" Any municipal corporation levying a municipal income tax on salaries, wages, commissions and other compensation earned by individuals, and on the net profits earned from the operation of a business, profession or other activity.

(W) "TAXPAYER" A person whether an individual, partnership, association, or any corporation or other entity, required hereunder to file a return or pay a tax.

§ 95.03 IMPOSITION OF TAX

(A) Taxable income. Subject to the provisions of § 95.15 of this chapter, an annual tax for the purposes specified in § 95.01 hereof shall be imposed on and after January 1, 1998, at a rate of one and one half per cent plus .14% plus .09% plus .19% (total 1.92%) per annum upon the following:

(1) Resident employee:

a. In the case of residents of Bowling Green, an annual tax of one and one half per cent (1 ½%) plus .14% plus .09% plus .19% (total 1.92%) on all salaries, wages, commission, and other compensation earned during the effective period of the ordinance. For the purposes of determining the tax on the earnings of resident taxpayers taxed under § 95.03 of the ordinance, the source of the earnings and the places in or at which the services were rendered, are immaterial. All such earnings wherever earned or paid are taxable. (Individuals, employees, partners, or owners subject to tax in more than one municipality on the same income see also § 95.14 hereof for permissible credits.)

b. The following are items which are subject to the tax imposed by § 95.03 of the ordinance.

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

.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 any form of unincorporated enterprise owned by two or more persons;

.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 § 95.03 of the ordinance;

.05 An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates; and 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 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 employer deducts such expenses or advances as such from his gross income for the purpose of determining his net profits taxable under federal law, and the employee is not required to include such receipts as income on his federal income tax return.

.03 If commissions are included in the net earnings of the trade, business profession, enterprise, or activity, carried on by an unincorporated entity of which the individual receiving such commission is owner or part owner and therefore subject to the tax under paragraphs A (3) or A (4) of the ordinance, they shall not be taxed under § 95.03, paragraph A (1).

.3 Fees, unless such fees are properly includible as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity owned or partly owned by said individual and such net profits are subject to the tax under § 95.03 paragraph A (3) 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 wages, holiday pay, sick leave, disability or similar fringe benefits are taxable to the extent that the employee's earnings are taxable to Bowling Green.

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

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

(2) Non-Resident Employee:

a. In the case of individuals who are not residents of Bowling Green there is imposed under § 95.03 paragraph A (2) of the ordinance, a tax of 1 ½% plus .14% plus .09% plus .19% (total 1.92%) on all salaries, wages, commissions, and other compensation earned during the effective period of the ordinance for work done or services performed or rendered within this City whether such compensation or remuneration is received or earned directly through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial.

b. The items subject to tax under § 95.03, paragraph A (2) of the ordinance are the same as those listed and defined in § 95.03, paragraph A (1). For the methods of computing the extent of such work or services performed within this City, in cases involving compensation for personal services partly within and partly without Bowling Green, see § 95.06, A (6) (Regs).

(3)a. Imposition of Tax on Net Profits of Resident Unincorporated Businesses:

.1 In the case of resident unincorporated businesses, professions, enterprises, undertakings or other entities conducted, operated, engaged in, prosecuted or carried on, irrespective of whether such taxpayer has an office or place of business in Bowling Green, there is imposed an annual tax of 1 ½% plus .14% plus .09% plus .19% (total 1.92%) on the net profits earned, accrued or received during the effective period of the ordinance attributable to the City, under the formula or separate accounting method provided for in § 95.03 of the ordinance, derived from sales made or services performed or rendered and business or other activities in this City.

.2 The tax imposed on resident associations or other unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof but the tax is imposed on an unincorporated resident entity owned by one person is upon the individual owner. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see § 95.03 A (3) b.)

.3 The tax imposed by § 95.03, paragraph A (3) a, of the ordinance is imposed on all resident unincorporated entities having net profits attributable to Bowling Green under the method of allocation provided for in the ordinance, regardless of where the owner(s) of such resident unincorporated business entity resides.

.4 Resident unincorporated entities owned by two or more persons all of whom are residents of Bowling Green, having all income allocable to this City, or having any income allocable to other municipalities not levying a similar tax, shall disregard the method of allocation provided

for in the ordinance and pay the Bowling Green tax on the entire net profits thereof. Payment of the tax by the entity on the entire net profits thereof shall constitute payment of all Bowling Green tax due from the owners or members thereof on their distributive shares of the entity's net profits. However, a return shall be required from any owner or member having taxable income other than such distributive share of the net profits of such entity.

.5 Resident unincorporated entities owned by two or more persons may request permission to file the entity return in accordance with § 95.03 (4) b hereof if:

.01 All owners or members are residents of this City and any of the entity income is allocable to another taxing municipality;

.02 One or more owners or members are non-residents and subject to tax in their municipality of residence on income allocable to this City; or

.03 One or more owners or members are non-residents and any of the entity income is allocable outside this City.

