

**TITLE NINE - Taxation**  
Chap. 191. Income Tax.

**CHAPTER 191**  
**Income Tax**

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CROSS REFERENCES

Power to levy - see Ohio Const. Art. XVIII, Sec. 3  
 Taxation limitations - see CHTR. 4.02  
 Municipal income taxes - see Ohio R.C. Ch. 718

**191.01 DEFINITIONS.**

For the purpose of this chapter, the following terms shall have the definitions hereafter given:

- (a) "ADJUSTED FEDERAL TAXABLE INCOME" - A "C" corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "Adjusted Federal Taxable Income" as if the pass-through entity was a "C" corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.
- (b) "ASSOCIATION" - A partnership, limited partnership, limited liability company, chapter S corporation as defined in the federal tax code, 26 U.S.C. 1361, or any other form of unincorporated enterprise.
- (c) "BOARD OF REVIEW" - The Board created by and constituted as provided in Section 11 of this ordinance.
- (d) "BUSINESS" - An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, co-partnership, limited partnership, corporation, association or any other entity.
- (e) "CITY" - The City of North Canton, Ohio
- (f) "CORPORATION"- A corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.
- (g) "DOMICILE" - The permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.
- (h) "EMPLOYEE" - One who receives wages, salary, commission or other type of compensation or other income in the service of an employer.
- (i) "EMPLOYER" - An individual, co-partnership, limited partnership, association, corporation, governmental body, unit or agency, or any other entity who or that employs one or more persons on a salary, wage, commission, or other compensation or other income basis.
- (j) "FISCAL YEAR" - An accounting period of twelve (12) months or less ending on any date other than December 31st,
- (k) "GENERIC FORM" - An electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or separate requests for refunds that contain all the information required on North Canton's regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms without altering the City's procedures for processing.
- (l) "GROSS RECEIPTS" - The total revenue derived from sales, work done, or service rendered, before any deductions, exceptions, or credits are claimed.

- (m) "INCOME" - Shall include all monies derived from any source whatsoever, including but not limited to:
- (1) All salaries, wages, commissions, other compensation and other income from whatever source received by residents of the City.
  - (2) All salaries, wages, commissions, other compensation and other income from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in the City.
  - (3) The portion attributable to the city of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in the City.
- (n) "INTANGIBLE INCOME" - Income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.
- (o) "NET PROFITS" - For taxable years prior to 2004, the net gain from the operation of a business, profession or enterprise after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system (i.e., either cash or accrual) used by the taxpayer for federal income tax purposes without deduction of taxes imposed by this ordinance, and Federal and State and other taxes based on income, and in case of an association, without deduction of salaries paid to partners and other owners; and as otherwise adjusted to the requirements of this ordinance and Rules & Regulations.  
Net profits shall include any amount or value received, realized, or recognized in a sale or other disposition of tangible personal property or real property used in business, in excess of book value. (See "Adjusted Federal Taxable Income").
- (p) "NON-RESIDENT" - An individual domiciled outside the City.
- (q) "NON-RESIDENT UNINCORPORATED BUSINESS OR ENTERPRISE" - An unincorporated business or enterprise not having a place of business within the City.
- (r) "ORDINANCE" means Ordinance No. 145-04 enacted by the Council of the City on , and any amendments or supplements thereto.
- (s) "OTHER ENTITY" - Any agency, association, authority, body, commission, organization or person not previously named or defined in this section including, but not limited to, any governmental agency, authority, body, or commission.
- (t) "PLACE OF BUSINESS" - Any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance. A taxpayer does not have a regular place of business outside North Canton solely by consigning goods to an independent contractor or other contractor outside the City for sale.

- (u) "PERSON" - Every natural person, co-partnership, limited partnership, corporation, fiduciary or association, whenever used in any clause prescribing and imposing a penalty. The term "person" as applied to association, shall mean the partners or members thereof, and as applied to corporation, the officers thereof.
- (v) "QUALIFYING WAGE" - Wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. "Qualifying wage" represents employees' income from which municipal tax shall be deducted by the employer, and any wages not considered a part of "qualifying wage" shall not be taxed by the Municipality. This definition is effective January 1, 2004, for taxable years 2004 and later.
- (w) "RESIDENT" - An individual domiciled in the City.
- (x) "RESIDENT UNINCORPORATED BUSINESS OR ENTERPRISE" unincorporated business or enterprise having a place of business within the City.
- (y) "TAXABLE INCOME" - Income minus the deductions and credits allowed by this ordinance and Rules & Regulations. (See "Income" definition.)
- (z) "TAXABLE YEAR" - The calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this ordinance and Rules & Regulations 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.
- (aa) "TAXPAYER" - A person, whether an individual, co-partnership, limited partnership, corporation, association or other entity, required hereunder to file a return or to pay a tax.

In all definitions and throughout this ordinance and rules and regulations, the singular shall include the plural and the masculine shall include the feminine and the neuter.  
(Ord. 145-04. Passed 11-15-04.)

#### **191.02 COMMENCEMENT AND DURATION OF THE TAX.**

(a) - The tax imposed by this Ordinance is effective as to income and profits earned, received, or accruing on and after January 1, 1970, at the rate of one per cent (1%) per annum and as to income and profits earned, received, or accruing on and after July 1, 1971, at the rate of one and one-half per cent (1.5%) per annum, and payroll deductions must be made against all income, salaries, qualifying wages, commissions, bonuses, other compensations or other income earned, received, or accruing on and after that date.

(b) This chapter continues effective insofar as the levy of taxes is concerned until repealed. (Ord. 145-04. Passed 11-15-04.)

#### **191.03 ALLOCATION OF FUNDS.**

(a) One percent (1%) of the tax imposed by this Ordinance shall be allocated to provide funds for the purpose of general municipal operations, including maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements.

- (b) The one percent so imposed shall be disbursed in the following order, to wit:
- (1) Such part thereof as shall be necessary to defray all costs of collection, administration and enforcement of the entire tax imposed by this Ordinance.
  - (2) The balance of the one percent (1%) shall be allocated as follows: three-tenths to the Capital Improvement Fund and seven-tenths for general operating purposes, for uses, in each case, as determined by Council.
  - (3) The remaining one-half per cent (.5%) so imposed shall, to the extent appropriated by Council for the purpose, be allocated for the payment of debt service on bonds outstanding as of January 1, 1984, and issued to provide for the payment of costs of capital improvements to the waterworks system of the City and, to the extent not so appropriated, for general municipal operations and capital improvements in amounts and for uses, in each case, as determined by Council.  
(Ord. 145-04. Passed 11-15-04.)

