

First Reading: November 16, 1982

Second Reading: December 7, 1982

Third Reading: December 21, 1982

BEING A RESOLUTION LEVYING A TAX TO PROVIDE FUNDS FOR THE PURPOSE OF GENERAL MUNICIPAL OPERATIONS, MAINTENANCE OF EQUIPMENT, NEW EQUIPMENT, EXTENSION, ENLARGEMENT, AND IMPROVEMENT OF MUNICIPAL SERVICES AND FACILITIES AND CAPITAL IMPROVEMENTS, ON ALL SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY RESIDENTS OF THE CITY OF SALEM; ON ALL SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY NON-RESIDENTS OF THE CITY OF SALEM FOR WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE CITY OF SALEM; ON THE NET PROFITS EARNED ON ALL BUSINESSES, PROFESSIONS OR OTHER ACTIVITIES CONDUCTED BY RESIDENTS OF THE CITY OF SALEM; ON THE NET PROFITS EARNED ON ALL BUSINESSES, PROFESSIONS OR OTHER ACTIVITIES CONDUCTED IN THE CITY OF SALEM BY NON-RESIDENTS, AND ON THE NET PROFITS EARNED BY ALL CORPORATIONS DOING BUSINESS IN THE CITY OF SALEM, AS THE RESULT OF WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE CITY OF SALEM; REQUIRING THE FILING OF RETURNS AND FURNISHING OF INFORMATION BY EMPLOYERS AND ALL THOSE SUBJECT TO SAID TAX; IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING THE TAX AT THE SOURCE AND PAYING THE SAME TO THE CITY OF SALEM; PROVIDING FOR THE ADMINISTRATION, COLLECTION AND ENFORCEMENT OF SAID TAX; TO ESTABLISH INCOME TAX REGULATIONS; DECLARING VIOLATION THEREOF TO BE A MISDEMEANOR AND IMPOSING PENALTIES THEREOF; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SALEM, STATE OF OHIO, THREE-FOURTHS OF THE MEMBERS CONCURRING:

SECTION 1: DEFINITIONS

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

- A. "Taxpayer" - A person, whether an individual, partnership, limited partnership, corporation, association or other entity, required hereunder to file a return or to pay a tax hereunder.
- B. "Association" - A partnership, limited partnership, or an other form of unincorporated enterprise, owned by two or more persons.
- C. "Business" - An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, limited partnership, corporation, association, or any other entity.
- D. "Corporation" - A corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, foreign country or dependency.
- E. "Employee" - One who works for wages, salary, commission or other type of compensation in the service of an Employer.
- F. "Employer" - An individual, partnership, limited partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other compensation basis.
- G. "Net Profits" - The net gain from the operation of a business, profession or enterprise after provision for all cost and expense incurred in the conduct thereof, including reasonable allowance for depreciation, depletion, amortization and reasonable additions to reserve for bad debts, either paid or accrued in accordance with recognized principles of accounting applicable to the method of accounting regularly employed and without deduction of Federal or State

taxes based on income, and without deducting taxes imposed by this ordinance.

- H. "Non-Resident" - An individual, partnership, limited partnership, corporation, association, or other entity domiciled outside the City of Salem.
- I. "Person" - Every natural person, partnership, limited partnership, corporation, fiduciary or association. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any association, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.
- J. "Resident" - An individual, partnership, limited partnership, corporation, association, or other entity domiciled in the City of Salem.
- K. "Other Entity" - The term "other entity" means any person or unincorporated body not previously named or defined and includes inter alia, fiduciaries located within the City of Salem.
- L. "Place of Business" - The term "place of business" means any bona fide office, (other than a mere statutory office) factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance.

A taxpayer does not have a regular place of business outside Salem solely by consigning goods to an independent factor or contractor outside the City for sale.

