

RULES AND REGULATIONS

WAVERLY, OHIO

Adopted under the Authority of the City of Waverly
Income Tax Ordinance # 68-94

(Includes Amendments effective January 1, 2004)

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ARTICLE I

Section 14 of the ordinance outlines the uses to which funds raised are to be put and the items on which the tax is to be applied.

ARTICLE II DEFINITIONS

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

“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” means the Tax Administrator - see below.

"Association" means a partnership, cooperative, limited partnership, Chapter S Corporation as defined in the Federal Tax Code or any form of unincorporated enterprise owned by two or more persons.

"Board of Review" means the board created by and constituted as provided in Section 13 of the ordinance.

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

"City" means the City of Waverly, Ohio.

"Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory, or foreign country or dependency, but not including Chapter S Corporations (see "Association").

"Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer. Any person upon whom an employer is required to withhold for either Federal income or social security tax, or on whose account payments are made under the Ohio Workman's Compensation law, shall prima facie be an employee.

"Employer" means an individual, partnership, association, corporation (including a corporation not for profit), governmental agency, board, body, bureau, department, subdivision, or unit or any other entity, who or that employs one or more persons on a salary, wage commission or other compensation basis whether or not such employer is engaged in business, or that provides any source of taxable income as outlined in Section 3.

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

"Generic Form" means 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 corporations tax on income.

"Gross Receipts" means the total income of a taxpayer from any source whatsoever.

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

"Net Profits" means the net gain or loss from the operation of a business profession, enterprise, or other activity excluding capital gains and losses, after provision for all necessary and ordinary expenses paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, adjusted to the requirements of this ordinance and the Rules & Regulations, but excluding Federal and other taxes based on income and the tax imposed by the ordinance, excluding dividends and excluding income received from affiliated or subsidiary companies which own no property and do no business within the United States.

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" means an individual age 16 or older who is not a resident as herein defined.

"Non-Resident Unincorporated Business Entity" means one not having an office or place of business within the City of Waverly.

"Other Payer" means 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.

"The Ordinance" means Ordinance No. 68-94, enacted by the City Council of Waverly, Ohio on October 17, 1994

"Person" means every natural person, partnership, fiduciary, association, corporation, or other entity. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity or association shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

"Place of Business" means any Bona Fide office (other than a mere statutory office), factory, warehouse or other space which is regularly occupied and used by the taxpayer

in carrying on any business activity whether in person or through one or more of his employees regularly in attendance.

“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 or 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.

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 from withholding and tax.

“Resident” means an individual age 16 or older domiciled in the City of Waverly, Ohio. Any person who maintains a residence within the City of Waverly, Ohio for a total of 183 days or more within any 12 month period shall be deemed a resident.

“Resident Unincorporated Business Entity” means an unincorporated business entity having an office or place of business within the City of Waverly, Ohio.

“Tax Administrator” means the Tax Administrator of the Department of Taxation of the City of Waverly or the person executing the duties of the said Tax Administrator, hereinafter referred to as Tax Administrator.

“Taxable Year” means the calendar year, or the fiscal year, used as the basis on which net profits are to be computed under the ordinance and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

“Taxpayer” means a person age 16 years or older, whether an individual, partnership, association, corporation or other entity, required by the ordinance to file a return and/or

pay a tax. In all definitions and these regulations, the singular shall include the plural, and the masculine shall include the feminine and the neuter.

ARTICLE III

IMPOSITION OF TAX

A. Bases.

1. Resident Employee:

a. In the case of residents of the City, effective **January 1, 2004**, an annual tax of **one percent (1%)** is imposed on all salaries, income, wages, commissions, and other compensation earned (including earnings deposited by the employee into deferred compensation or medical coverage plans) during the effective period of the ordinance. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 3 of the ordinance, the source of the earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings wherever earned or paid are taxable, except that tax shall not be levied on expenses reported in accordance with guidelines for Federal Form 2106, subject to audit and approval by the City Department of Taxation.

b. The following are items which are subject to the tax imposed by Section 3:

(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:

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

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

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

(d) An officer or employer (whether elected, appointed, or commissioned) of the United States Government or any of its agencies or of the State of Ohio or any of its political sub-divisions or agencies thereof; or any foreign country or dependency except as provided in Section 3, paragraph E of the ordinance;

(e) 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 non-profit corporations), governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity.

(2) Commissions earned by a taxpayer, whether directly 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.

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

(b) 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.

(c) If commissions are included in the net earnings of the trade, business, profession, enterprise or activity, carried on by an unincorporated entity or association of which the individual receiving such commission is owner or part owner and therefore subject to the tax under Section 3, paragraph A1 or A3 of the ordinance, they shall not be taxed under Section 3, paragraph A3 or A4.