#### **191.04 IMPOSITION OF TAX ON RESIDENTS.**

(a) In the case of residents of the City an annual tax of one and one-half percent (1.5%) is imposed on all salaries, qualifying wages, commissions, other compensation, and other income (including earnings deposited by the employee into deferred compensation or medical coverage plans) earned or received during the effective period of the Ordinance. For the purpose of determining the tax on the income of resident taxpayers, the source of the income and the place or places in or at which the services were rendered or the income was earned or received, are immaterial. All such income wherever earned or received is taxable.

- (b) The following are items which are subject to the tax:
- (1) Gross income, including but not limited to income, salaries, qualifying 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 an officer, director or employee of a corporation (including charitable and other nonprofit organizations), or association or any other entity or person; an officer or employee (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 subdivisions or agencies thereof; or any foreign country or dependency. For clarification, effective January 1, 2005, "income" includes lottery, gambling and sports winnings, and games of chance. No deductions shall be allowed against income from lottery, gambling and sports winnings, and games of chance unless the taxpayer is considered a professional gambler for federal income tax purposes, in which case related deductions as permitted by the Internal Revenue Code shall be allowed against gambling and sports winnings.
  - (2) Commissions earned or received by a taxpayer, whether directly or through an agent, and whether in cash or in property for services rendered during the effective period of the Ordinance, regardless of how computed or by whom or wheresoever paid.

- 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 commissions is owner or part owner and therefore subject to Section 191.06 and/or 191.07, they shall not be subject to Section 191.04.
- (3) Fees, unless such fees are properly includible as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity or association owned or partly owned by said individual and such net profits are subject to Section 191.06 and/or 191.07.
  - (4) Other compensation and income, as reported on W-2's or 1099's, including but not limited to tips, bonuses, lump sum distribution from qualified pension and profit sharing trusts not made pursuant to employee's retirement, profit sharing, "non-competition" covenants, portions of stock options that are not considered capital gains by the City, lottery winnings, including the Ohio State Lottery and Multi-State Lotteries, sports winnings, gambling winnings of any type, or gifts of any type in connection with services rendered.
  - (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 pay 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 an employer as separation or severance payouts (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 if applicable tax has not previously been paid. Ongoing retirement benefits, such as pension payments, are exempt from North Canton income tax.
  - (7) Moving expenses, to the extent that they are reimbursed by employers, are not taxable if deducted on federal return.
  - (8) For taxable years 2004 and later, if any of the items listed in subsections (b)(1)-(7) hereof are not considered taxable for Internal Revenue Code Section 3121(a) withholding, those items shall not be considered taxable for North Canton.

- (9) Effective for tax years 2004 and later, the distributive share of income paid to an S corporation shareholder shall be taxable in the following manner:
- A. If no portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the distributive share is taxable only to the extent that it represents wages or net earnings from self-employment.
  - B. If any portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the full amount of the distributive share is taxable.

(c) Domestic employees are not subject to employer withholding under North Canton Income Tax, but such employees shall be subject to all of the requirements of the ordinance regarding individual filing.

(d) When a resident receives compensation for services for sales of real estate or insurance from an employer whose sit-as is the City, that total compensation is taxable at City's tax rate and is payable to the City. The site of the property sold or residence of the purchaser of insurance has no bearing on the taxing of the compensation.  
(Ord. 39-11. Passed 4-11-11.)

#### **191.05 IMPOSITION OF TAX ON NON-RESIDENTS.**

(a) In the case of individuals who are non-residents of North Canton, there is imposed an annual tax at the rate of one and one-half (1.5%) per annum on all qualifying wages, commissions, other compensation and other income (including earnings deposited by the employee into deferred compensation or medical coverage plans) earned or received 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.

(b) The items subject to tax under this section are the same as those listed and defined in Section 191.04. For methods of computing the extent of such work or services performed within the City, and cases involving compensation for personal services partly within and partly outside the City.

(c) 12-day occasional entry rule:

- (1) A non-resident individual who works in the City twelve (12) or fewer days per year shall be considered an occasional entrant, and shall not be subject to North Canton municipal income tax for those 12 days. For the purposes of the 12-day calculation, any portion of a day worked in North Canton shall be counted as one day worked in North Canton.

- (2) Beginning with the thirteenth day, the employer of said individual shall begin withholding North Canton income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to North Canton in accordance with Section 191.16. Since the individual can no longer be considered to have been occasional entrant, the employer is further required to remit taxes on income earned in North Canton by the individual for the first twelve days.
- (3) If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the City.
- (4) The 12-day occasional entry rule does not apply to entertainers or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events.

(d) When a non-resident receives compensation for services for sales of real estate or insurance, and the real estate sold or purchaser of the insurance are resident to North Canton, the total compensation related to the sales is taxable at North Canton's tax rate and is payable to the City of North Canton.

(e) On all qualifying wages earned by persons employed by the City of North Canton, whether residents or non-residents of the City of North Canton, for work done or services performed or rendered for the City of North Canton.  
(Ord. 39-11. Passed 4-11-11.)

#### **191.06 IMPOSITION OF TAX ON RESIDENT UNINCORPORATED BUSINESSES.**

(a) In the case of a non-resident individual, partnership, association, fiduciary or other entity (other than a corporation), trades, businesses, professions, other activities, enterprises or undertakings conducted, operated, engaged in, prosecuted or carried on by residents of North Canton, there is imposed an annual tax at the rate of one and one-half per cent (1.5%) per annum on the net profits earned or accruing.

(b) The tax imposed on resident associations or unincorporated entities owned by one or more persons is upon the shareholders, owners, and partners, but the associations and entities shall collect and remit the tax on behalf of it's shareholders, owners, and partners. However, 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 subsections (e) and (f) below.

(c) The tax imposed by Section 191.04 is imposed on all income of shareholders, owners, and partners from 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. The associations and entities shall collect and remit the tax on behalf of it's shareholders.

(d) Resident unincorporated entities or associations owned by one 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 on behalf of its shareholders. (See subsection (b) hereof.) In such case, the tax paid by the entity on behalf of its shareholders shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits; however, a return shall be required from any such owner or member having taxable income other than the distributive share of the net profits from the entity.