- M. "Business Allocation Percentage" - The term "Business Allocation Percentage", as used in these regulations, means the average percentage arrived at by applying the formula set forth in Section 2, sub-section H of the ordinance. The "Business Allocation Percentage" is the percentage which may be applied to determine the portion of the entire net profits of a taxpayer to be allocated as having been made with the City of Salem within the meaning of provision of said Section 2.
- N. "The Ordinance" - The term "The Ordinance" means Ordinance No. 821116-70 enacted by the Council of the City of Salem, on December 12, 1982, and any amendments or supplements thereto.

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

**ARTICLE I - 2
COMMENCEMENT AND DURATION
OF THE TAX**

The tax imposed by this ordinance is effective as to income and profits earned or accruing on and after January 1, 1983, and payroll deductions must be made against all salaries, wages, commission, bonuses and other compensation earned or accruing on and after that date.

The ordinance continues effective insofar as the levy of taxes is concerned until repealed or modified by the Council of the City of Salem Ohio.

**ARTICLE II - 1
IMPOSITION OF TAX - RESIDENT EMPLOYEES**

In the case of the residents of the City of Salem an annual tax of one percent is imposed on all salaries, wages, commissions and other compensation earned or accrued on and after January 1, 1983. For the purpose of determining the tax on the earnings of the resident taxpayers, taxed under sub-section A of the Section 2 of the ordinance, the source of the earnings and the place or places in or at which the services were rendered are immaterial. All such earnings, wherever earned or paid, are taxable.

The following are items which are subject to the tax:

- (a) Salaries, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered on and after January 1, 1983.
 - (1) As an officer or employee, or both, of a corporation (including charitable and other non-profit corporations), joint stock association or joint stock company;
 - (2) As an employee (as distinguished from a partner or member) of a partnership, limited partnership, or any other form of unincorporated enterprise owned by one or more persons;
 - (3) As an employee (as distinguished from the proprietor) of a business, trade or profession conducted by an individual owner;
 - (4) As an officer or employee (whether elected, appointed or commissioned) of a governmental administration, agency, arm, authority, board, branch, bureau, department, division, sub-division, section or unit of the State of Ohio or any of the political subdivisions thereof;
 - (5) As an officer or employee (whether elected, appointed, or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, sub-division, section or unit of the United States Government or of a corporation created and owned, or controlled by The United States Government or any of its agencies;
 - (6) As an employee of any other entity or person.
- (b) Wages, bonuses, or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered on and after January 1, 1983.
 - (2) Whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit or production or piece-work rates; and
 - (2) Whether paid by an individual, limited partnership, partnership, association, corporation (including charitable and other non-profit corporations), governmental administration, agency, arm, authority, board, body, branch department, division, subdivision, section or unit, or any other entity.
- (c) Commissions received by a taxpayer whether directly or through an agent and whether in cash or in property, for services rendered on and after January 1, 1983, regardless of how computed, by whom or wheresoever paid.

If amounts received as a drawing account exceed the commissions earned, the tax is payable on the gross amounts received.

Amounts received from an employer by way of expenses and not by way of compensation, and used as such by the individual receiving them, are not deemed to be compensation if the employer deducts such expense advances as such from his gross income for the purpose of determining his net profits taxable under the ordinance.

If such commissions are included in the net earnings of a trade, business, profession, enterprise or

activity regularly carried on by such individual and therefore subject to tax under sub-section C of Section 2 of the ordinance, they shall not again be separately taxed. In such case, such net earnings shall be taxed as provided in Article II-9 of these Regulations.

- (d) The receipt of fees and other compensation for personal services rendered shall be deemed to be subject to taxation under the ordinance.
- (e) Domestic servants are subject to Salem tax under this ordinance but are not subject to withholding provisions. That is to say, the domestic will report earnings and pay the tax directly to The Salem Income Tax Department.

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

- (3) Funds received from local, state or federal governments because of service in the Armed Forces of the United States by the person rendering such service, or as a result of another person rendering such service.
- (4) Poor relief, pensions, social security, unemployment compensation, and disability benefits received from private industry or local, state or federal governments, or from charitable, religious or educational organizations.
- (5) Dues, contributions and similar payments received by charitable, religious, educational or literary organizations or labor unions, lodges and similar organizations.
- (6) Receipts from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide charitable, religious and educational organizations and associations.
- (7) Any association, organization, corporation, club or trust, which is exempt from federal taxes on income by reason of its charitable, religious, educational, literary, scientific etc. purposes.
- (8) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, and income of a decedent's estate during the period of administration (except such income from the operation of a business.)
- (9) Earnings and income of all persons under 18 years of age whether residents or non-residents.