.6 The commission of every real estate sales person whose license is registered with a broker whose business address is located in Bowling Green is deemed to be Bowling Green activity, the net profit from which is subject to the tax of this City.

b. Imposition of Tax on Resident's Distributive Share of Profits of a Resident Unincorporated Business Entity, Not Attributable to This City:

.1 A resident individual who is sole owner of a resident or unincorporated entity shall disregard the business allocation formula and pay the City tax on the entire net profits of his resident, unincorporated business entity. Provided, however, that if any portion of such net profits is allocable to another taxing municipality, credit for tax due or paid such other taxing municipality shall be claimed in accordance, with § 95.14 hereof.

.2 In the case of a resident individual partner or part owner of a resident unincorporated entity, there is imposed an annual tax of 1 ½% plus .14% plus .09% plus .19% (total 1.92%) on such individual's share of net profits earned, accrued or received during the effective period of the ordinance not attributable to this City, under the method of allocation provided for in § 95.03 of the ordinance, and not taxed against the entity. Provided, however, if any portion, thereof is allocable to another taxing municipality credit for tax due or paid such other municipality shall be claimed in accordance with § 95.14 hereof.

(4)a. Imposition of Tax on Net Profits of Non-Resident Unincorporated Businesses:

.1 In the case of non-resident unincorporated businesses, professions, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of 1 ½% plus .14% plus .09% plus .19% (total 1.92%) on net profits earned, accrued or received during the effective period of the ordinance attributable to this City, under the formula or separate accounting method provided for in the ordinance.

.2 The tax imposed on non-resident unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof.

.3 Non-resident unincorporated entities owned by two or more persons all of whom are residents of Bowling Green may elect to disregard the method of allocation provided for in the ordinance and pay the tax on the entire net profits thereof. The tax so paid by the entity shall constitute all the tax due from the owners or members of the entity on their distributive shares of such net profits. However, a return shall be required from any owner or member having taxable income other than such distributive share of the net profits of such entity.

.4 Non-resident unincorporated entities owned by two or more persons may request permission to file the entity return in accordance with § 95.03 (4b) hereof if:

.01 All owners or members are residents of Bowling Green and any of the entity income is allocable to other taxing municipalities;

.02 One or more owners or members are non-residents and subject to tax in their municipality of residence on income allocable to this City; or

.03 One or more owners or members are non-residents and any of the entity income is allocable outside this City.

b. Imposition of Tax on Resident's Share of Profits of a Non-Resident Unincorporated Business Entity Not Attributable to Bowling Green (See § 95.14 for credits)

.1 A resident individual who is sole owner of a non-resident unincorporated business entity shall disregard the business allocation formula and pay the tax on the entire net profits of his unincorporated entity. Provided, however, if any portion of such net profits is allocable to another taxing municipality, credit for tax due or paid such other taxing municipality shall be claimed in accordance with § 95.14 hereof.

.2 In the case of a resident individual partner or part owner of a non-resident unincorporated entity, there is imposed an annual tax of 1 ½% plus .14% plus .09% plus .19% (total 1.92%) on such individual's distributive share of net profits earned, accrued or received during the

effective period of the ordinance not attributable to this City under the method of allocation provided for in § 95.03 of the ordinance and not taxed against the entity. Provided, however, that such resident individual or partner or owner shall be entitled to credit for tax paid another taxing municipality in accordance with § 95.14.

(5) Imposition of Tax on Net Profits of Corporations.

a. In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in this City, there is imposed an annual tax of 1 ½% plus .14% plus .09% plus .19% (total 1.92%) on the net profits earned, received or accrued during the effective period of the ordinance attributable to this City under the formula or separate accounting method provided for in the ordinance.

b. In determining whether a corporation is conducting a business or other activity in this City, the provisions of § 95.03 B of these regulations shall be applicable.

c. Corporations which are required by the provisions of § 5725.38 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 cases, 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 definition contained in § 95.02 of these regulations but not in limitation thereof, the following additional information respecting net business profits is furnished.

a. Net Profits.

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

.2 Net profits as disclosed 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.

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

.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. Provided, however, that loss on the sale, exchange or other disposition of depreciable property or real estate, used in the taxpayer's business shall not be allowed as a deductible expense.

.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 Tax Commissioner (if 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 deduction. If for any reason the income from property is not subject to the tax, then taxes on and other expenses of said property are not deductible. In any event, the following taxes are not deductible from income: (1) the tax under the ordinance; (2) federal or other taxes based on income; (3) gift, estate or inheritance taxes; and (4) taxes for local benefits or improvements to property which tend to appreciate the value thereof.