(3) Fees, unless such fees are properly includable as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity or association owned or partly owned by said individual and such net profits are subject to the tax under Section 3 paragraph A3 or A4 of the ordinance.

(4) Other compensation and income, as reported on W-2's or 1099's, including but not limited to tips, bonuses, profit sharing, stock options that are not considered capital gains, or gifts of any type in connection with services rendered, and including compensation paid to domestic servants, casual employees and other types of employees.

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

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

(7) Moving expenses, to the extent that they are reimbursed by employers, are not taxable if deducted on the Federal return.

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

(9) 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.

c. When compensation is paid or received in property, its fair market value at the time of receipt shall be subject to the tax and to withholding. Board, lodging and similar items received by an employee in lieu of additional cash compensation shall be included in 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 the City, there is imposed under Section 3, paragraph A2 of the ordinance, a tax of **one percent (1%)** on all salaries, income, wages, commissions, and other compensation earned (including earnings deposited by the employee into deferred compensation or medical coverage plans) during

the effective period of the ordinance for work done or services performed or rendered within the City, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial. Tax shall not be levied on expenses reported in accordance with guidelines for Federal Form 2106, subject to audit and approval by the City Department of Taxation.

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

(a) the individual does not reside in the City of Waverly.

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

(c) 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 (2) 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.

(d) 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.

(2) 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.

(3) 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.

b. The items subject to tax under Section 3, paragraph A2 of the ordinance are the same as those listed and defined in Article III, A1 above. For the methods of computing the extent of such work or services performed within the City, in cases involving compensation for personal services partly within and partly without the City, see Article VI, A6 of these regulations.

c. When a non-resident receives compensation for services from sales of real estate or insurance from an employer whose situs is the City of Waverly, that total compensation is taxable at Waverly's tax rate and is payable to the City of Waverly. The site of the property sold or residence of the purchaser of insurance has no bearing on the taxing of the compensation, except that non-residents may allocate their compensation to other municipalities by submitting an allocation plan acceptable to the Tax Administrator.

EXAMPLE 1: Smith is a non-resident sales agent in charge of a Waverly office of a Kentucky company and receives in Waverly an order from a Chillicothe customer. The order is forwarded to Kentucky and shipment is direct from Kentucky to Chillicothe. Smith's commission is earned in and allocable to Waverly.

EXAMPLE 2: Jones is an agent of Doe, a non-resident, and works out of a branch office managed by Doe in the City. The business generated by Jones results in fees to Doe. Since the fees are the result of services of an agent working out of a Waverly place of business, they are allocated to Waverly and taxable to Doe regardless of where the orders were solicited.

EXAMPLE 3: Smith receives a 10% commission on gross business for the year. He is a non-resident and generates \$70,000.00 of business per year. He spends 50% of his time

working within the City and 50% without. The time he spends in the City produces 70% of the business. Since allocation on a strict time basis fails to show the true picture, his earnings must be allocated on the basis of the portion of business that results from work within the City. That percentage is 70% and therefore \$49,000.00 is allocable to the City. His commission on that business is 10%. The taxable commission is \$4,900.00.

EXAMPLE 4: Jones, a non-resident receives a 10% commission on each item sold. He sells \$20,000.00 worth of items in the City during the year and receives \$2,000.00. That is the taxable amount irrespective of commissions for services elsewhere.

3. Resident Unincorporated Businesses:

- a. In the case of resident unincorporated businesses, professions, enterprises, undertakings or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of 1/2 percent (.5%) 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 in Section 3, paragraph A3 of the ordinance, derived from work done or services performed or rendered and business or other activities conducted in the City.
- b. The tax imposed on resident associations 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 imposed on an unincorporated resident entity owned by one person is upon the individual owner. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III A3e and A3f below.
- c. The tax imposed by Section 3, paragraph A of the ordinance is imposed on all resident unincorporated entities or associations having net profits attributable to the City under the method of allocation provided for in the ordinance, regardless of where the owner or owners of such resident unincorporated business entities or associations reside.
- d. Resident unincorporated entities or associations owned by two or more persons, all of whom are residents of the City, shall disregard the method of allocation provided for in the ordinance and pay the tax on their entire net profits thereof. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits.
- e. A resident individual who is sole owner of a resident unincorporated entity or association shall disregard the business allocation formula and pay the tax on the entire net profits of his resident unincorporated business entity or association.
- f. In the case of a resident individual partner or part owner of a resident unincorporated entity association, there is imposed an annual tax of **one percent (1%)** on such individual's distributive share of net profits earned, accrued or received during the effective period of the ordinance not attributable to the City, under the method of allocation provided for in Section 3, paragraph B of the ordinance, and not taxed against the entity.