ARTICLE II - 2

IMPOSITION OF TAX - NON-RESIDENTS

In the case of individuals who are non-residents of Salem there is imposed under the ordinance an annual tax of one percent on all salaries, wages, commissions and other compensation, earned or accruing on and after January 1, 1983, for work done or services performed or rendered within the City of Salem, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property.

The items subject to tax under this section are the same as those listed and defined in Article II-1. For methods of computing the extent of such work done or services performed within the City of Salem, and cases involving compensation for personal services partly within and partly outside the City of Salem, see Article IV-1

ARTICLE II - 3
IMPOSITION OF TAX - NET BUSINESS
PROFITS - RESIDENTS

1. In the case of trades, businesses, professions, other activities, enterprises or undertakings conducted, operated, engaged in, prosecuted, or carried on by residents of Salem, there is imposed an annual tax of one percent on the net profits earned or accruing on and after January 1, 1983.
2. For the purpose of construing sub-section (c) and (d) of Section 2 of the ordinance, the term “residents” in the phrase “conducted by residents of the City of Salem” will ordinarily be construed to have reference to the business entity itself, as distinguished from the partners, proprietors or other participants in its profits.
3. Generally, a partnership, association or other unincorporated enterprise owned by two or more persons will be taxed as an entity. However, in the case of a non-resident partnership, association or unincorporated enterprise which cannot be reached or taxed directly by the City of Salem, or if only part of its earnings may be directly taxed, then in either such case, resident partners, co-owners, proprietors or other participants in the profits thereof must include in their declaration and tax return or returns their distributive shares of such profits, or portion thereof not taxed to the business enterprise as an entity, and must pay the tax thereon.
4. The tax imposed under this section of the ordinance (2) (c) is levied upon the entire net profits of the resident trade, business, profession, other activity, enterprise or undertaking, wherever earned, paid, or accrued, and regardless of the fact that any part of such business or professional activity may have been conducted at or through a place or places of business located outside the City of Salem.

ARTICLE II - 4
IMPOSITION OF TAX - NET BUSINESS
PROFITS - NON-RESIDENTS

1. In the case of a non-resident individual, partnership, association, fiduciary, or other entity (other than a corporation) engaged in the conduct, operation, or prosecution of any trade, business, profession, enterprise, undertaking, or other activity, there is imposed an annual tax of one percent on the net profits (earned or accruing on and after January 1, 1983) of such trade, business, profession, enterprise, undertaking, or other activity if, and to the extent, conducted in or derived from activity in Salem.
2. A non-resident entity within the meaning of sub-section (e) of Section 2 of the ordinance which has a branch or branches, office or offices and/or store or stores, warehouse, or other place or places in which the entity’s business is transacted, located in the City of Salem, shall be considered to be

conducting, operating, prosecuting, or carrying on a trade, business, profession, enterprise, undertaking or other activity to the full extent of the sum total of all transactions originating or consummated in, by or through such Salem branch, office, store, warehouse or other place or business, including (a) billings made on such transactions, or (b) services rendered, or (c) shipments made, or (d) goods, chattles, merchandise, etc., sold, or (e) commissions, fees or other remuneration or payments earned.

3. In the case of the partnership, association, or other unincorporated business owned by one or more persons the tax, generally, shall be upon said partnership, association, or business enterprise as an entity and not ordinarily upon the partners or members thereof. However, the provisions of Article II-3 are applicable to render taxable against such resident partners or members their distributive share of any profits of such non-resident entity not taxable under this ordinance.
4. In determining the proportion or amount of the taxable net profits of a non-resident business entity having a place or places of business within and outside Salem, such business entity may at its option use and apply the Business Allocation Percentage Formula set forth in Section 2 sub-section (h) of the ordinance. For explanation of Formula, see Article II-6.