.06 Capital gains and losses from sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned.

.07 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 under said law.

.08 The Tax Commissioner may, upon submission by the taxpayer of satisfactory evidence showing the amount of expenses attributable to non-taxable income, permit the taxpayer to include in his return expenses attributable to taxable income in an amount agreed to by the taxpayer and the Tax Commissioner.

(7) Rental 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 \$100.00 per month, it shall, be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer and the net income of such rental properties shall be subject to tax; provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$100.00 per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds \$100.00 per month; 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 \$100.00 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 City are subject to tax on the net income from rentals (to the extent above specified), regardless of the location of the real property owned excepting that, if any such property is located in and subject to a municipal income tax by another taxing municipality, credit shall be claimed for tax due or paid such other taxing municipality, in accordance with § 95.14 of the ordinance.

h. Non-residents of this City are subject to tax only on the income from real property located in this City and, in determining whether gross monthly rentals exceed \$100.00 shall take into consideration only the income from such properties located within this City.

i. Corporations owning or managing real estate are taxable only on that portion of income derived from property located in this City.

(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 an attachment to be filed with the City tax return.

(B) Allocation of Business Profits. For businesses conducted both within and without Bowling Green, 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. The net profits allocable to this City from business, professional or other activities conducted in the City by corporation, or unincorporated entities (whether resident or non-resident) may be determined from the records of the taxpayer if taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within this City.

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

c. In determining the income allocable to this City from the books and records of a taxpayer an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters are within or without this City.

(2) Business Allocation Percentage Method.

a. STEP 1: Ascertain the percentage which the average net book value of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within this City is of the average net book value 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 this City is determined by dividing the average net book value of such property within this City (without deduction of any encumbrances) by the average net book value of all such property within and without this City. In determining such percentage, property rented to the taxpayer as well as real and tangible personal property owned by the taxpayer must be considered.

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

.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.

b. STEP 2: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made and services rendered in this City is of the total gross receipts wherever derived during the period covered by the return.

.1 The following sales shall be considered Bowling Green sales:

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

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

.03 All sales of tangible personal property delivered to purchasers within this City even though transported from a point outside this City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within this City 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 this City to purchasers outside this City if the taxpayer is not, through its own employees regularly engaged in the solicitation or promotion of sales at the place 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 sub-paragraphs a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale; and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside this City by mail or phone from an office, or place of business within this City shall not be considered a solicitation of sales outside this City.

c. STEP 3: Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within this City is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without this City during the period covered by the return,

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

.2 Wages, salaries, and other compensation shall be computed on the cash or accrual basis in accordance 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 this City the amount treated as compensation for services performed within this 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 this City.

.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 this City 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 this City is of his total working time.

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 this City. A factor is excluded only when it does not exist anywhere.

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

(3) Substitute Method:

a. In the event a just and equitable result cannot be obtained under the formula, the Board, upon application of the taxpayer or the Commissioner, 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 Board 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 shall be served at the time of filing upon the taxpayer or Commissioner as the case may be. No specific form need be followed in making such an application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the Board of Review.

(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 subsequent to January 1, 1957 allocable to this City may be applied against the portion of the profit of succeeding years allocable to this City until exhausted but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.

(2) In the event net profits are allocated both within and without this City, the portion of a net operating loss sustained shall be allocated to this City in the same manner as provided herein for allocating net profits to this City. 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) In the case of fiscal years beginning prior to the effective date of the ordinance the net operating loss deduction will be that portion of the operating loss that the number of months of the fiscal year after the effective date of the ordinance bears to the total number of months in such fiscal year.

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

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

- a. Year in which net operating loss is sustained.
- b. Method of accounting and allocation, used to determine portion of net operating loss allocable to this City.
- 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.

(6) 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 to the surviving business entity.

(7) In the case of a net operating loss in filing of consolidated returns, see § 95.03 (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 Commissioner to file separate returns.
- b. A new corporation, other than a corporation created or organized by a member of the group, has become a member of the group during the taxable year.
- c. A corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.

(3) If a corporation becomes a member of the group during the taxable year the consolidated return must include the income for the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire

year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for 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 after it ceases to be a member separate returns must be filed. If a corporation has been a member of the affiliated group for less than one month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one month.

If a subsidiary is a member of 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 fractions shall be based on the actual figures.

(5) All subsidiary corporations must agree in writing to the filing of the consolidated return as they will be liable for the tax as well as will 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 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 fractions the consolidated net operating loss carryover allocated to this City shall be allowed.

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

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

(E) Exceptions:

The following shall not be considered taxable:

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

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

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

(4) Interest and dividends from intangible property.

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

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

(7) 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 profits by taxpayers operating for profit.

(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 Bowling Green under the method or methods provided above.