(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 or association, there is imposed an annual tax of one and one-half (1.5%) 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, and not taxed against the entity.  
(Ord. 145-04. Passed 11-15-04.)

#### **191.07 IMPOSITION OF TAX ON NON-RESIDENT UNINCORPORATED BUSINESS.**

(a) In the case of a non-resident individual, partnership, association, fiduciary or other entity (other than a corporation), there is imposed an annual tax at the rate of one and one-half per cent (1.5%) per annum on the net profits earned or accruing of such trade, business, profession, enterprise, undertaking, or other activity conducted in or derived from activity in North Canton.

(b) In the case of partnership, association, or other unincorporated business owned by one or more persons, the tax shall be upon said partnership, association, or business enterprise as an entity and not upon the partners or members thereof. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see subsections (d) and (e) below.

(c) Non-resident unincorporated entities or associations, owned by one 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 profits.

(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 and one-half percent (1.5%) 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.  
(Ord. 145-04. Passed 11-15-04.)

**191.08 IMPOSITION OF TAX; NET PROFITS OF CORPORATIONS.**

In the case of a corporation doing business in North Canton, whether domestic or foreign, and whether domiciled in North Canton or elsewhere, there is imposed an annual tax at the rate of one and one-half per cent (1.5%) per annum on that part of the net profits earned or accruing of such corporation, which is earned by such corporation as a result of sales made, work done or services performed or rendered and business or other activities conducted in the City. (Ord. 145-04. Passed 11-15-04.)

**191.09 ALLOCATION OF BUSINESS PROFITS.**

(a) For taxable years 2004 and later, net profits (i.e., "adjusted federal taxable income") shall be calculated by adjusting the corporation's federal taxable income before net operating losses and special deductions in the following manner:

- (1) 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.
- (2) 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, except to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.
- (3) Add an amount equal to five percent (5%) of intangible income deducted under division (A)(1) of this section, 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.
- (4) 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.
- (5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.
- (6) 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.
- (7) 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 that 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 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.

(b) Business Allocation Percentage Method:

(1) STEP 1: Calculate the percentage allocable to the City of the average original cost of total real and tangible personal property (including leasehold improvements), wherever situated, owned or used in the business during the period covered by the return.

A. 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 original cost 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.

1. 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).
2. 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:
  - a. 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;
  - b. Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs or other amounts required to be paid by the terms of a lease or other arrangement.

(2) STEP 2: Calculate the percentage allocable to the City of 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.

A. The following sales shall be considered North Canton sales:

1. 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.
2. 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.
3. All sales of tangible personal property delivered to purchasers within the City even though transported from a point outside the City of 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.

4. 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.
  5. 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.
- B. 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, phone, or other electronic means from an office or place of business within the City shall be considered a solicitation of sales within the City.
- (3) **STEP 3:** Calculate the percentage allocable to the City of the total wages, salaries, commissions, other compensation and other income of employees, within and without the City, during the period covered by the return. Wages, salaries, and other compensation shall be included to the extent that they represent qualifying wages.
- A. 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.
  - B. Wages, salaries, other compensation and other income shall be computed on the cash or accrual basis in accordance within the method of accounting used for Federal income tax purposes.
  - C. 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 deemed to be:
    1. 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;
    2. 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
    3. 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.

- (4) 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 computing 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.
  - (5) 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.
- (c) Substitute Method:
- (1) In the event a just and equitable result cannot be obtained under the formula the Director of Finance, 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.
  - (2) Application to the Director of Finance 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 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 Director of Finance.
  - (3) If the substitute method approved is the use of books and records of the taxpayer, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Director of Finance to determine whether the net profits attributable to the City are apportioned with reasonable accuracy.  
(Ord. 145-04. Passed 11-15-04.)

#### **191.10 TREATMENT OF EXPENSES.**

All ordinary and necessary expenses of doing business 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.

- (a) If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated 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.

- (b) 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.
- (c) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Director of Finance (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.
- (d) 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.
- (e) 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.  
(Ord. 145-04. Passed 11-15-04.)

#### **191.11 TREATMENT OF OTHER INCOME OR LOSS.**

(a) Capital gains and losses (capital or other) 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 or value received, realized or recognized on a sale or other disposition of tangible personal property or real property used in business, in excess of original book value, shall be treated as taxable income under the Ordinance to the extent of depreciation previously taken as a deduction. The method of calculating the depreciation deduction shall not be considered when recovering the depreciation as a result of the sale, exchange or other disposition of property. The balance in excess of the amount of depreciation recovered shall be treated as a capital gain.

- (1) Definition of Property Used in the Trade or Business. For purposes of this section, 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 includible 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) is 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) Five percent (5%) of non-taxable income shall be considered to be attributable expenses.

(e) 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 taxation under the intangible personal property laws of the State. Income in the form of royalties is taxable if the taxpayer's activities produced the publication or other product, the sale of which produces the royalties.

(f) In determining income subject to taxation, losses from the operation of a business or profession cannot be used to reduce wages from employment or other employment compensation. (Ord. 145-04. Passed 11-15-04.)

#### **191.12 RENTAL PROPERTY.**

Rentals received by the taxpayer are to be included as income 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 taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part. Following are the circumstances under which, in any instance, the rental of any real property shall or shall not be deemed to be a "Business Activity":

- (a) Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of one hundred dollars (\$100.00) per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax.
  - (1) Provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds one hundred dollars (\$100.00) per month.
  - (2) Provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farms, whether or not the gross income exceeds one hundred dollars (\$100.00) per month.
  - (3) Provided further that the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds one hundred dollars (\$100.00) per month.