EXAMPLE 1: Smith and Jones are partners in a business with headquarters situated in Waverly. Smith is a resident and Jones is not. The business is carried on in the City and elsewhere. Since this is a resident partnership, the net profits (wherever earned) are taxable to the entity itself and not to the individual members individually.

EXAMPLE 2: Doe and Buck are co-owners of an unincorporated business in Portsmouth, Ohio, that is principally carried on in that city. Doe is a resident of Waverly and Buck is not. The association does 20% of its business in Waverly, although it has no place of

business in Waverly. Since this association is a non-resident, it can only be taxed as an entity on that portion of the net profits earned through business activity in Waverly. Since Doe is a resident, however, he must include in his tax return his distributive share of the net profits (wherever earned) and pay the tax on that portion which has not been taxed to the entity. Buck as an individual can not be taxed other than on his share of those profits taxable to the entity as Waverly earnings. Doe's distributive share of any losses may not be used to offset other income.

EXAMPLE 3: A partnership has no place of business in the City and does no business here. Two of the three partners are residents. The residents must pay the income tax on their distributive share of the entire net profits of the partnership. There is no tax on the entity as such. The resident partners may not apply any losses generated by this partnership to offset any other taxable income.

4. Non-resident Unincorporated Businesses or Associations:

a. In the case of non-resident unincorporated businesses, associations, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of **one percent (1%)** 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 Section 3, paragraph B of the ordinance.

b. The tax imposed on non-resident unincorporated entities or associations owned by two or more persons is upon the entities rather than the individual members or owners thereof. For tax on that part of resident owner's distributive share of net profits not taxed against the entity, see Article III, A4d and A4e below.

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

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

e. In the case of a resident individual partner or part owner of a non-resident unincorporated entity or association, there is imposed an annual tax of **one percent (1%)** on such individual's distributive share of net profits earned, accrued or received during the effective period of the ordinance not attributable to the City under the method of allocation provided for in Section 3 of the ordinance and not taxed against the entity.

5. Corporations:

a. In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the City, there is imposed an annual tax of **one percent (1%)** on the net profits earned, received or accrued during the effective period of the ordinance attributable to the City under the formula or separate accounting method provided for in Section 3 of the ordinance.

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

B. Amplification:

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

1. Net Profits:

- a. Net Profits as used in the ordinance and these regulations mean net profits derived from any business, profession or other activity or undertaking carried on for profit or normally carried on for profit.
- b. Net Profits as disclosed on any return filed pursuant to the provisions of the ordinance shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service, providing such method does not conflict with any provisions of the ordinance or these regulations.

2. Gross Receipts:

- a. Gross Receipts shall include, but not be limited to, income in the form of commissions, fees, rentals from real and tangible personal property and other compensation for work done or services performed or rendered as well as income from sales of stock in trade.
- b. From gross receipts there shall be deducted allowable expenses to arrive at the net profit subject to tax.

3. Expenses:

- a. All ordinary and necessary expenses of doing business including reasonable compensation paid employees, shall be allowed but no deduction may be claimed for salary or withdrawal of a proprietor or of the partners, members, or other owners of an unincorporated business, enterprise, or association.
 - (1) If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated for by insurance or otherwise, 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.
 - (2) Current amortization of emergency facilities under the provisions of the Internal Revenue Code, if recognized as such for Federal income tax purposes, may be included as an expense deduction hereunder.
 - (3) Where depreciable property is voluntarily destroyed only the cost of such demolition and the undepreciated balance thereof will be allowed as an expense in the year of such demolition, to the extent allowable for Federal income tax purposes.
 - (4) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Tax Administrator (if the reserve method is used), a reasonable addition to the reserve may be claimed; but in no event shall the amount exceed the amount allowable for Federal income tax purposes.
 - (5) Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax, then taxes on and other expenses of said property are not deductible.
- In any event, the following taxes are not deductible from income; (1) the tax under the ordinance; (2) Federal or other taxes based upon income; (3) gift, estate or inheritance

taxes; and (4) taxes for local benefits or improvements to property which tend to appreciate the value thereof.

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

4. Other Income or Losses:

a. Capital gains and losses from sale, exchange or other disposition of property used in the trade or business shall not be taken into consideration in arriving at net profits earned. However, any amount received on a sale or other disposition of tangible personal property or real property used in business, in excess of book value, shall be treated as taxable income under the ordinance to the extent of depreciation allowable after November 1, 1994. The balance shall be treated as a capital gain.