(F) The contributions from income toward a Keogh (HR-10) or similar plan are nondeductible and, hence, includable in the taxable income for this City to the individual who decided or can decide to implement or participate in the plan.

§ 95.04 EFFECTIVE PERIOD OF TAX

(A) The tax imposed by § 95.03 (A1) and (A2) of the ordinance shall be levied, collected and paid with respect to salaries, wages, bonuses, incentive payments, commissions, fees, and other compensation earned during the effective period the ordinance.

(B) The tax imposed by § 95.03 (A3), (A4) and (A5) of the ordinance, with respect to net profits of trades, businesses, professions, enterprises, undertakings and other activities is on the net profits earned during the effective period of the ordinance.

§ 95.05 RETURN AND PAYMENT OF TAX

(A) Date and Requirement for Filing:

(1) On or before April 30th of the year following the effective date of the ordinance and each year thereafter, every person subject to the provisions of § 95.03 (A1) - (A5), inclusive, of the ordinance shall, except as hereinafter provided, make and file a return with the Commissioner, whether or not a tax is due.

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

(3) Every person subject to the provisions of § 95.03 of the ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, wages, commissions and other personal service compensation, net profits from business or other activities, including the rental from use of real and personal property, and other income taxable under the ordinance, received for the period covered by the return and such other pertinent facts and information in detail as the Commissioner may require.

4) Where an employee's entire earnings for the tax period are paid by an employer(s), and 1 ½% plus .14% plus .09% plus .19% (total 1.92%) tax thereon has in each instance been withheld and deducted by the employer(s) from the gross amount of the entire earnings of such employee-taxpayer, and where the employer of such employee has filed a report or return in which such employee's entire and only earnings are reported to the Commissioner, and where such employee has no taxable income other than such earnings and the tax so withheld has been paid to the Commissioner, such employee need not file a return.

(5) An employee who is permitted to deduct business expenses from gross wages, salaries, or commissions must file a return in order to claim such deductions even though all or part of such wages, salaries, or commissions are subject to withholding.

(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.

(9)a. Except as provided for herein, the tax is on the partnership or association as an entity, whether resident or non-resident, and a return is required disclosing the net profits allocable to this City and the tax paid thereon. However, any resident partner or member of an unincorporated entity is required to make a return and pay the tax on income allocable outside the City in accordance with § 95.03 (A 3 b) and (A 4 b).

b. Notwithstanding the provisions of § 95.03 of the ordinance a resident or non-resident unincorporated entity may, in lieu of paying the tax on the entire net profits of the entity, request permission to file the entity return as an Information Return only when:

.1 Any portion of the entity profits is allocable to another taxing municipality; or

.2 One or more of the owners or members is a non-resident and subject to municipal income tax in his municipality of residence on his distributive share of the net profits of the entity; or

.3 One or more of the owners or members is a non-resident and any portion of the entity income is allocable outside this City.

c. If such permission is granted the entity return shall include all required schedules, and amount and manner of determining income subject to the City income tax, and a complete list of all members or owners and their distributive shares of the entity net profits. In addition, each individual owner or member is required to file a declaration and a return and to pay the tax on his distributive share of the entity net profits, excepting that:

.1 A resident owner or member shall be entitled to the credit provided for in § 95.14 of the ordinance on that portion of his distributive share of the entity net profits allocable to, and taxable by, another taxing municipality;

.2 A non-resident owner or member shall exclude such portion of his distributive share of the entity net profits as is allocable outside Bowling Green.

d. The granting of permission to file an information return shall not relieve the entity as such of the payment of any tax due and unpaid from any individual owner or member, or from the responsibility of withholding the tax from employees and remitting such tax pursuant to § 95.06 of the ordinance.

(10) A husband and wife may file a joint return.

(B) Information Required and Reconciliation with Federal Returns

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

(2) 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 Bowling Green tax and unallowable expenses shall be eliminated in determining net income subject to Bowling Green tax. The fact that any taxpayer is not required to file a federal tax return does not relieve him from filing a Bowling Green tax return.

(3) If 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 this City, a report of such change shall be filed by the taxpayer within three months after receipt of the final notice from the Federal Internal Revenue Service or final court decision, see § 95.11.

(4) If a change in federal income tax liability results in a reduction of taxes owed and paid to this City a claim for refund shall be filed with the Commissioner as prescribed in § 95.11.

(5) Where credit is claimed for taxes due or paid another taxing municipality as provided for by § 95.14 of the ordinance, the amount of such credit shall be determined and

claimed in accordance with § 95.14 hereof. Such claim shall be on a form prescribed by the Commissioner.

(C) Extensions

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

(D) Payment with Return.

