

Income Tax Ordinance
Waverly, Ohio

(Includes Amendments effective January 1, 2004)

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The City of Waverly
Income Tax Ordinance

BE IT ORDAINED BY THE Council of the City of Waverly that:

SECTION 1 - PURPOSE

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

SECTION 2 - DEFINITIONS

As used in this 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.

ADJUSTED FEDERAL TAXABLE INCOME- means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

- (a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
- (b) Add an amount equal to five per cent of intangible income deducted under division (A)(1)(a) of Ohio Revised Code 718.01, 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;
- (c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;
- (d) (i) Except as provided in division (A)(1)(d)(ii) of Ohio Revised Code 718.01, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code; (ii) Division (A)(1)(d)(i) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.
- (e) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
- (f) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;
- (g) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except: (i) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and (ii) Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

ADMINISTRATOR - The individual designated by the ordinance, whether appointed or elected to administer and enforce the provisions of the ordinance.

ASSOCIATION - A partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons.

BOARD OF REVIEW - The Board created by and constituted as provided in SECTION 13 of this ordinance.

BUSINESS - an enterprise, venture, transaction, activity, profession, trade or undertaking of any nature conducted for profit or ordinarily conducted for profit whether by an individual, partnership, association, corporation or any other entity.

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.

EMPLOYEE - One who works for wages, salary, commission or other type of compensation in the service of an employer.

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.

FISCAL YEAR - An accounting period of twelve (12) months or less ending on any day other than December 31st.

GENERIC FORM - an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income.

GROSS RECEIPTS - The total income from any source whatsoever.

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

NET PROFITS - A net gain from the operation of a business, profession, enterprise or other activity, venture or transaction after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, without deduction of taxes imposed by this ordinance, federal, state and other taxes based on income and in the case of an association, without deduction of salaries paid to partners, and other owners, and otherwise adjusted to the requirements of this ordinance.

For taxable years beginning on or after January 1, 2004, "net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts described in section (A) immediately following this definition, required to be reported on schedule C, schedule E, or schedule F.

(A) The City of Waverly shall not tax any of the following:

1. the military pay or allowances of members of the armed forces of the United States and of members of their reserve components, including the Ohio National Guard;
2. The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities;
3. Except as otherwise provided in division (G) of Ohio Revised Code § 718.01, intangible income;

4. Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually. Such compensation in excess of one thousand dollars may be subjected to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.
5. Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306. of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation;
6. The income of a public utility, when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code, except a municipal corporation may tax the following, subject to Chapter 5745. of the Revised Code: Beginning January 1, 2002, the income of an electric company or combined company; beginning January 1, 2004, the income of a telephone company.
7. On and after January 1, 2003, items excluded from federal gross income pursuant to section 107 of the Internal Revenue Code;
8. On and after January 1, 2001, compensation paid to a nonresident individual to the extent prohibited under section 718.011 of the Ohio Revised Code;
9. (a) Except as provided in division (F)(9)(b) and (c) of Ohio Revised Code 718.01, an S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code. (b) If, pursuant to division (H) of former section 718.01 of the Ohio Revised Code as it existed before the effective date of the amendment of that section by H.B. 127 of the 125th General Assembly, a majority of the electors of a municipal corporation voted in favor of the question at an election held on November 4, 2003, the municipal corporation may continue after 2002 to tax an S corporation shareholder's distributive share of net profits of an S corporation. (c) If, on December 6, 2002, a municipal corporation was imposing, assessing, and collecting a tax on an S corporation shareholder's distributive share of net profits of the S corporation to the extent the distributive share would be allocated or apportioned to this state under divisions (B)(1) and (2) of section 5733.05 of the Ohio Revised Code if the S corporation were a corporation subject to taxes imposed under Chapter 5733. of the Revised Code, the municipal corporation may continue to impose the tax on such distributive shares to the extent such shares would be so allocated or apportioned to this state only until December 31, 2004, unless a majority of the electors of the municipal corporation voting on the question of continuing to tax such shares after that date vote in favor of that question at an election held November 2, 2004. If a majority of those electors vote in favor of the question, the municipal corporation may continue after December 31, 2004, to impose the tax on such distributive shares only to the extent such shares would be so allocated or apportioned to this state. (d) For the purposes of division (D) of section 718.14 of the Ohio Revised Code, a municipal corporation shall be deemed to have elected to tax S corporation shareholders' distributive shares of net profits of the S corporation in the hands of the shareholders if a majority of the electors of a municipal corporation vote in favor of a question at an election held under division (F)(9)(b) or (c) of this section. The municipal corporation