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

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

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

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

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

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

d. The Tax Administrator, upon submission by the taxpayer of satisfactory evidence showing the amount of expenses attributable to non-taxable income, shall permit the taxpayer to include in his return expenses attributable to non-taxable income in an amount agreed to by the taxpayer and the Tax Administrator. In lieu of such evidence, 5.0 percent (5.0%) of non-taxable income shall be considered to be attributable expenses.

e. Rentals from Real Property.

1. 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.

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

3. Real property, as the term is used in these regulations, shall include commercial property, residential property, farm property and any and all other types of real estate.

4. In determining the taxable income from rentals, the deductible expense shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for federal income tax purposes.

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

6. Non-residents of Waverly are subject to such taxation only if real property is situated within the City of Waverly.

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

8. However, all provisions herein regarding rentals from real property shall be subject to the provision that any excess losses by any taxpayer resulting from the rental, ownership, management or operation of the real estate from which such rentals are derived, shall not be able to be offset against any income of said taxpayer that is subject to withholding under the terms and regulations of the Waverly Income Tax Ordinance.

9. On or before October 1 each year, all landlords who rent property in the City of Waverly must submit an up-to-date list of all their tenants to the City of Waverly, Tax Administrator.

f. Income from patents or copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to the State intangible tax.

Conversely, such a state intangible tax is not deductible in determining City tax.

g. Net operating losses may not be carried back against net profits of a prior year nor forward against profits of some future year and may not be used to offset other current year income. In no case may losses of one spouse be used to offset profits of the other spouse.

h. Cancellation of indebtedness to the extent that such indebtedness was used to offset current and/or prior year's income.

C. Allocation of Business Profits:

If the books and records of a taxpayer conducting a business or profession both within and without the City disclose with reasonable accuracy what portion of its net profits is attributable to business conducted within the City, the separate accounting method may be used. In the absence of such records, the business allocation percentage method will be used.

1. Separate Accounting Method:

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

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

c. In determining the income allocable to the City from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production

of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the City.

2. Business Allocation Percentage Method:

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

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

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

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

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

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

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

(a) All sales made through retail stores located within the City to purchasers within or without the City except such of said sales to purchasers outside the City that are directly attributable to regular solicitations made outside the City personally by the taxpayer or his employees.

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

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

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

(e) Charges for work done or services performed incident to a sale, whether or not included in the price of 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 the City by mail or phone from an office or place of business within the City shall not be considered a solicitation of sales outside the City.

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

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

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

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

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

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

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

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

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

3. Substitute Method:

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

(b) Application to the Administrator to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing before the end of the taxable year. The application shall state the specific grounds on which the substitution of the factors or use of different method is requested and the relief sought to be obtained. No specific form need be followed in making such application. Once a taxpayer has filed

under a substitute method, he must continue to so file until given permission to change by the Administrator.

4. A request to change methods of allocation must be made, in writing to the Administrator before the close of the taxable year.

D. Consolidated Returns:

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

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

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

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

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

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

6. In consolidating the net income, the taxable income of each corporation shall be computed in accordance with the provisions governing the taxable income of separate

corporations except that there shall be eliminated unrealized profits and losses in transactions between member of the affiliated group.

7. 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, intercompany 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. Welfare payments, unemployment insurance benefits, old age pensions or similar payments.
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. In the case of members of the National Guard, Air National Guard, Organized Reserves and Air Reserves, this exception shall apply only to their drill and flight pay.
6. Any charitable, educational, fraternal or other type of non-profit association or organization enumerated in Section 718.01 of the Revised Code of Ohio which is exempt from payment of real estate taxes is exempt from payment of the tax imposed by the ordinance.
 - a. Any association or organization falling in the category listed in the preceding paragraph not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the tax levied under the ordinance on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.
 - b. Where such non-profit association or organization conducts income producing business both within and without the City, it shall calculate its profits allocable to the City under the method or methods provided above.
7. Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from interstate commerce.
8. Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.
9. Dividends and other income of domestic corporations received from their affiliates or subsidiaries, if such affiliates or subsidiaries do not own any property and do no business within the United States.
10. Royalty income derived from oil and/or gas wells.
11. Alimony received.
12. 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.

F. 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.

ARTICLE IV

EFFECTIVE PERIOD

A. The tax imposed by Section 3, paragraph A1 and A2 of the ordinance shall be levied, collected and paid with respect to salaries, income, wages, bonuses, incentive payments, commissions, fees and other compensation earned during the effective period of the ordinance.

B. The tax imposed by Section 3 paragraph 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.

1. Where the fiscal year of the taxpayer differs from the calendar year, the tax shall be applied to that part of the annual net profits for the fiscal year as shall be received on and after the first day of the taxpayer's fiscal year, to the close of the taxpayers fiscal year.