(1) The payment due at the time of filing the return shall be the amount of the tax imposed by the ordinance after deducting:

- a. The amount of the Bowling Green income tax deducted at the source by an employer(s) pursuant to § 95.06 of the ordinance;
- b. Such portion of the tax as has been paid on the Declaration of Estimated Bowling Green income tax in accordance with § 95.07 of the ordinance, including any overpayment of the previous year's Bowling Green income tax which has not been refunded;
- c. Credit for any tax paid or due another taxing municipality in accordance with § 95.14 of the ordinance.

(2) Should the return indicate an overpayment of the tax to which this City is entitled under the provisions of the ordinance, such overpayment may be applied against any subsequent liability or, at the election of the taxpayer and so indicated on the return, such overpayment (or portion thereof) shall be refunded. Provided that no additional taxes or refunds of less than One Dollar (\$1.00) 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 any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in § 95.11 and § 95.14. Such amended return shall be on a form obtainable on request from the Commissioner. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(2) Within three months from the final determination of a federal tax liability affecting the taxpayer's Bowling Green tax liability, such taxpayer shall make and file an amended Bowling Green return showing income subject to the Bowling Green tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

(F) No Netting

(1) Commencing with tax returns for years beginning after December 31, 1988, the net loss from a business entity may not be used to offset salaries, wages, commissions, or the net income from any other entity or activity. Each business loss may be carried-forward to offset future income from the same entity for the same owner in accordance with § 95.03 (C). Each business profit that exceeds loss carry-forwards from the same entity must be included in taxable income.

§ 95.06 COLLECTION AT SOURCE

(A) Duty of Withholding

(1) Except as otherwise provided herein, it is the duty of each employer within or doing business within this City, who employs one or more persons whether as an employee, officer, director, or otherwise, to deduct each time any compensation is paid the tax of 1 ½% plus .14% plus .09% plus .19% (total 1.92%) from;

- a. The gross amount of all salaries, wages, bonuses, incentive payments, fees, commissions or other forms of compensation paid to residents of the City, regardless of the place where the services are rendered; and
- b. All compensation paid non-residents for services rendered, work performed or other activities engaged in within Bowling Green.

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

(3) Employers who do not maintain a permanent office or place of business in Bowling Green, but who are subject to tax on net profits attributable to this City, under the method of allocation provided for in the ordinance, are considered to be employers within this City 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 Commissioner, 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 return and pay the tax pursuant to the provisions of the ordinance and § 95.05 and 95.07 of the regulations.

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

a. If a 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 this City bears to the total volume of business transacted by him within and outside Bowling Green.

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

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

d. The occasional entry into Bowling Green of a non-resident employee who performs the duties for which he is employed primarily outside this City, shall not be deemed to take such employee out of the class of those rendering their services entirely outside this City.

e. The occasional absence of a non-resident employee who is primarily assigned within this City, shall not be deemed to take such employee out of the class of those rendering service entirely within Bowling Green. If assigned to a Bowling Green duty station, any employee desiring to allocate his time shall maintain records in sufficient detail in order to determine any period(s) of absence and the reasons therefore.

f. Every employee who allocates his time to this City and to any other place, whether or not that place is a municipal taxing entity, shall file a return which shall indicate the manner in which the allocation was achieved.

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

(8) An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided such expenses are incurred in earning compensation, including commissions, and are not deducted as a business expense by the employee under § 95.03 of these regulations.

(9) An employer whose records show that an employee is a non-resident of this City and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside this City by such employee, provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Commissioner notifies said employer in writing that such employee is a resident of this

City. All employees are required to notify the employer of any change of residence and the date thereof.

(10) A Bowling Green employer is required under the ordinance to withhold the tax of 1 ½% plus .14% plus .09% plus .19% (total 1.92%) from the compensation paid Bowling Green residents regardless of where the services compensated for were performed. Any Bowling Green employer who employs a Bowling Green resident in another taxing municipality is subject to the withholding provisions of both ordinances, and shall withhold and remit tax as follows:

- a. If the rate of tax levied by the other taxing municipality is the same as is imposed by the Bowling Green ordinance, the Bowling Green employer shall withhold the tax of 1 ½% plus .14% plus .09% plus .19% (total 1.92%) on the wages earned by such Bowling Green resident in such other taxing municipality, remitting to the City of Bowling Green only the balance, if any, of the tax withheld.
- b. If the rate of tax levied by the other taxing municipality is less than the rate imposed by the Bowling Green ordinance, such Bowling Green employer shall withhold tax of 1 ½% plus .14% plus .09% plus .19% (total 1.92%) on the entire wage earned by such Bowling Green resident, and shall remit to the other taxing municipality only the tax imposed by the ordinance of such other taxing municipality on the income earned therein by such Bowling Green resident, and shall remit to the City of Bowling Green the balance of the tax withheld;
- c. If the rate of tax levied by the other taxing municipality is at a higher rate than the rate imposed by the Bowling Green ordinance, such Bowling Green employer shall withhold and remit to such other taxing municipality its full rate of tax on compensation earned therein by such Bowling Green resident, remitting to the City of Bowling Green only the tax withheld on wages earned other than in such higher taxing municipality.