- (b) In determining the amount of gross monthly rental of any real property, periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.
- (c) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- (d) Real property, as the term is used in this Regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.
- (e) In determining the taxable net income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Department of Internal Revenue for Federal Income Tax purposes.
- (f) Residents of North Canton are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned, provided however, that losses for units located outside the City can be used only to offset income from units located outside the City and cannot be used to offset income from units located inside the City or any other business profits irrespective of source.
- (g) Non-residents of North Canton are subject to such taxation only if the real property is situated within the City. Non-residents, in determining whether gross monthly rentals exceed one hundred dollars (\$100.00), shall take into consideration only real estate situated within North Canton.
- (h) Duties of owners of rental or leased property.
  - (1) For the purposes of this subsection, "tenant" means:
    - A. If there is a written lease or rental agreement, the person or persons who signs the written lease or rental agreement with the owner.
    - B. If there is an oral lease or rental agreement, the person or persons with whom the owner enters into the oral lease or rental agreement.
  - (2) All property owners of rental or lease property who rent to tenants of residential, commercial or industrial premises shall file with the Director of Finance a report showing the names and addresses of each such tenant who occupies residential, commercial or industrial premises within the corporation limits of North Canton.
  - (3) Within thirty days after a new tenant occupies residential, commercial or industrial rental property of any kind within North Canton, all property owners of rental or leased residential, commercial or industrial property who rent to tenants, shall file with the Director of Finance, a report showing the names and addresses of each such tenant who occupies residential, commercial or industrial premises within the corporation limits of North Canton.
  - (4) Within thirty days after a tenant vacates a rental or leased residential, commercial or industrial property located within North Canton, the property owner of such vacated rental or lease property shall file with the Director of Finance a report showing the date of vacating from the rental or leased residential, commercial or industrial property and identifying such vacating tenant.

- (5) For failure to comply with subsection (h) hereof there shall be imposed a penalty of fifty dollars (\$50.00) for the first offense, one hundred dollars (\$100.00) for the second offense, and two hundred dollars (\$200.00) for third and subsequent offenses.
- (6) Subsection (h) hereof is in accordance with Ordinance No. 134-78, effective March 1, 1979.  
(Ord. 145-04. Passed 11-15-04.)

### **191.13 EXEMPTIONS FROM TAX.**

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

- (a) Pay or allowance of active members of the armed forces of the United States and of members of their reserve components, including the Ohio National Guard.
- (b) Payments from pensions, unemployment compensation or similar payments, including social security and disability benefits received from private industry or local, state or federal governments, or from charitable, religious or educational organizations.
- (c) Proceeds of insurance paid by reason of death of the insured; annuities, or gratuities not in the nature of compensation for services rendered from whatever source derived.
- (d) The gross income and gross receipts 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.
- (e) Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide Stark County charitable, religious and educational organizations and associations.
- (f) Dues, contributions and similar payments received by charitable, religious, educational or literary organizations or labor unions, lodges and similar organizations.
- (g) Alimony received.
- (h) Earnings and income of all individuals under eighteen years of age whether residents or nonresidents. The individual is subject to tax, in the year in which they become eighteen, from their birth-date until the end of the year.
- (i) Gains from involuntary conversion, cancellation or indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio and income of a decedent's estate during the period of administration (except such income from the operation of a business).
- (j) Compensatory damages for personal injuries or for damages to property by way of insurance or otherwise.
- (k) Compensation paid under Section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually.
- (l) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The minister must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and permitted to perform all sacraments of the church or the religious body.

- (m) Intangible income as defined in Section 191.01(n).
- (n) Income, 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 limited the power of the States or their political subdivisions to impose net income taxes on the income derived from interstate commerce.
- (o) Income, 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. (Ord. 63-11. Passed 6-20-11.)

#### **191.14 RETURN AND PAYMENT OF TAX.**

(a) Each taxpayer, except as herein provided, shall, whether or not a tax be due thereon, make and file a return on or before April 15 of the year following the effective date of this Ordinance, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within one hundred five (105) days from the end of said fiscal year or other period.

(b) The return shall be filed with the Director of Finance on a form or forms furnished or obtainable upon request from the Director of Finance, or on a generic form approved by the Director of Finance.

(c) In all returns filed hereunder there shall be set forth the aggregate amount of income, salaries, wages, bonuses, incentive payments, commissions, fees and other compensation received and/or net profits earned or received for the period covered by the return and subject to said tax, together with copies of Federal Forms W-2's and 1099's, and such additional pertinent information as the Director of Finance may require. The return shall also show the amount of the tax imposed by the Ordinance on such income, or net profits, or both.

(d) The taxpayer making the return shall at the time of filing thereof, pay to the City Director of Finance the amount of tax shown to be due and unpaid by the return. If, pursuant to the provisions the taxpayer has at the time of making such final return overpaid his tax, such taxpayer shall show the amount of overpayment and may in said return either (a) request a refund therefore, or (b) request that the amount thereof be credited against the amount which will be required to be paid by taxpayer on the next succeeding installment of tax which may become due. Where the total amount due or refund claimed for a tax year is less than two dollars (\$2.00), such amount shall not be collected or refunded.

(e) Where any portion of the tax otherwise due shall have been deducted at the source and shall have been paid to the Director of Finance by the person making the said deduction, a credit equal to the amount so paid shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing of the said return. (Ord. 145-04. Passed 11-15-04.)

(f) Upon written request of the taxpayer made on or before the date for filing the return, and for good cause shown, for tax years prior to 2004, the Director of Finance may extend the time for filing the annual return for a period of not more than six months or not more than thirty days beyond any extension requested of or granted by the Internal Revenue Service for the filing of the federal income tax return. For taxable years 2004 and later, the extended due date for individuals shall be the last day of the month following the month to which the federal income tax due date has been extended. For businesses, if the extension is filed through the Ohio Business Gateway, the extended due date shall be the last day of the month to which the due date of the federal income tax return has been extended. If not filed through the Ohio Business Gateway, the extended due date 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 Director of Finance may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the period extended. The Director of Finance may deny the extension if the taxpayer's income tax account with the City is delinquent in any way.  
(Ord. 137-06. Passed 12-11-06.)

(g) Consolidated Returns.

- (1) Any affiliated group which files a consolidated return for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code may file a consolidated return with North Canton. However, once the affiliated group has elected to file a consolidated return or a separate return with North Canton, the affiliated group may not change their method of filing in any subsequent tax year without written approval from North Canton.
- (2) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within North Canton constituting a portion only of its total business, the Director of Finance shall require such additional information as he deems necessary to ascertain whether net profits are properly allocated North Canton. If the Director of Finance finds that the profits are not properly allocated to North Canton by reason of transactions with stockholders or other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity, or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to North Canton.

(h) 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. Such amended returns shall be on a form obtainable on request from the Director of Finance. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the due date for filing the original return.