ARTICLE II - 5
IMPOSITION OF TAX - NET BUSINESS
PROFITS - CORPORATIONS

1. In the case of a corporation doing business in Salem, whether domestic or foreign, and whether domiciled in Salem, or elsewhere, there is imposed an annual tax of one percent on that part of the net profits (earned or accruing on and after January 1, 1983) of such corporations, which is earned by such corporations as a result of work done or services performed or rendered and business or other activities conducted in the City of Salem.
2. The provisions of Paragraph 2 of Article II - 4 of these Regulations are applicable to such corporations.
3. A corporation doing business both within and outside the City of Salem, may, in determining the part of the net profit which are taxable under the ordinance, at its option:
 - (10) Use the usual accounting system of the taxpayer corporation, so long as said usual accounting system shall be one acceptable to the U.S. Internal Revenue Department as evidenced by acceptance and approval of income tax returns filed therein: or
 - (11) Use the Business Allocation Percentage Formula set forth in Section 2, sub-section H of the ordinance.

ARTICLE II - 6
BUSINESS ALLOCATION PERCENTAGE

1. At the option of a corporation taxpayer or of a non-resident business entity, such taxpayers may, but

are not obliged to, use the formula set forth in Section 2 of the ordinance to compute the percentage of their entire net profits (derived from activities both within and outside the City of Salem) which is taxable under the ordinance, and to determine the tax payable to the City of Salem thereunder.

If the taxpayer did not have a place of business outside Salem during the period covered by any declaration and/or return required under the ordinance, its business allocation percentage is 100 percent; in other words the taxpayer is required to pay a tax of one percent on the entire net profit of the business.

If the taxpayer had a place or places of business outside Salem; and was doing business in Salem during such period, the business allocation percentage shall be computed on the following basis (Section 718.02 Revised Code - State of Ohio):

- (1) In the taxation of income which is subject to taxation by the provisions of the ordinance, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the City of Salem shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the City of Salem, then only such portion shall be considered as having a taxable situs in the City of Salem for purposes of municipal income taxation. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of the City of Salem shall be considered as having a taxable situs in the City of Salem for purposes of municipal income taxation in the same proportion as the average ratio of:
 - (1) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City of Salem during the taxable period to the average net book value of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight:

- (1) Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City of Salem to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed;
- (2) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City of Salem to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

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

- (b) As used in Division (a) of the sub-section, “sales made in the City of Salem” mean:
- (2) All sales of tangible personal property which is delivered within the City of Salem regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation;
 - (3) All sales of tangible personal property which is delivered within the City of Salem regardless of where title passes even though transported from a point outside such City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such City and the sales result from such solicitations or promotion;
 - (4) All sales of tangible personal property which is shipped from a place within the City of Salem to purchasers outside such City regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

The Business Allocation Percentage is computed by determining the percentages (a) which Salem real and tangible personal property bears to all real and tangible personal property (including that situated in Salem) of taxpayer wheresoever situated; (b) which Salem business sales bear to taxpayer’s entire business sales wheresoever derived (including those derived from Salem); and (c) which payrolls paid by taxpayer within Salem bear to taxpayer’s entire payroll wheresoever paid (including Salem payrolls); adding together the three percentages so arrived at, and dividing the total by three.

However, if one of the factors (property, sales or payrolls) is missing, the other two percentages are added and the sum is divided by two, and if two of the factors are missing the remaining percentage is the business allocation percentage.

EXAMPLE 1:

Corporation having places of business in Salem, Detroit, and Cleveland.

Salem real and tangible personal property \$10,000. All real and personal property (Salem, Detroit and Cleveland) \$100,000. Percentage: 10%

Salem sales \$15,000. All sales \$75,000. Percentage: 20%

Salem payroll \$6,000. All payroll \$20,000. Percentage: 30%

Business allocation percentage:

10% plus 20% plus 30% -----3-----equals 20%

EXAMPLE 2:

Same corporation owning no real or tangible personal property anywhere. Salem sales \$15,000; all sales \$75,000; Percentage 20%.