(B) Return and Payment of Tax Withheld and Status of Employers,

(1) The deductions from salaries, wages, and other compensation required to be made by employers are to begin with the compensation earned on and after the effective date of the 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 (Form EQR) and pay to the Commissioner 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, that where he deems such precaution necessary, the Commissioner may require an employer to remit withholding taxes at more frequent intervals. Provided further, in the event tax has been withheld from Bowling Green residents and remitted to other taxing municipalities, the tax so remitted shall be indicated on Form EQR. The return (Form EQR) required to be filed under this article shall be made on a form furnished by or obtainable on request from the Commissioner.

(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

Commissioner, depending upon 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 quarterly period the employer shall make the necessary adjustment directly with the employee and the amount to be reported on the quarterly EQR as withheld shall be the corrected amount;
- .2 If the over-withholding is discovered in a subsequent quarter of the same calendar year the employer may make proper adjustment with the employee. In such case the EQR for the quarter 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 EQR;
- .3 If the over-withholding is discovered in the following year, the employer should notify the Commissioner of such over-withholding and the circumstances thereof. Upon proper verification the Commissioner shall refund to the employee the amount of such excess withholding,

b. Former Employees:

- .1 In case too much has been withheld from an employee who is no longer employed by the employer, the employer shall notify the Commissioner of the amount and circumstances of such over-withholding and the Commissioner shall then refund to the employee the amount of such excess withholding; or
- .2 If the error is discovered by the employee such employee shall file a claim with the Commissioner and, upon verification thereof by the employer, the Commissioner 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 this City and such non-resident has been employed outside of Bowling Green for all or part of the time, such employee shall file a claim with the Commissioner covering such erroneous withholding and the Commissioner 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 Commissioner of such deficiency and the reason therefor.

(3) Every employer is deemed to be a trustee for the City of Bowling Green 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 City for the payment of such tax whether actually collected from such employee or not.

(5) On or before the 31st day of January, following any calendar year in which such deductions have been made by any employer, such employer shall file with the Commissioner, in the form prescribed by the Commissioner, an information return for each employee from whom Bowling Green 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 Bowling Green income tax withheld from such employee.

(6) For the convenience of employers, the information return may be made in one of three ways at the election of each employer, as follows:

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

b. Those employers not using Form W-2 furnished commercially may obtain forms upon request from the Commissioner.

c. Where the furnishing of this information as above indicated will create a distinct hardship the employer, upon written request to the Commissioner, may be permitted to furnish a list of all employees subject to the tax, which list shall show the employee's full name, last known address, social security number, gross amount of compensation paid during the year and the amount of Bowling Green income tax withheld. Such list may be compiled on any mechanical equipment presently used by the employer, but provision must be made for spacing equal to at least three lines between each name. The employer's name must be indicated on each sheet, each sheet must be numbered and the total number of sheets comprising the complete report indicated on the first page.

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

7) In addition to such information returns, and at the time the same are filed, such employer shall file with the Commissioner a withholding reconciliation form to enable the Commissioner 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 ($\frac{1}{2}$ cent) or more in which case it shall be increased to one cent (1 cent).

(D) The officer or the employee having control or supervision of or charged with the responsibility of filing the report and making payment, is personally liable for failure to file the report or pay the tax due as required by this section. The dissolution of a corporation does not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or pay tax due.

§ 95.07 DECLARATION

(A) Requirement of Filing.

(1) A declaration of estimated tax shall be filed by every taxpayer who anticipates receiving taxable income from which Bowling Green income tax will not be withheld by an employer(s). See also § 95.07 (C) hereof. Where required, such declaration shall be filed within four (4) months after the beginning of the taxable year.

(2) The declaration shall be filed for an amount equal to the taxpayer's liability for the preceding year, in the absence of known circumstances to the contrary. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith. The declaration shall be subsequently amended (increased or decreased) whenever a change in the tax liability can reasonably be determined.

(B) Date of Filing:

(1) Such declaration shall be filed on a form furnished by or obtainable from the Commissioner. The form may require a statement that the figures used in making the declaration are the figures used for estimating federal income tax adjusted to exclude any income or deductions not taxable or permissible under the Bowling Green ordinance.