ARTICLE V

RETURN AND PAYMENT OF THE TAX

A. Date and Requirement and Filing.

1. On or before April 15th of the year following the effective date of the ordinance, and each year thereafter in compliance with Ohio Revised Code § 718.05(B). Every person subject to the provisions of Section 3 (A1 through A5 inclusive) of the ordinance shall, except as hereinafter provided, make and file with the Administrator a return on a form prescribed by and obtainable, upon request, from the Administrator, whether or not a tax be due. The fact that a taxpayer is not required to file a Federal tax return does not relieve him from filing a Waverly tax return.

a. The City of Waverly shall accept generic forms 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 form otherwise complies with the rules or ordinances of the City of Waverly governing the filing of returns, reports or documents

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

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

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

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

6. Except as provided for herein, the tax is on the partnership or association as an entity, whether resident or non-resident, and a return is required disclosing the net profits allocable to the City and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity or association is required to make a return and pay the tax in accordance with Article III, A3f of these regulations.

7. A husband and wife may file a joint return. However, any self-employment, business and/or rental losses of one spouse may not be used to offset the income of the other spouse.

B. Information Required and Reconciliation with Federal Returns:

l. a. Every person subject to the provisions of Section 3 of the ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, wages, commissions and other personal service compensation, net profits from business or other activities, including the rental from real and personal property and other income taxable

under the ordinance, received for the period covered by the return and such other pertinent facts and information in detail as the Administrator may require.

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

2. In returns filed hereunder there shall be set forth the amount of tax imposed by the ordinance on all taxable income. Any credits due, as described in Article V, paragraph D1 of these regulations may then be deducted and the balance of tax due, or overpayments if any, set forth.

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

C. Extensions:

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

a. The Administrator may require a tentative return accompanied by payment of the tentative tax on or before the regular filing date when granting an extension.

b. When the return is filed within the extended filing period and a balance of tax due is indicated after all payments and credits provided in Sections 5, 6, 7 and 15 of the ordinance have been applied, the balance of tax due, together with interest on that balance, shall be paid. The interest shall be computed from the date the return was originally due, even though an extension has been granted.

c. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended, provided all other filing and payment requirements of the ordinance have been met.

d. The City of Waverly may deny a taxpayer's request for extension **only** if the taxpayer:
(1) fails to timely file the request;
(2) fails to file a copy of the federal extension request;
(3) 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**
(4) 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.**

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

D. Payment with Return.

1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown 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 the ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 7 of the ordinance, or where an income tax has been paid to another municipality, credit for the amount 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 is entitled under the provisions of the ordinance may have such overpayment applied against any subsequent liability, 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. Amended Returns.

1. Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 11 and 12 of the ordinance. Such amended return shall be on a form obtainable, upon request, from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

2. Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City of Waverly return showing income subject to the tax based upon such final determination of Federal tax liability and pay any additional tax shown thereon or make claim for refund of any overpayment. See Article XI, B1 of these regulations.

ARTICLE VI

COLLECTION OF TAX AT THE SOURCE

A. Duty of Withholding.

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

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

b. All compensation paid non-residents for services rendered, work performed or other activities engaged in within the City.

c. A nonresident employer, agent of such an employer, or other payer that is not situated in the City of Waverly and is exempt from withholding pursuant to this section shall report all taxable income paid to its employees or agents working in the City of Waverly on an annual basis. This report shall be due on or before **February 28** of each year, and

shall include a calculation of the total compensation earned in the City of Waverly by all employees during the preceding calendar year.

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.

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

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

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

5. Commissions and fees paid to independent contractors 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 Article V and VII of these regulations. It is the responsibility of the payer to provide copies to the City of Federal Form 1099, or such other form used to report commissions and fees paid to non-employees. Failure to provide such form 1099 or other form used to report commissions and fees paid shall be subject to the provisions of Section 8, paragraph C, Section 10 and 12 of the ordinance.

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

a. If the 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 the City bears to the total volume of business transacted by him, except as clarified in Article III A2c of these regulations.

b. The deducting and withholding of personal service compensation of the other non-resident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee which the total number of his working hours within the City 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 the City on a seven-day per week basis. The percentage of time worked in the City will be computed on the basis of a forty-hour week unless the employer notifies the Administrator that a greater or lesser number of hours per week is worked.

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

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

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

8. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid 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 expenses by the employee under Article III of these regulations.

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

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

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 following the close of each calendar quarter, make a return and pay the Administrator the tax withheld during the preceding quarter.