Salem payroll \$6,000; All payroll \$20,000; Percentage 30%

Business allocation percentage:

20% plus 30% -----2-----equals 25%

EXAMPLE 3

Same corporation owning real and tangible personal property in Salem valued at \$10,000 and owning no real or tangible personal property outside Salem. Other factors same as in Examples 1 and 2.

Business allocation percentage:

100% plus 20% plus 30% -----3-----equals 50%

After determining such business allocation percentage, the tax shall be determined by applying that percentage to the entire net profits of the taxpayer, wherever derived (thus arriving at the taxable net profit), and computing one percent of the resultant taxable net profit.

In case it shall appear to the City Treasurer that any agreement, understanding or arrangement exists between the taxpayer and any other person, firm or corporation, whereby the activity, business, income or capital of the taxpayer is improperly or inaccurately reflected, the City Treasurer may adjust items of income, deductions and capital, and disregard assets in computing any allocation percentage, provided any income directly traceable thereto is also excluded from entire net income, so as equitably to determine the tax.

(2) EXPLANATION OF “PROPERTY FACTOR”. The percentage of the taxpayer’s real and tangible personal property within Salem is determined by dividing the net book value (during the period covered by the report) of such property within Salem, without deduction of any encumbrances, by the average net book value similarly computed, of all such property within and without Salem. Only property owned by the taxpayer is considered in determining such percentage.

(3) EXPLANATION OF BUSINESS RECEIPTS FACTOR.

Receipts from the following are also allocable to Salem:

- (1) Work done and performed or services rendered in Salem.
- (2) Rentals from property situated in Salem, where the rental of such property is a usual or normal part of the taxpayer’s business activity.
- (3) All other business receipts earned in Salem. For the purpose of determining business allocation percentage, no account shall be given to receipts, within or without Salem, of income derived

from intangibles (including stocks, bonds, royalties and the like) the income of which is taxable under the statutes of the State of Ohio.

All receipts of the period covered by the report (computed on the cash or accrual basis, in accordance with the method of accounting used in the computation of the taxpayer's entire net income) must be taken into account.

(4) **COMPENSATION FOR WORK DONE AND PERFORMED OR SERVICES RENDERED.**

- (1) Compensation and other receipts for work done or services performed within Salem are allocable to Salem and taxable under the ordinance. All amounts so received, credited or charged by taxpayer in payment for such work or services are so allocable, irrespective of whether done or performed by employees or agents of taxpayer, by sub-contractors, or by any other persons. It is immaterial where such amounts were payable or where they were received.
- (2) Commissions or fees received by the taxpayer are allocated to Salem if the services for which the commissions were paid were performed in Salem. If the taxpayer's services for which commissions or fees were paid were performed for the taxpayer by salesmen or other agents or employees attached to or working out of a Salem place of business of the taxpayer, the taxpayer's services will be deemed to have been performed in Salem.

Where a lump sum is received by the taxpayer in payment for services within and without Salem, the amount attributable to services within Salem is to be determined on the basis of the relative values of, or amounts of time spent in the performance of, such services within and without Salem.

- (c) **OTHER BUSINESS RECEIPTS.** Receipts from sale of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) are not business receipts. Receipts from the sale of real property held by the taxpayer as a dealer for sale to customers in the regular course of business are business receipts and are allocable to Salem if the real property was situated in Salem. Receipts from sales or intangibles included in business capital, held by the taxpayer as a dealer for sale to customers in the regular course of business, are business receipts and are allocable to Salem if the sales were made in Salem or through a regular place of business of the taxpayer in Salem.
- (5) **PAYROLL FACTOR** The percentage of the taxpayer's payroll allocable to Salem is determined by dividing the wages, salaries and other personal service compensation of the taxpayer's employees within Salem during the period covered by the report, by the total amount of compensation of all taxpayer's employees during such period.

Wages, salaries and other compensation are computed on the case or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.