- (2) Within three (3) months from the final determination (whether by decision of the appropriate taxing authority or a judicial decision) of any federal, State, or municipal income tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the City tax based upon such final determination of federal, State, or municipal income tax liability, and pay any additional tax shown due thereof or make claim for refund of any overpayment.
- (i) Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this ordinance.
- (j) Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof.
- (k) The fact that a taxpayer is not required to file a federal return does not relieve him from filing a City return.
- (l) Persons, resident or non-resident, shall not be permitted to offset any losses derived from business against any wages or payroll earnings outside of that business.  
(Ord. 145-04. Passed 11-15-04.)

#### **191.15 RECONCILIATION WITH FEDERAL RETURNS.**

(a) Where figures of total income, total deductions, and net profits are included, as shown by a federal return, adjustments shall be made for any items of income and allowable expenses which are not subject to the City tax shall be eliminated, and for taxable years prior to 2004, net profit items not subject to federal tax but subject to the City tax shall be included, in determining net income subject to the City tax. These adjustments shall be shown in a form approved by the Director of Finance.

(b) The Director of Finance may require additional information at any time he deems necessary to verify the accuracy of any return.  
(Ord. 155-05. Passed 9-12-06.)

#### **191.16 COLLECTION OF TAX AT SOURCE.**

(a) It is the duty of each employer (as hereinbefore defined) who employs one or more persons on a salary, wage, commission, other compensation or other income basis, to deduct from compensation paid to any employee subject to the Ordinance, the tax at its then applicable rate from such salary, qualifying wage, bonus, incentive payment, commission or other compensation or other income due by said employer to said employee. The tax shall be deducted by the employer from:

- (1) All compensation paid to employees who are non-residents of the City for services rendered, work performed, or other activities engaged in within the City; and
- (2) From the gross amount of all income, qualifying wages, bonuses, incentive payments, commissions or other form of compensation paid to employees who are residents of the City, regardless of the place where the services are rendered.

- (3) For taxable years 2004 and later, tax shall be withheld only from qualifying wages as defined in Section 191.01(v), with the following adjustments:
- 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 any amount not included in wages solely because the employee was employed by the employer prior to April 1, 1986, and thereby exempt from the Medicare tax. The wages shall be taxed as if they were subject to the Medicare tax.
  - C. Add 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 subsection applies only to those amounts constituting ordinary income. Further, an employer is not required to make any withhold 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.
  - D. Add 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 subsection applies only to employee contributions and employee deferrals.
  - E. Add any amount that is supplemental unemployment compensation benefits described in Section 3402(o)(2) of the Internal Revenue Code and not included in wages.

(b) All employers who or which maintain an office or other place of business in North Canton are required to make the collections and deductions in this section specified, regardless of the fact that the services on account of which any particular deduction is required as to residents of the City, were performed at a place of business of any such employer situated outside the City.

(c) 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 received. If the employer has withheld the tax and failed to pay the tax withheld to the Commissioner, the employee is not liable for the tax so withheld.

(d) Commissions and fees paid to professionals, brokers, and others who are independent contractors and not employees of the payor, are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file returns and pay the tax pursuant to the provisions of Section 191.14 et seq.

(e) Where a non-resident receives compensation for personal services rendered or performed partly within and partly outside North Canton, the withholding employer shall deduct, withhold and remit that portion of the compensation which is earned with North Canton in accordance with the following rules of apportionment:

- (1) If the non-resident is a salesman, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted or chiefly affected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the City bears to the total volume of business transacted by him, except as clarified in Sections 191.04(d) and 191.05(d).
- (2) The deducting and withhold of personal service compensation of all other employees (including officers of corporations) shall attach to the portion of the personal service compensation of such employee which the number of working days employed within the City bears to the employee's total number of working days.
- (3) If it is impossible to apportion the earnings as provided above because of the nature of the service or the basis of compensation, the percentage of time worked in North Canton shall be computed on the basis of a forty-hour week.

(f) An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions (whether by way of drawing account or otherwise).

(g) For taxable years prior to 2004, 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 by the employer to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided that such expenses are incurred in earning compensation, including commissions, and are not deducted as business expense by the employee.

(h) All employers that provide any contractual service within the City, and who employ subcontractors in conjunction with that service, shall provide the City the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withhold requirements under this ordinance.

(i) All businesses that issue a Federal Form 1099 to any person or entity, for any contractual service performed within the City, shall notify the City Income Tax Department of the name and address of such person or entity and the amount listed on the Federal Form 1099. (Ord. 39-11. Passed 4-11-11.)

**191.17 RETURN AND PAYMENT OF TAX WITHHELD.**

(a) Each employer within the City who employs one or more persons on a salary, wage, commission, other compensation or other income basis shall withhold at the time of the payment of such salary, wage, commission, other compensation or other income, the tax at its applicable rate from salaries, wages, commissions, other compensation or other income due by the said employer to the said employee, and the employer shall make a return and pay to the Director of Finance the amount of taxes so withheld as follows:

- (1) If the City's Director of Finance determines that the average monthly amount withheld by the employer for the previous taxable year was three hundred dollars (\$300.00) per month or more, the employer shall remit the withheld tax on or before the fifteenth day of the month following the month for which the taxes were withheld. (See subsection (b) hereof.)
- (2) If the City's Director of Finance determines that average monthly amount withheld by the employer for the previous taxable year was less than three hundred dollars (\$300.00) per month, the employer shall remit the withheld tax on or before the last day of each month following the calendar quarters ending March 31, June 30, September 30, and December 31.

(b) Any employer required to file monthly may request permission to file quarterly from the Director of Finance. Such request must be in writing and state the name and withholding account number of the employer, the address to which tax documents should be mailed, the estimated amount of tax to be withheld each quarter, the name and title of the person responsible for complying with the withholding requirements of the City, and the reason for requesting quarterly filing. The Director of Finance will notify the employer, in writing, of the decision made regarding the request. The Director of Finance shall have the authority to waive the requirement for a written request if the Director of Finance has independently determined that monthly filings need not be mandatory for an employer.

(c) If more than the amount of tax required to be deducted by the Ordinance is withheld from an employee's pay, such excess may be refunded by the employer or Director of Finance, depending upon the following:

- (1) If a current employee has been over-withheld, the employer may make the proper adjustments to subsequent withholdings deposited with the City in the same tax year.
- (2) If the over-withholding is discovered in the following year, the employer must notify the Director of Finance of such over-withholding and the circumstances thereof. Upon proper verification the Director of Finance shall refund to the employee the amount of such excess withholding.
- (3) If an employer discovers that a former employee has been over-withheld, the employer shall notify the Director of Finance of the amount and circumstances of such over-withholding and the Director of Finance shall then refund to the employee the amount of such excess withholding.
- (4) If the error is discovered by the employee, such employee shall file a claim with the Director of Finance and, upon verification thereof by the employer, the Director of Finance shall refund to the employee the amount of such excess withholding;

(d) If less than the amount of tax required to be deducted by the Ordinance is withheld from an employee's pay, such deficiency shall be withheld from subsequent wages. However, if the employee-employer relationship has terminated, the employer shall notify the Director of Finance of such deficiency and the reason therefore.