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

(C) Form for Filing:

(1) Such declaration shall be filed on a form furnished by or obtainable from the Commissioner. The form may require a statement that the figures used in making the declaration are the figures used for estimating federal income tax adjusted to exclude any income or deductions not taxable or permissible under the Bowling Green ordinance.

a. Credit shall be taken for Bowling Green income tax withheld or to be withheld from any portion of such income pursuant to § 95.06 of the ordinance.

b. Credit shall be taken for taxes properly paid or payable to another taxing municipality by Bowling Green residents, whether payable directly or through withholding.

c. Should the declaration indicate an overpayment after application of allowable credits, such overpayment shall not be refunded until the final return has been filed in accordance with § 95.05 of the ordinance.

(2) The original estimate of tax liability or a subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any quarterly payment date as set forth in § 95.07 (D1). Such amendment may be made on the regular declaration form or on the back of any quarterly notice form (Q-1).

(D) Date of Payments:

(1) The estimated tax may be paid in full with the declaration or in equal installments on or before the last day of the fourth, sixth, ninth and twelfth month after the beginning of the taxable year.

(2) The declaration must be accompanied by at least one-fourth of the estimated tax shown due thereon.

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

(E) Final Return Requires:

(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 any overpayment of over one dollar (\$1.00).

§ 95.08 DUTIES OF THE FINANCE DIRECTOR & COMMISSIONER

(A) Collection of Tax and Retention of Records:

(1) It shall be the duty of the Tax Commissioner designated to receive monies due this City, 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 Commissioner to enforce payment of all taxes owing the City of Bowling Green, to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

(B) Enforcement Provisions:

(1) The Commissioner is charged with the, administration and enforcement of the provisions of the ordinance and is, subject to the approval of the Board of Review, empowered to adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the ordinance. The Commissioner has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the 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 Commissioner in writing all the facts involved and the ruling sought.

(3) These regulations, together with all amendments and supplements hereto and all changes herein, will be on file at the office of the Tax Commissioner, City Hall, Bowling Green, Ohio, and will be open to public inspection.

(4) The Commissioner is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Commissioner that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. 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 § 95.11, 95.17 and 95.99 of the ordinance shall apply.

(C) Estimation of Tax by Commissioner:

(1) Whenever the Commissioner 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 upon the basis of such determination, together with the interest and penalties as prescribed in § 95.10 of this 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 Board of Review or pursuant to regulation approved by said Board, the Commissioner shall have the power to compromise any interest or penalty, or both, imposed by § 95.10 of this ordinance.

§ 95.09 INVESTIGATIVE POWERS OF THE COMMISSIONER

(A) Investigations by Commissioner:

(1) The Commissioner, 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 Commissioner 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 Commissioner, 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 Commissioner, or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The Commissioner may compel the production of books, papers and records and the attendance of all persons

before him whether as parties or witnesses whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transactions of the taxpayer.

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

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

(4) Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show 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 Commissioner, or his duly authorized agent, by delivering it to the person named at his usual place of business or residence, or by mailing it to the person by certified 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 Commissioner or his duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by § 95.99 of the ordinance.

(D) Any information gained as a result of any returns, investigations, verifications or hearing before the Commissioner or the Board, required by the ordinance or authorized by these rules and regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of One Thousand Dollars (\$1,000.00) or imprisonment for not more than six (6) months, or both.

In addition to the above penalty, any employee of the City 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 profit, or both. Such records shall be preserved for a period of not less than five (5) years from the date the final return is filed and paid or the withholding taxes are paid.

§ 95.10 INTEREST & PENALTIES

(A) Interest:

(1) Except as provided in paragraph C of this section, all taxes imposed and all monies withheld, or required to be withheld, by employers under the provisions of this 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 (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 (a) file a return when due; or (b) pay taxes when due; or, (c) pay tax on a declaration in accordance with § 95.07, \$.50 per business day from the day due until the day received (minimum \$10.00).

(2) For failure to remit taxes withheld from employees when due, the greater of 3% per month or fraction thereof times the unpaid tax, or \$10.00 per month or fraction thereof.

(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 paid within three (3) months after final determination of 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 Commissioner. 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 Commissioner shall determine the assessment which may or may not be the same as the proposed assessment.

(D) Appeal from Assessment

(1) Upon recommendation of the Commissioner, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Commissioner to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest, or both.

§ 95.11 COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS

(A) Unpaid Sums - A Civil Debt

(1) All taxes imposed by the ordinance and not paid when due became, together with interest and penalties thereon, a debt due the City from the taxpayer and are recoverable as are other debts by civil suit. Employers who are required, under § 95.06 of the ordinance, to withhold and remit the taxes required to be withheld at the source, and who

fail to withhold and/or remit, become liable to the City in a civil action to enforce the payment of the debt created by such failure.

(2) No additional assessment shall be made by the Commissioner after three (3) years from the time the return was due or filed, whichever is later. Provided however, there shall be 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 gross income shall be considered a substantial omission.