shall specify by ordinance or rule that the tax applies to the distributive share of a shareholder of an S corporation in the hands of the shareholder of the S corporation.

10. Employee compensation that is not "qualifying wages" as defined in section 718.03 of the Revised Code.

NON-RESIDENT - An individual domiciled outside the City of Waverly.

NON-RESIDENT UNINCORPORATED BUSINESS ENTITY - An unincorporated business entity not having an office or place of business within the City of Waverly.

OTHER PAYER - any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent.

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.

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.

QUALIFYING WAGES- Wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

- (a) Deduct any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.
- (b) Add the following amounts:
 - a. Any amount not included in wages solely because the employee was employed by the employer prior to April 1, 1986;
 - b. Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option and the municipal corporation has not, by resolution of ordinance, exempted the amount from withholding and tax. This section applies only to those amounts constituting ordinary income.
 - c. Any amount not included in wages if the amount is an amount described in section 401(k) or 457 of the Internal Revenue Code. This section only applies to employee contributions and employee deferrals.
 - d. Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.
- (c) Deduct any amount attributable to a nonqualified deferred compensation plan or program described in section 3121(v)(2)(C) of the Internal Revenue Code if the compensation is included in wages and has by resolution or ordinance been exempted from taxation by the municipal corporation.
- (d) Deduct any amount included in wages if the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option and the municipal corporation has, by resolution or ordinance, exempted the amount by withholding and tax.

RESIDENT - An individual domiciled in the City of Waverly.

RESIDENT UNINCORPORATED BUSINESS ENTITY - An unincorporated business entity having an office or place of business within the City of Waverly.

TAXABLE INCOME - Wages, salaries, and other compensations paid by an employer or employers before any deductions 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.

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

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

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

SECTION 3 - IMPOSITION OF TAX

A. Subject to the provision of Section 16 of this ordinance an annual tax for the purposes specified in Section 1 hereof shall be imposed on and after January 1, 2004 at the rate of one percent (1%) per annum upon the following:

1. On all salaries, wages, commissions and other compensation earned during the effective period of the ordinance by residents of the City of Waverly.

2. On all salaries, wages, commissions and other compensation earned during the effective period of the ordinance by nonresidents for work done or services performed or rendered in the City of Waverly.

A. 12-day Occasional Entry Rule.

The City of Waverly shall not tax the compensation of an individual if all the following apply:

1) the individual does not reside in the City of Waverly;

2) the compensation is paid for personal services performed by the individual in the City of Waverly on twelve (12) or fewer days during the calendar year;

3) in the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the City of Waverly and the individual pays tax on compensation described in division (B) of this section to the city, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual;

4) the individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the City of Waverly.

B. For purposes of the 12-day calculation, "Day" means any part of a 24-hour calendar day where compensation is earned in the City of Waverly.

C. Beginning with the thirteenth (13th) day, the individual shall no longer be considered an occasional entrant and is liable for taxes on income earned for the first twelve (12) days.

3. (a) On the portion attributable to the City of Waverly of the net profits earned during the effective period of this ordinance of all resident unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City of Waverly.

(b) On the portion attributable to the City of Waverly of the net profits earned during the effective period of this ordinance of a resident partner or owner of a resident unincorporated business entity not attributable to the city of Waverly and not levied against such unincorporated business entity.