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

(f) Every such employer required to deduct and withhold the tax at the source is liable directly to North Canton for payment of such tax whether actually collected from such employee or not.

(g) 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 Director of Finance, in the form prescribed by the Director of Finance, an information return for each employee from whom North Canton income tax has been withheld, showing the name, address, social security number of the employee, Medicare wages, and the amount of North Canton income tax withheld from such employee.

- (1) For the convenience of employers, the information return 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 the City clearly shows the information required in paragraph immediately preceding.
  - B. Where the furnishing of this information as above indicated will create a distinct hardship the employer, upon written request to the Director of Finance, may be permitted to furnish an alphabetized list of all employees subject to the tax, which list shall show the employee's full name, last known address, social security number, Medicare wages, and the amount of North Canton income tax withheld. Such list may be compiled on any mechanical equipment presently used by the employer, but provision must be made for spacing equal to at least three lines between each name. The employer's name must be indicated on each sheet, each sheet must be numbered and the total number of sheets comprising the complete report indicated on the first page.
- (2) 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.

(h) It is the responsibility of each employer to provide copies to the City of Federal Form 1099, or such other form used to report commissions, fees, and other compensation paid to nonemployees. (Ord. 145-04. Passed 11-15-04.)

**191.18 DECLARATIONS.**

(a) Every person who anticipates any taxable income which is not subject to Section 191.16 hereof, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 191.04 hereof shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any; provided, however, if a person's income is wholly from wages from which the tax will be withheld and remitted to the City, in accordance with Section 191.16 hereof, such person need not file a declaration.

(b) Such declaration shall be filed on or before April 15th of each year during the life of this ordinance, except that:

- (1) No penalties or interest shall be assessed, for not filing a declaration or not making payments or making late payments, on any resident taxpayer who was not domiciled in the City on the first day of January in the year in which they became subject to estimated payments.
- (2) No penalties or interest shall be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period, or if ninety percent (90%) of the actual liability has been received.

(c) Those taxpayers reporting on a fiscal year basis shall file a declaration within 105 days after the beginning of each fiscal year or period.

(d) Such declaration shall be filed upon a form furnished by, or obtainable from the Director of Finance, or on a generic form approved by the Director of Finance. (Ord. 145-04. Passed 11-15-04.)

**191.19 PAYMENT OF ESTIMATED TAX.**

(a) Effective January 1, 2003, such declaration of estimated tax to be paid the City by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth (1/4) of the Declaration amount and at least a similar amount shall be paid on or before July 31st and October 31st of the taxable year, and January 31st of following year.

(b) Effective January 1, 2003, such declaration of estimated tax to be paid to the City by corporations and associations shall be accompanied by a payment of at least one-fourth of the Declaration amount and at least a similar amount shall be paid on or before June 15, September 15 and December 15. In the case of a fiscal year taxpayer the second, third, and fourth quarterly estimated payments shall be due on the fifteenth day of the sixth, ninth, and twelfth months of the taxable year, respectively.

(c) In case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates. (Ord. 145-04. Passed 11-15-04.)

**191.20 DUTIES AND POWERS OF THE DIRECTOR OF FINANCE.****(a) Collection of Tax and Retention of Records:**

- (1) It shall be the duty of the Director of Finance to receive the tax imposed by the Ordinance in the manner prescribed herein from the taxpayers; to keep an accurate record thereof, and to report all monies so received.
- (2) It shall be the duty of the Director of Finance to enforce payment of all taxes owing North Canton, to keep accurate records for a minimum of six (6) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

**(b) Enforcement Provisions:**

- (1) The Director of Finance is charged with the administration and enforcement of the provisions of the ordinance and is empowered to adopt, promulgate, and enforce Rules & Regulations relating to any matter or thing pertaining to the administration and enforcement of the ordinance. The Director of Finance has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the ordinance and the Rules and Regulations.
- (2) Any taxpayer or employer desiring a special ruling on any matter pertaining to the ordinance or these Rules & Regulations, should submit to the Director of Finance in writing all the facts involved and the ruling sought.
- (3) These Rules & Regulations, together with all amendments and supplements hereto and all changes herein, will be on file at the office of the Director of Finance and will be open to public inspection.
- (4) The Director of Finance is authorized to arrange for the payment of unpaid taxes, interest, and penalties on a schedule of installment payments not to exceed six months when the taxpayer has proved to the Director of Finance that due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the ordinance.
- (5) Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand.
- (6) Payments received shall first be applied to taxes and then to delinquent penalties and interest.

(c) Whenever the Director of Finance has been unable to secure information from the taxpayer as to his taxable income for any year, he may determine the amount of tax appearing to be due and assess the taxpayer upon the basis of such determination, together with the interest and penalties. The Director of Finance shall send to such taxpayer a written proposed assessment. A taxpayer may, within thirty days after the date the proposed assessment was mailed, file a written protest with the Director of Finance stating the reasons for protesting the assessment. If no protest is filed, the proposed assessment shall become final and the amount so assessed become due. If a protest is filed, then within thirty days after the filing, the Director of Finance shall withdraw the assessment, shall adjust the assessment, or shall reaffirm the assessment, and it shall then become final. A protest of the final assessment may be filed with the Board of Review only if the proposed assessment was protested with the Director of Finance.

(d) The Director of Finance shall have the power to compromise any interest or penalty, or both, imposed by Section 191.22.  
(Ord. 120-08. Passed 11-24-08.)