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

(B) Refunds and Overpayments

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

(3) Overpayments will be either refunded or credited to the taxpayer's current liability at his option. Where no election has been made by the taxpayer, overpayment 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 become due.

b. To his current estimated tax liability.

(C) Limitation: Where the total amount due or refund claimed for a tax year is less than one dollar (\$1.00) such amount shall not be collected or refunded.

§ 95.12 BOARD OF REVIEW

(A) Composition:

A Board of Review, consisting of the City Solicitor, as chairman, and two other individuals to be appointed by the chief executive officer of the City is hereby created. 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. Any hearing by the Board may be conducted privately and the provisions of § 95.09 hereof with reference to the confidential character of information required to be disclosed by the ordinance shall apply to such matters as may be heard before the Board on appeal

(B) Duties

All rules and regulations and amendments or changes thereto, which are adopted by the Commissioner under the authority conferred by the ordinance, must be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Commissioner, and, at the request of the taxpayer or Commissioner, is empowered to substitute alternate methods of allocation.

(C) Appeals

(1) An appeal from a ruling of the Commissioner by a taxpayer or employer is effected by filing a notice of appeal with the Board at City Hall, Bowling Green, Ohio, within thirty (30) days after the announcement of the Commissioner's ruling or decision from which the appeal is taken. A copy of such notice of appeal must be filed with the Commissioner.

(2) The Board, by a majority vote, may affirm, modify or reverse, in whole or in part any such ruling or decisions of the Commissioner.

(3) Hearings before the Board shall be private unless the taxpayer requests a public hearing.

§ 95.13 ALLOCATION OF FUNDS

There is no regulation on this section as it is a policy matter for Council

§ 95.14 CREDITS TO RESIDENTS FOR TAX PAID TO ANOTHER MUNICIPALITY

(A) When the taxable income of a resident of the City of Bowling Green is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to the other municipality equal to fifty percent (50%) of the amount obtained by multiplying the lower of the tax rate of such other municipality, or of this municipality, by the taxable income earned in or attributable to the municipality of employment or business activity.

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

(C) Reciprocal credits with all other taxing authorities were phased out, January 1, 1972 through December 31, 1974. (Ord #2822, 2-2-72 and Ord #3516, 9-27-76).

§ 95.15 NO CREDIT TO NON-RESIDENTS FOR TAX PAID TO ANOTHER MUNICIPALITY

Reciprocal credits with all other taxing authorities were phased out, January 1, 1972 through December 31, 1974 (Ord # 2822, 2-2-72 and Ord #3516, 9-27-76).

§ 95.16 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER

Since the Council of Bowling Green has successively extended the term for the applicability of the tax, the last extension being from July 1, 1971 until repealed (Ord #3216, 12-16-74), the rules for the collection of taxes are amply provided for as a matter of law, in the Ordinance as supplemented by other sections of these regulations.

§ 95.17 PROHIBITED ACTS

It shall be unlawful for any person to:

- (A) Fail neglect or refuse to make any return or declaration required by this ordinance; or
- (B) Make any incomplete, false or fraudulent return; or
- (C) Willfully fail, neglect or refuse to pay the tax, penalties, or interest imposed by this ordinance; or
- (D) Willfully fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Commissioner; or
- (E) Refuse to permit the Commissioner or any duly authorized agent or employee to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
- (F) Fail to appear before the Commissioner and to produce his books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Commissioner; or
- (G) Refuse to disclose to the Commissioner any information with respect to the income or net profits of a taxpayer; or
- (H) Fail to comply with the provisions of this ordinance or any order or subpoena of the Commissioner authorized hereby; or
- (I) 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
- (J) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and Bowling Green tax withheld, or to knowingly give the Commissioner false information; or
- (K) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this ordinance.

§ 95.16 LIMITATION OF PROSECUTION

- (A) Prosecution for an offense made punishable under any provisions of this chapter shall be commenced within three years after the commission of the offense, provided however that, in the case of fraud, failure to file a return, or the omission of 25% or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.
- (B) The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return, return or declaration, from filing such form, or from paying the tax.

§ 95.19 SAVINGS CLAUSE

There is no regulation as this section pertains to the legality of the ordinance and not to its administration.

§ 95.20 AMENDMENTS AND SUPPLEMENTS

From time to time amendments and supplements to these regulations may be issued by the Tax Commissioner.

§ 95.99 PENALTY

(A) Any person who violates any of the provisions of § 95.17 shall be guilty of a misdemeanor in the first degree and shall be fined not more than \$1,000.00 or imprisoned not more than six (6) months, or both, for each offense.

(B) Any person divulging information in violation of § 95.09 shall, upon conviction thereof, be deemed guilty of a misdemeanor in the first degree and shall be subject to a fine or penalty of not more than \$1,000.00 or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the City of Bowling Green who violates the provisions of § 95.09 relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.