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

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

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

6. Amount received as gambling winnings and reported on IRS Form W-2G or Form 5754 and/or any other form from the Internal Revenue Service that reports winnings from gambling. Gambling includes but is not limited to bingo, keno, slot machines, casino games, horse racing, dog racing, jai alai, sweepstakes, wagering pools, lotteries, prizes and any other wagering transactions.

B. The portion of the net profits attributable to the City of Waverly of a taxpayer conducting a business, profession or other activity both within and without the boundaries of the City of Waverly shall be determined as provided in Section 718.02 of the Revised Code of Ohio and in accordance with the rules and regulations adopted by the Administrator pursuant to this ordinance.

C. Consolidated Returns.

1. Filing of consolidated returns may be permitted or required in accordance with the Rules and Regulations prescribed by the Administrator.

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

D. Exclusions from Tax.

The provisions of this Ordinance shall not be construed as levying a tax upon the following:

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

2. Proceeds of insurance paid by reason of the death of the insured, pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
3. Dues, contributions and similar payments received by charitable, religious educational organizations, labor unions, trade or professional associations, seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such activities are conducted by a Bona Fide charitable, religious or educational organization or association.
4. Gains from involuntary conversions, cancellations of indebtedness and income of a decedent's estate during the period of administration (except such income from the operation of a business).
6. The City of Waverly shall not tax the income of a public utility, when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code; however, the City of Waverly may tax the following, subject to Chapter 5745 of the Ohio Revised Code:
 - a. Beginning January 1, 2002, the income of an electric company or combined company;
 - b. Beginning January 1, 2004, the income of a telephone company
 - c. "Combined company," "electric company," and "telephone company" have the same meanings as in section 5727.01 of the Ohio Revised Code.

E. Allocation Formula

- a. Net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of the following:
 - i. The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation during the taxable period to the average original cost of all 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 the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

- ii. Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in such municipal corporation to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under section 718.011 of the Ohio Revised Code;
- iii. Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross

receipts of the business or profession during the same period from sales and services, wherever made or performed.

If the foregoing apportionment formula does not produce an equitable result, another basis may be substituted, under uniform regulations, so as to produce an equitable result.

SECTION 4 - LEVY, COLLECTION AND PAYMENT OF TAX

Said tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of businesses, professions or other activities earned from December 1, 1994, provided, however, that where the fiscal year of the business, profession 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 on and after December 1, 1994, the close of the taxpayer's fiscal year. Thereafter, the taxpayer shall report on its fiscal year basis.

SECTION 5 - RETURN AND PAYMENT OF TAX

A. All residents except as herein provided shall, whether or not a tax is due thereon, make and file a return on or before April 15th of the year following the effective date of this ordinance, and each year thereafter in compliance with Ohio Revised Code § 718.05(B). When the return is made for a fiscal year or other period different from the calendar year, the returns shall be filed within four (4) months from the end of the fiscal year.

B. The City of Waverly shall accept a generic form of any return, report, or document required to be filed if the generic form once completed and filed, contains all of the information required to be submitted with the City of Waverly's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic forms otherwise complies with the rules or ordinances of the City of Waverly governing the filing of returns, reports or documents. The return shall be filed with the Administrator setting forth:

1. The aggregate amounts of salaries, wages, commissions, and other compensation earned, including gambling winnings, and gross income from business, profession, or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to said tax.
2. The amount of tax imposed by this ordinance on such earnings and profits;
3. Such other pertinent statements, information returns, or other information as the Administrator may require.

C. Any taxpayer that has requested an extension for filing a federal income tax return may request by filing a copy of the taxpayer's request for a federal filing extension with the Administrator. The request for extension shall be filed not later than the last day for filing the municipal income tax return as prescribed by ordinance of the City of Waverly. The Administrator shall grant such a request for extension filed before January 1, 2004, for a period not less than the period of the federal extension request. The IRS authorizes four (4) months automatically and additional requests are limited to six (6) months from the original due date. For taxable years beginning after 2003, the extended due date of the municipal income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. The Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended. The

taxpayer shall make the request by filing a copy of the taxpayer's request for a federal filing extension with the Tax Commissioner.