**191.21 EXAMINATION OF BOOKS AND RECORDS; INFORMATION SO OBTAINED CONFIDENTIAL; PENALTY.**

(a) Investigations by Director of Finance:

- (1) The Director of Finance, or his duly authorized agent, is authorized to examine the books, papers, records of any employer, taxpayer or person subject to the ordinance, or whom the Director of Finance believes is subject to the provision of the ordinance, for the purpose of verifying the accuracy of any return made; or, if no return was made, to ascertain the tax due under the ordinance.
- (2) An employer or taxpayer shall furnish, within ten (10) days following a written request by the Director of Finance, 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 Director of Finance, 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 Director of Finance may compel the production of books, papers, records, and Federal and State income tax returns, and the attendance of all persons before him whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.
- (2) The Director of Finance'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 Director of Finance.
- (3) The Director of Finance may order the appearance before him, or his duly authorized agent, of any party whom he believes to have 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 Director of Finance is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
- (4) Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show the time and place of the hearing and what books, papers or records the witness is to make available at such hearing.
- (5) The notice shall be served by the Director of Finance, or his duly authorized agent, by delivering it to the person named personally, or by leaving the notice at his usual place of business or residence, or by mailing it to the person by registered mail, return receipt requested, addressed to his usual place of business or residence.

(c) Refusal by any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Director of Finance or his duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 191.24.

(d) Confidential Nature of Examinations:

- (1) Any information gained as a result of the filing of any returns, investigations, verifications or hearings before the Director of Finance, required by the ordinance or authorized by these Rules & Regulations shall be confidential and no disclosure thereof shall be made except for official tax purposes or as ordered by a court of competent jurisdiction or upon receipt of a waiver signed by the taxpayer who has submitted the return. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than six (6) months, or both. Every such breach of confidence constitutes a separate offense.
- (2) In addition to the above penalty, any employee of the City who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(e) Retention of Records.

- (1) Employers and other taxpayers subject to the tax under the Ordinance are required to keep such records as will enable the filing of true and accurate returns, whether of taxes withheld at source or of taxes payable upon income or net profits, or both, and such records are to be preserved to enable the Director of Finance or any agent or employee of the Director of Finance to verify the correctness of the returns filed. Such records shall be kept for a period of six (6) years.  
(Ord. 145-04. Passed 11-15-04.)

**191.22 INTEREST AND PENALTIES.**

(a) Interest: All taxes imposed by this Ordinance and all monies withheld, or required to be withheld, by employers under the provisions of this ordinance and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of one-half of one percent (1/2%) per month.

(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: one-half percent (1/2%) per month or fraction of a month. (No limit)
- (2) For failure to remit taxes withheld from employees: three percent (3%) per month or fraction of a month.
- (3) In case of taxpayer failing to file returns when due and who is not otherwise exempt from filing requirements: a civil penalty of twenty-five dollars (\$50.00) for each failure-to-file violation.

- (c) Exceptions:
- (1) No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within the prescribed time.
  - (2) In the absence of fraud neither penalty nor interest shall be assessed on any additional taxes resulting from a federal audit for federal income tax purposes provided an amended return is filed and the additional tax paid within three (3) months after final determination of the federal tax liability.
  - (3) A taxpayer or employer shall have thirty (30) days after receipt of notice of any proposed imposition of interest and penalties within which to file a written protest or explanation with the Director of Finance. If no protest or explanation is filed within the prescribed time, the proposed imposition of interest and penalties shall become and be the final assessment. Upon filing of a written protest or explanation, the Director of Finance shall determine the assessment which may or may not be the same as the proposed assessment. (Ord. 145-04. Passed 11-15-04.)

**191.23 COLLECTION OF UNPAID TAXES AND LIABILITIES; REFUND OF OVERPAYMENT.**

- (a) Unpaid Amounts:
- (1) All taxes imposed by the Ordinance remaining unpaid when the same have become due, together with all interest and penalties thereon, become a debt due the City from the taxpayer, and are recoverable as other debts by suit instituted by the City Law Director. Employers who or which fail to withhold and/or remit taxes required to be withheld at the source (Section 191.16), become liable to the City in a civil action to enforce the payment of the debt created by such failure.
  - (2) Except in the case of fraud, omission of twenty-five percent (25%) or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all civil actions to recover North Canton income taxes and penalties, interest and non-filing or late fees thereon, shall be brought within three years after the tax was due or the return was filed, whichever is later. In the case of fraud, omission of twenty-five percent (25%) or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover North Canton income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later.
  - (3) Employers who withhold taxes at the source although not obligated by the terms of this ordinance are obligated to report and remit the taxes so withheld and become liable to the City in a civil action to enforce payment of the debt created by the failure to report and remit.
  - (4) The officers or the employees having control or supervision of or charged with the responsibility of filing the report and making payment are personally liable for failure to file the report or pay the tax due as required. The dissolution, bankruptcy, or reorganization of a corporation, association, or other entity does not discharge an officer's or employee's liability for a prior failure of the corporation, association, or other entity to file returns or pay tax due.

- (5) When in the opinion of the Director of Finance, an income tax account, which is at least seven years delinquent from the date said tax was due, and cannot reasonably be anticipated to be collected, the said Director of Finance may thereafter write off that account, and remove that delinquent account from the ledger of the city's accounts receivable.
- (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. However, the following shall apply regarding refunds of tax withheld from nonqualified deferred compensation plans (NDCP):
- A. A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.
- B. A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.
- C. Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified compensation.
- (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 Director of Finance.
- (3) Overpayments will be either refunded, or credited to the taxpayer's current year's liability, at his option. Where no election has been made, overpayments of any year's taxes shall be applied as follows:
- A. To unpaid penalty and interest assessments.
- B. To the taxes owed for any previous year in the order in which such taxes became due.
- C. To his current estimated tax liability.

- (4) Refunds for days worked out of North Canton are 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. The work year shall be considered two hundred sixty (260) days. Saturdays and Sundays shall not normally be considered work days. Wage continuation plans of any type (including, but not limited to, vacation days, holidays, personal days, and sick days) are deemed to be days spent in North Canton for purposes of the refund calculation. Additions, deletions, or other changes to the method for calculating refunds shall be at the discretion of the Director of Finance.
- (5) Amounts of less than two dollars (\$2.00) shall not be refunded or assessed.
- (6) Income tax that has been deposited with North Canton, but should have been deposited with another municipality, is allowable by North Canton as a refund but is subject to the three-year limitation on refunds: Income tax that should have been deposited with North Canton, but was deposited with another municipality, shall be subject to recovery by North Canton. North Canton will allow a non-refundable credit for any amount owed North Canton that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than North Canton's tax rate. If North Canton's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by North Canton.  
(Ord. 145-04. Passed 11-15-04.)