2. If more than the amount of tax required to be deducted by the ordinance is withheld from any employee's pay, such excess may be refunded by the employer or the Administrator. In those cases in which too much has been withheld by the employer from an employee and remitted to the Administrator and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain a refund by application to the Administrator, except that refunds will not be made unless claimed within three (3) years after the year for which the tax was withheld as provided in Section 11 of the ordinance and Article XI of these regulations. If less than the amount of tax required to be deducted is deducted and withheld by the employer in any pay period or pay periods, the deficiency shall be deducted in subsequent pay periods.

Taxes Withheld in Error: Taxes withheld in error shall be refunded by the employer. Total amount of tax refunded shall be deducted from next Employer's Quarterly Return of Tax Withheld. List showing names of employees receiving refunds, amounts refunded each and reasons for refunds must be attached.

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

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

5. On or before the 31st day of January, following any calendar year in which such deductions have been made by any employer, such employer shall file with the Administrator in the form prescribed by the Administrator, an information return for each employee from whom City income tax has been withheld, clearly showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of City of Waverly income tax withheld from such employee.

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

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

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

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

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

C. Fractional Parts of Cent.

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

D. Voluntary Withholding.

An employer not required to withhold the tax (i.e. non-resident employer with no activity within the City of Waverly) on compensation paid to a resident employee may elect to deduct said tax from the employees compensation. A request to withhold the tax imposed by the ordinance must be made, in writing, to the Administrator before any deductions are made. The employer shall be responsible for complying with the withholding requirements of the ordinance and these regulations.

ARTICLE VII

DECLARATIONS

A. Requirements of filing:

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

2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year, after taking into consideration known factors which might alter anticipated income. 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.

B. Date of Filing:

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

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

C. Form for Filing:

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

2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration at any time. Such amendment may be made on the regular declaration from or on a form furnished by and obtainable

from the Administrator. An amendment must be filed on or before each quarterly filing date if there is a change of more than 30% to the original estimate. Interest and penalty amounts may be assessed against estimates that result in being less than 90% of income taxable to Waverly.

D. Dates 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, seventh, tenth and thirteenth month after the beginning of the taxable year.
2. The declaration must be accompanied by at least one installment 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 Returns Required:

1. The filing of a declaration does not relieve the taxpayer of the necessity of filing a final return even though there is no change in the declared tax liability. A final return must be filed to obtain refund of any overpayment of over one dollar (\$1.00).

ARTICLE VIII

DUTIES AND POWERS OF THE TAX ADMINISTRATOR

A. Collection of Tax and Retention of Records:

1. It shall be the duty of the Administrator to receive the tax imposed by the ordinance in the manner prescribed therein from the taxpayers; to keep an accurate records 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 payment thereof.

B. Enforcement Provisions:

1. The Administrator is charged with the administration and enforcement of the provisions of the ordinance and is, subject to the approval of the 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 Administrator has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the ordinance.
2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the ordinance or these rules and regulations, should submit to the Administrator in writing all the facts involved and the ruling sought.
3. These regulations, together with all amendments and supplements hereto and all changes herein, will be on file with the Clerk of the City and at the office of the Administrator and will be open to public inspection.
4. The Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the ordinance and shall exceed a period

in excess of six (6) months only with approval of the Administrator. Payment agreements of more than twelve (12) months duration shall be granted only by the Board of Review.

5. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 11 and 12 of the ordinance shall apply.

6. Payments received shall first be applied to the oldest delinquent tax and then to penalties and interest.

C. Estimation of Tax by Administrator:

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

1. General Provisions:

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

(1) Such proposed assessment shall be served upon the taxpayer in person or by mailing to his last known address.

(2) A taxpayer shall have thirty (30) days after the date the assessment was served or mailed within which to file a written notice of appeal with the Board of Review. Such written notice of appeal shall be filed in a sealed envelope plainly marked "Appeal to Board of Review" and mailed to: Board of Review; City of Waverly, 201 W. North Street, Waverly, Ohio, 45690 or delivered to the Clerk of the City of Waverly who shall, within five (5) days after receipt thereof, deliver such appeal to the Chairman of the Board of Review, or if the Chairman is not available, to the Vice-Chairman.

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

b. When any taxpayer subject to the provisions of the ordinance has filed a return indicating the amount of tax due and has failed to pay said tax into the City Treasury as required by the ordinance, the Administrator need not issue an assessment but may proceed under the provisions of Sections 11 and 12 of the ordinance.