1. The request for extension shall be filed not later than the last day for filing the City of Waverly tax return as prescribed by ordinance or rule of this municipal corporation. The City of Waverly may deny a taxpayer's request for extension only if the taxpayer:

(a) fails to timely file the request;

(b) fails to file a copy of the federal extension request;

(c) owes the City of Waverly any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or nonpayment of income tax; or

(d) has failed to file any required income tax return, report, or other related document for a prior tax period.

The granting of an extension for filing a municipal corporation income tax return does not extend the last date for paying the tax without penalty unless the municipal corporation grants an extension of that date.

D. 1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as 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 this ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 7 of this ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 15, 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 said return.

2. A taxpayer who has overpaid the amount of tax to which the City of Waverly is entitled under the provisions of this ordinance may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

E. 1. AMENDED RETURNS: Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 11 and 15. Such amended returns 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 from filing the original return.

2. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's City of Waverly tax liability, such taxpayer shall make and file an amended City of Waverly return showing income subject to the City of Waverly 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.

SECTION 6 - COLLECTION AT SOURCE

A. In accordance with Rules and Regulations prescribed by the Administrator, each employer within or doing business within the City of Waverly shall deduct at the time for the payment of such salary, wage, commission or other compensation, the tax of one percent (1%) of the gross salaries, wages, commissions or other compensation due by the said employer to said employee and shall, on or before the last day of the month following the close of each calendar quarter make a return and pay to the Administrator the amount of taxes deducted. Said returns shall be on a form or forms prescribed by and obtainable from the Administrator and shall be subject to the Rules and

Regulations prescribed therefore by the Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

B. Such employer in collecting said tax shall be deemed to hold the same, until payment is made by such employer to the City of Waverly, as a Trustee for the benefit of the City of Waverly and any such tax collected by such employer from his employees shall, until the same is paid to the City of Waverly, be deemed a trust fund in the hands of such employer.

C. Each employer, on or before the 28th day of February following any calendar year in which such deductions have been made by any employer, shall file with the Administrator an information return for each employee from whom the City of Waverly Income Tax has been withheld, showing the name and address of the employee, the whole amount of compensation paid said employee during the year and the amount of City of Waverly Income Tax withheld from each employee.

D. For taxable years beginning after 2003, the City of Waverly shall not require any employer or any agent of any employer or any other payer, to withhold tax with respect to any amount other than qualifying wages. Nothing in this section prohibits an employer from withholding tax on a basis greater than qualifying wages.

E. An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.

F. An employee is not relieved from liability for a tax by failure of the employer to withhold the tax as required by a municipal corporation or by the employer's exemption from the requirement to withhold the tax.

G. The failure of an employer to remit to the municipal corporation the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.

H. Compensation deferred before the effective date of this amendment is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

SECTION 7 - DECLARATIONS

A. Every person who anticipates any taxable income which is not subject to Section 6 hereof, or who engages in any business, profession, enterprise, activity, venture or transaction subject to the tax imposed by Section 3 hereof shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any; provided, however, if a persons income is wholly from wages from which the tax will be withheld and remitted to the City of Waverly in accordance with Section 6 hereof, such person need not file a declaration.

B. 1. Such declaration shall be filed on or before April 30th of each year during the life of this ordinance, or within four (4) months of the date the taxpayer becomes subject to tax for the first time.

2. Those taxpayers reporting on a fiscal year basis shall file a declaration within four (4) months after the beginning of each fiscal year or period.

C. 1. Such declaration shall be filed upon a form furnished by, or obtainable from the Administrator, provided, however, credit shall be taken for the City of Waverly tax to be withheld from any portion of such income. In accordance with the provisions of Section 15 hereof, credit may be taken for tax to be paid to or be withheld and remitted to another taxing municipality.