#### **191.24 VIOLATIONS, PENALTIES.**

- (a) No person shall:
  - (1) Fail, neglect or refuse to make any return or declaration required by this Ordinance; or
  - (2) Make any incomplete, false or fraudulent return; or
  - (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this Ordinance; or
  - (4) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Director of Finance; or
  - (5) Refuse to permit the Director of Finance or any duly authorized agent or employee to examine his books, records, papers, and State and Federal income tax returns relating to the income or net profits of a taxpayer; or
  - (6) Fail to appear before the Director of Finance and to produce his books, records, papers, and State and Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Director of Finance; or
  - (7) Refuse to disclose to the Director of Finance 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 Director of Finance 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' addresses, total wages paid and North Canton tax withheld, or to knowingly give the Director of Finance false information.

(b) Any person who violates any part of this section shall be guilty of a misdemeanor of the third degree 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.

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

(Ord. 145-04. Passed 11-15-04.)

### 191.25 BOARD OF REVIEW.

(a) Board of Review. An Income Tax Board of Review, consisting of a chairman and two other individuals, each to be appointed by Council. The members shall serve for three-year terms from the effective date of their respective appointments, except that the original terms shall be for one, two and three years respectfully.

#### (b) Appeals by Taxpayers.

- (1) Any person dissatisfied with any ruling or decision of the Director of Finance, which is made under the authority conferred by this ordinance, may appeal therefrom to the Board within thirty (30) days from the announcement of such ruling or decision by the Director of Finance, provided the taxpayer making the appeal has filed with the City the required return or other documents concerning the obligation at issue. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any ruling or decision or any part thereof. Such hearing shall be scheduled within forty-five (45) days from the date of appeal, unless the taxpayer waives a hearing. The Board's ruling must be made within ninety (90) days from the date of the closing of the record, shall be in writing and filed with the Director of Finance, and within fifteen (15) days of its decision shall send notice of its decision by ordinary mail to the taxpayer making the appeal.
- (2) A taxpayer dissatisfied with a decision or filing by the Board of Review may appeal to a court of competent jurisdiction within thirty days from the date of filing of the ruling or decision to which exception is taken. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.
- (3) The taxpayer may appear before the Board at the hearing, and/or be represented by an attorney at law, certified public accountant, or other representative.

(c) Organizational Procedures.

- (1) A majority of members present at any hearing or meeting shall constitute a quorum.
- (2) The Board of Review shall adopt its own procedural rules and keep records of all proceedings accordingly. The Board shall elect a chairman and secretary from its membership and shall be governed by Robert's Revised Rules of Order except as its own bylaws (if any) differ. Any members are eligible for reappointment to the Board of Review. No compensation shall be paid to the members unless otherwise provided by City Council. All members of the Board of Review shall be resident citizens of the City. Any Board members may be removed from office due to misfeasance, nonfeasance, malfeasance, or nonattendance to duty, and removal shall be made by the City Council.
- (3) 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 191.21(d) 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 Tax Appeals.  
(Ord. 145-04. Passed 11-15-04.)

**191.26 INCOME TAX PAID BY RESIDENTS TO OTHER MUNICIPALITIES.**

Any person who resides or is domiciled in the City, but who receives net profits, salary, qualifying wages, commissions, other compensation or other income for work done, services performed, or business transacted outside of the City, which is taxable under the Ordinance, upon production of satisfactory evidence that he has paid income tax on such net profits, salary, qualifying wages, commissions or other compensation or other income to another municipality of this State shall be entitled to adjust the tax herein imposed by deducting therefrom the net tax which has been paid by said person on such net profits, salary, qualifying wages, commissions, other compensation or other income, provided, however, that the amount so deducted shall be limited to the amount of tax the said person would have paid to the City pursuant to this ordinance on that portion of such net profits, salary, qualifying wages, commissions, other compensation or other income which has been taxed by another municipality. No adjustment may be made for any such income, the source of which when determined in accordance with the methods of allocation provided herein, is within the City. (Ord. 145-04. Passed 11-15-04.)

**191.27 APPLICABILITY.**

The Ordinance is inapplicable to any person or corporation upon whom or which it is beyond the legal power of Council to impose the tax; it is likewise inapplicable as to any property, income or profits (or part thereof) as to which it is beyond the legal power of Council to levy the tax. (Ord. 145-04. Passed 11-15-04.)

**191.28 CONSTRUCTION; SEPARABILITY OF PROVISIONS.**

If any sentence, clause, section or part of this Ordinance, or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal or invalid, such clause, sentence or part of this Ordinance shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this Ordinance. It is hereby declared to be the intention of the Council of the City that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not been included herein. (Ord. 145-04. Passed 11-15-04.)

**191.29 COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE.**

(a) This Ordinance shall continue effective insofar as the levy of taxes is concerned until repealed and insofar as the collection of taxes levied in the aforesaid period and actions or proceedings for collecting any tax so levied or enforcing any provisions of this ordinance are concerned, it shall continue effective until all of said taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this ordinance shall have been fully terminated, subject to the limitations contained in Section 191.23(a).

(b) Any returns or payments required to be made after the ordinance is repealed shall be filed and made in accordance with the provisions of this ordinance, notwithstanding the fact that the tax period was terminated.  
(Ord. 145-04. Passed 11-15-04.)

**191.30 MUNICIPAL INCOME TAX CREDIT PROGRAM; LOCAL JOB CREATION/RETENTION INCOME TAX CREDITS.**

(a) Council may grant, by ordinance, local job creation income tax credits against the City's income tax under Ohio R.C. 718.15 to taxpayers who also receive a tax credit from the State of Ohio under Ohio R.C. 122.17 for a project that will create jobs in the City.

(b) The local job credit income tax credit shall be measured as a percentage of the new income tax revenue the City derives from new employees of the taxpayer and shall be for a term not exceeding ten (10) years.

(c) The local job credit income tax credit shall be based upon a finding by Council that the project:

- (1) Will create jobs in the State and the City;
- (2) Is economically sound and will benefit the people of the state and the city by increasing opportunities for employment and strengthening the economy of the state and the City; and
- (3) Receiving the tax credit is a critical factor in the decision of the taxpayer to go forward with the project; and
- (4) The City is required to meet a local financial match requirement designated by the Ohio Tax Credit Authority.

(d) The City and the taxpayer shall enter into an agreement specifying all the conditions of the credit prior to passing an ordinance granting the local job creation income tax credit.  
(Ord. 132-06. Passed 1-16-07.)