2. Provisions Affecting Employers:

a. If the Administrator determines that an employer subject to the provisions of the ordinance has failed to file a return for tax withheld and has failed to pay into the City Treasury the full amount of said taxes, the Administrator shall issue an assessment showing the amount of tax due, together with any penalties and interest that may have

accrued thereon, and the provisions of Section 8, paragraph C of the ordinance shall then apply.

b. If the Administrator determines that an employer subject to the provisions of the ordinance has failed to withhold tax the Administrator shall issue an assessment showing the tax due, together with any penalties and interest that may have accrued thereon, and the provisions of Section 8, paragraph C of the ordinance shall then apply.

c. When an employer subject to the provisions of the ordinance has filed a return indicating the amount of tax withheld and has failed to pay said tax into the City Treasury as required by the ordinance, the Administrator may proceed under the provisions of Sections 11 and 12 of the ordinance and need not issue an assessment as provided in Section 8, paragraph C of the ordinance.

ARTICLE IX

EXAMINATION OF BOOKS AND RECORDS, INFORMATION SO OBTAINED CONFIDENTIAL; PENALTY

A. Investigation by Administrator:

1. The Administrator, or his duly authorized agent, is empowered to examine the books, papers, records and copies of Federal income tax returns of any employer, taxpayer or person subject to the ordinance, for the purpose of verifying the accuracy of any return made to the City; or if no return was made, to ascertain the tax due under the ordinance.
2. An employer or taxpayer shall furnish within ten (10) days following a written request by the Administrator, or his duly authorized agent, the means, facilities and opportunity for making examinations and investigations authorized by the ordinance.

B. Subpoena of Records and Persons:

1. The Administrator, or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The Administrator may compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transactions of the taxpayer.
2. The Administrator's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Administrator.
3. The Administrator may order the appearance before him, or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Administrator is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
4. Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show time and place of the hearing and what books, papers or records the witness is to make available at such hearing.
5. The notice shall be served by the Administrator or his duly authorized agent, by delivering it to the person named in the notice or by leaving the notice at his usual place of business or residence, or by mailing it to the person by registered mail, return receipt

requested, addressed to his usual place of business or residence.

C. Penalty for Non-compliance.

Refusal of any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Administrator or his duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribe by Section 12 of the ordinance.

D. Confidential Nature of Examinations.

Any information gained as a result of any returns, investigations, verifications or hearing before the Administrator required by the ordinance or authorized by these rules and regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than sixty (60) days, or both. In addition to the above penalty, any employee of the City of Waverly who violates the provisions of Section 9 of the ordinance relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

E. Retention of Records.

All employers and taxpayers are required to keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits or both. Such records shall be preserved for a period of not less than three (3) years from the date the final return is filed and paid or the withholding taxes are paid.

ARTICLE X

INTEREST AND PENALTIES

A. Interest:

Except as provided in paragraph C of this Article, all taxes imposed and monies withheld by employers under the provisions of the ordinance and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of 0.67% per month or fraction thereof equivalent to the rate of 8.0% per annum.

B. Penalties:

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

1. For failure to pay taxes due, other than taxes withheld, \$25.00 for the first instance and \$50.00 for each subsequent instance.
2. For failure to remit taxes withheld from employees, \$25.00 for the first instance and \$50.00 for each subsequent instance.
3. For failure to file income tax returns, \$25.00 for the first instance and \$50.00 for each subsequent instance.

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 fifteen (15) days from the date the taxpayer was notified of such findings.
2. In the absence of fraud neither penalty nor interest shall be assessed on any additional

taxes resulting from a Federal audit for Federal income tax purposes provided an amended return is filed and the additional tax paid within three (3) months after final determination of the Federal tax liability.

3. Interest and penalty assessments may be abated at the discretion of the Administrator if, when added together, the amounts to be assessed for interest and penalty total less than twenty dollars (\$20.00) on a given account.

D. Appellate Review.

The Administrator may abate penalty, or interest, or both, up to \$5,000.00 per account. Upon recommendation of the Administrator, the Board of Review may abate penalty or interest, or both, in any amount, or upon appeal, the Board of Review may abate penalty or interest, or both, even though the Administrator has not recommended this abatement.

ARTICLE XI

COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENT

A. Unpaid Sums--A Civil Debt:

1. All taxes imposed by the ordinance and not paid when due become, together with interest and penalties thereon, a debt due the City from the taxpayer and are recoverable as are other debts by civil suit. Employers who are required, under Section 6 of the ordinance, to withhold and remit the taxes required to be withheld at the source, and who fail to withhold and/or remit, become liable to the City in a civil suit to enforce the payment of the debt created by such failure.

2. No additional assessment shall be made by the Administrator after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be a six (6) year period of limitation on such additional assessments in the case of a return that omits a substantial portion of income or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report 10% 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 Administrator is extended to one (1) year from the time of final determination of the 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 income tax liability, whichever is later.