2. The original declaration or any subsequent amendment thereof may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.

D. Such declaration of estimated tax to be paid to the City of Waverly shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the sixth, ninth, and twelfth months after the beginning of the taxable year. Provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

E. On or before the last day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City of Waverly shall be paid therewith in accordance with the provisions of Section 5 hereof.

SECTION 8 - DUTIES OF THE ADMINISTRATOR

A. 1. It shall be the duty of the Administrator to receive the tax imposed by this 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 the City of Waverly, 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. Said Administrator is hereby charged with the enforcement of the provision of this ordinance, and is hereby empowered, subject to the approval of the Board of Review to adopt and promulgate and to enforce rules and regulations relating to any matter of thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this ordinance, including provisions for the re-examination and correction of returns. 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 be granted until proper returns are filed by the taxpayer for all amounts owed by him under the ordinance. 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 Section 11 and 12 of the ordinance shall apply.

C. 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 Administrator may determine the amount of tax appearing to be due the City of Waverly from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

D. Subject to the consent of the Board of Review or pursuant to regulation approved by said Board, the Administrator shall have the power to compromise and interest or penalty, or both, imposed by Section 10 of this ordinance.

E. On or after January 1, 2002, each municipal corporation that imposes a tax on income shall make electronic versions of any rules or ordinances governing the tax available to the public through the internet, including, but not limited to, ordinances or rules governing the rate of tax; payment and withholding of taxes; filing any prescribed returns, reports, or other documents; dates for filing or paying taxes, including estimated taxes; penalties, interest, assessment, and other collection remedies; rights of taxpayers to appeal; and procedures for filing appeals.

SECTION 9 - INVESTIGATIVE POWERS OF THE ADMINISTRATOR - PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION

A. The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records, and federal income tax returns of any employer or any taxpayer or person subject to, or whom the Administrator believes is subject to the provisions of this ordinance, for the purpose of verifying the accuracy of any return made, or if no return was made, to ascertain the tax due under this ordinance. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Administrator, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

B. The Administrator is hereby authorized to order any person presumed to have the knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

C. The refusal to produce books, papers, records, and federal income tax returns, or the refusal to submit to such examination by any employer or person subject to or presumed to be subject to the tax or by any officer, agent, or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this Section or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this ordinance, punishable as provided in Section 12 hereof.

D. Any information gained as the result of any returns, investigations, hearings, or verifications required or authorized by this ordinance shall be confidential, except for official purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this ordinance, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than five hundred dollars (\$500.00) 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 Waverly who violates the provisions of the Section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

E. Every taxpayer shall retain all records necessary to compute his tax liability for a period of five (5) years from the date his return is filed, or the withholding taxes are paid.

SECTION 10 - INTEREST AND PENALTIES

A. All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this ordinance and remaining unpaid after they become due will be assessed interest at the rate of eight (8) percent per annum or ten dollars (\$10.00), whichever is greater.

B. Failure to pay, timely file and or pay held, a penalty of twenty-five dollars (\$25.00) for the first time and fifty dollars (\$50.00) each time thereafter.

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 thereon within the time prescribed by the Administrator and provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after final determination of the federal tax liability. The Administrator may waiver or abate any such interest or penalties as he, in his description, deems proper.

SECTION 11 - COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

A. All taxes imposed by this ordinance shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to this tax, or failure to file a return and additional assessment shall not be made after three (3) years from the time the return was due or filed whichever is later, provided however, in those cases in which a Commissioner of Internal Revenue and the taxpayer has executed a waiver of the federal statute of limitation, the period within which an additional assessment may be made by the Administrator shall be one (1) year from the time of the final determination of the federal tax liability.