2. No refund shall be made to any taxpayer until he has complied with all provisions of the ordinance and has furnished all information required by the Administrator.

3. Items included on Federal Form 2106 are eligible as deductions, subject to review and approval by the Administrator, and subject to limitations imposed by the Federal government.

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

a. To the taxes, penalties and interest owed for any previous year in the order in which such taxes became due.

b. To his current estimated tax liability.

5. Refunds are normally available only to non-residents, and refunds shall be computed by dividing total wages by total days worked in order to determine an average daily wage. If the information is submitted, holidays, sick days, and/or vacation days shall be subtracted from two hundred sixty (260) to determine the total days worked. Saturday, Sundays, vacation days, sick days, and holidays shall not normally be considered work days. Additions, deletions, or other changes to the method for calculating refunds shall be at the discretion of the Administrator.

C. Limitations:

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

ARTICLE XII

VIOLATION -- 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 withholdings 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 an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
10. Fail to use ordinary diligence in maintaining proper records of employees; residence addresses, total wages paid and the City of Waverly tax withheld, or knowingly give the Administrator false information; or
11. Evade or attempt to evade in any manner the payment of the whole or any part of the tax, penalties or interest imposed by 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 sixty (60) days or both, for each offense.

B. Prosecutions.

Prosecutions under the ordinance must be commenced within the period specified in O.R.C. Section 718.06.

C. Failure to Receive Forms--Not a Defense.

The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him from:

1. Making any information return, declaration or return,
2. Filing such form,

3. Paying the tax.

ARTICLE XIII

BOARD OF REVIEW

A. Board of Review.

1. A non-partisan Board of Review consisting of three citizens of the City of Waverly, Ohio, not otherwise employed by the City of Waverly, Ohio is hereby created. The members of the board shall be appointed by the Mayor with the consent of the City Council. Per diem compensation shall be fixed by the City Council.
2. All rules, regulations and amendments or changes thereto which are adopted by the Administrator under the authority conferred in the ordinance must be approved by the Board of Review, then submitted to the City Council for approval, before the same shall become effective. After such approval, such rules, regulations, amendments and changes shall be filed with the City Clerk and shall be open to public inspection.
3. Whenever the Tax Administrator 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 Administrator 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.

B. Appeals by Taxpayers.

1. The Board of Review shall, on hearing, have jurisdiction to affirm, modify or reverse any assessment, ruling or decision, or any part thereof made by the Administrator from which an appeal has been filed as provided in Section 13 of the ordinance.
 - a. **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 of.** The Board of Review must 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.**
 - b. 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.
2. **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.**

C. Organizational Procedures.

1. The Board of Review shall elect, from its members, a chairman, a vice-chairman, and a secretary.
2. A majority of members present at any hearing or meeting shall constitute a quorum.
3. The Board of Review shall adopt its own procedural rules and keep records of all proceedings accordingly. Such records are not public records available for inspection under Section 149.43 of the Ohio Revised Code. Hearings requested by a taxpayer before a Board of Review created pursuant to this section are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code.
4. All hearings upon appeal by the Board shall be conducted privately, unless a public

hearing is requested by the taxpayer, and the provisions of Section 9 of the ordinance 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 of Review on appeal.

ARTICLE XIV

USE OF FUNDS

(See Section 14 of the Ordinance)

ARTICLE XV

CREDIT ALLOWED FOR TAX PAID IN ANOTHER MUNICIPALITY

A. Limitation.

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. Credits to Residents.

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

C. Method of Applying for Credit.

1. No credit will be given unless the taxpayer claims such credit on his final return or other form prescribed by the Administrator and presents such evidence of the payment of a similar tax to another municipality as the Administrator may require.
2. A statement satisfactory to the Administrator from the taxing authority of the municipality to which the taxes are paid that a City of Waverly resident or his employer is paying the tax shall be considered as fulfilling the requirements of this article.

ARTICLE XVI

SAVINGS CLAUSE

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

B. If any sentence, clause, section or part of the ordinance, or any article or part of these rules and regulations, or any tax against any individual, or any of the several groups specified in the ordinance or rules and regulations, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality or invalidity shall affect only such sentence, clause, section or part of the ordinance or article, or part of these rules and regulations and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the ordinance or these rules and regulations. It is hereby declared to be the

intention of the City Council that these rules and regulations would have been adopted had such unconstitutional illegal or invalid sentence, clause, section, article or part thereof not been included therein or herein.

ARTICLE XVII

AMENDMENTS AND SUPPLEMENTS

- A. The effectiveness of these regulations are to be considered effective **January 1, 2004**.
- B. From time to time amendments and supplements to these regulations may be issued by the Administrator, subject to the approval of the Board of Review.