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

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

SECTION 12 - VIOLATIONS - PENALTIES

A. Any person who shall:

1. Fail, neglect or refuse to make any return or declaration required by this ordinance; or
2. Make any incomplete, false or fraudulent return; or
3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this ordinance; or
4. Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
5. Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
6. Fail to 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 this ordinance or any order or subpoena of the Administrator authorized hereby; or
 9. Give to any employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer if 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 City of Waverly tax withheld, or to knowingly give the Administrator false information; or
 11. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this ordinance;
- Shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six (6) months, or both, for each offense.
- B. All prosecutions under this section must be commenced within five (5) years from the time of the offense complained of except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution must be commenced shall be ten (10) years from the date the return was due or the date the false or fraudulent return was filed.
- C. The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return, return or declaration from filing such form, or from paying the tax.

SECTION 13 - BOARD OF REVIEW

- A. A Board of Review, consisting of a chairman and two other individuals each to be appointed by the Mayor of the City of Waverly with approval of the Waverly City Council, 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 provision of Section 9 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. All additional rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this 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 Administrator, and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.
- C. Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this ordinance may appeal therefrom to the Board of Review; and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. The request for review shall be in writing, shall state why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Administrator issues the decision complained
- D. Whenever the Tax Commissioner issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the City of Waverly, the Tax Commissioner shall notify the taxpayer at the same time of

the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision. The Board of Review shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the board and may be represented by an attorney at law, certified public accountant, or other representative. The Board shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send notice of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision.

E. The taxpayer of Administration may then appeal the local Board of Review's decision to the Courts or to the State Board of Tax Appeals as defined in Ohio Revised Code section 5717.011.

SECTION 14 - ALLOCATION OF FUNDS

The funds collected under the provision of this ordinance shall be applied for the following purposes, and in the following order, to wit:

1. Such part thereof as shall be necessary to defray all costs and expenses of collecting the taxes levied by this ordinance and the cost of administering and enforcing the provisions hereof.
2. That the remaining revenue, after the cost and expenses of collecting, administering and enforcing the taxes levied under this ordinance, shall be paid at not more than the percentage indicated into the funds listed in Table 1 with the remaining being deposited in the General Fund.

Table 1

Distribution of Tax Revenues

Fund	Allocation (%)
Street Lighting	5.00
Bridge and Street	5.00
Traffic	30.00
Fire	15.00
Sewer	25.00

(This allocation was amended with Ordinance #1-97 which was passed on January 21, 1997. The allocation at that time was changed with all money going into the General Fund)

SECTION 15 - CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY

- A. Where a resident of the City of Waverly is subject to a municipal income tax in another municipality he or she shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.
- B. Every individual taxpayer who resides in the City of Waverly who receives net profits, salaries, wages, commissions or other personal service compensation for work done or services performed or rendered outside the City of Waverly, if it be made to appear that he has paid a municipal income tax on the same income taxable under this ordinance to another municipality, shall be allowed a credit against the tax imposed by this ordinance of the

amount so paid by him or in his behalf to such other municipality. The credit shall not exceed the tax assessed by this ordinance on such income earned in such other municipality or municipalities where such tax is paid.

C. A claim for refund or credit under this section shall be made in such manner as the Administrator may by regulation provide. If a tax is paid to the wrong municipality and the correct locality is pursuing the payment of the tax, the correct locality must allow a non-refundable credit for those taxes paid incorrectly, but not refundable to taxpayer because of statute.

SECTION 16 - SAVING CLAUSE

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

SECTION 17 - EFFECTIVE CLAUSE

The fact this ordinance is necessary for the preservation of the public peace, health and safety in that the funds to be raised by the tax imposed therein are necessary for the operation of the City of Waverly and the services provided by said City and such operation and service will be jeopardized by lack of necessary funds by delay in not enacting this ordinance on an emergency basis effective December 1, 1994.

Therefore, this ordinance is adopted on an emergency basis by the Council of the City of Waverly at the October 17, 1994 regular session.

The effective date of the amendments to this ORDINANCE is the January 6, 2004.