Employees within Salem include all employees regularly connected with or working out of a place of business maintained by the taxpayer in Salem, irrespective of where the services of such employee were

performed. However, if the taxpayer establishes to the satisfaction of the City Treasurer that because of the fact that a substantial part of its payroll was paid to employees attached to a Salem place of business who performed a substantial part of their services outside Salem, the computation of the payroll factor according to the general rule stated above would not produce an equitable result, then the City Treasurer may, in his discretion, permit the payroll factor to be computed on the basis of the amount of compensation paid for services rendered within and without the City. On the other hand, wherever it appears that, because a substantial part of the taxpayer's payroll was paid to employees attached to places of business outside Salem who performed a substantial part of their services within Salem, the computation of the payroll factor according to the general rule would not properly reflect the amount of the taxpayer's business done within Salem by its employees, the City Treasurer may require the payroll factor to be computed on the basis of the amount of compensation paid for services performed within and without the City. In any such case, where an employee performed services both within and without Salem, the amount treated as compensation for services performed within Salem shall be deemed to be (a) in the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within Salem; (b) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation which the value of his services within Salem bears to the value of all his services; and (c) In the case of an employee compensated on a time basis, the proportion of the total amount received by him which the working time employed in Salem bears to the total working time.

(6) **ADJUSTMENT OF BUSINESS ALLOCATION PERCENTAGE FORMULA**

Generally, the Business Allocation Percentage Formula will result in a fair apportionment of the taxpayer's net profits within and without Salem. However, due to the peculiar circumstances of certain businesses, the formula may work a hardship in some cases or result in a tax evasion in others, thus not do justice to the taxpayer or the City. Accordingly, in such cases, the City Treasurer may substitute factors calculated to bring about a fair and proper allocation in any case where the taxpayer has adopted the optional use of the business allocation percentage formula.

ARTICLE II - 7
ON WHAT EARNINGS OR NET PROFITS
TAX FIRST LEVIED

The tax referred to in Article II-1 and II-2 shall first be levied, collected and paid with respect to the salaries, wages, bonuses, incentive payments, commissions, fees and/or other compensation earned on and after January 1, 1983, and each year thereafter.

The tax referred to in Article II-3, II-4, and II-5 with respect to net profits of trades, businesses, professions, enterprises, undertakings, and other activities shall first be levied, collected and paid with respect to such net profits earned or accrued (in accordance with the regular accounting system of taxpayer as approved by the U.S. Collector of Internal Revenue) from and after January 1, 1983, and each year thereafter.

But see Article II-8 for fiscal year returns.

ARTICLE II - 8 FISCAL YEARS

Where the fiscal year of a trade, business, profession, enterprise, undertaking, and/or other activity differs from the calendar year, the tax shall be applicable to the net profits of the fiscal year, but for the first fiscal year with respect only to such portion thereof as was earned on and after January 1, 1983.

A fiscal year will be recognized only if it has been or may be recognized as such by the Director of Internal Revenue for the purposes of Federal Income Tax.

ARTICLE II - 9 NET BUSINESS PROFITS

In amplification of the definition contained in Article I (g) of these Regulations, but not in limitation thereof, the following

additional information and requirements respecting net business profits are furnished.

- (1) Where necessary to properly reflect income, inventories must be used. The basis of pricing used for the purpose of the Federal Income Tax must in each instance be used.
- (2) Where the books and records are kept on an “accrual basis”, “long-term contract basis”, or “installment basis” and/or the “accrual basis”, “long-term contract basis” or “installment basis”, is used in the filing of Federal Income Tax returns, such basis must be used for the purpose of this tax,
- (3) If the return is made on a “cash basis”, gross profit shall include receipts from commissions, fees and interest, as well as the gross profit or loss from sales of merchandise, chattels, goods, wares, securities, notes, choses-in-action and services, except as hereinafter provided.
- (4) If the return is made on an “accrual basis”, gross profit shall include (1) commissions, fees and interest earned, plus (2) the gross profit or loss from sales of merchandise, chattels, goods, wares, securities, notes, choses-in-action, and services, except as hereinafter provided.
- (5) From gross profit there shall be subtracted allowable expenses to arrive at the net profits subject to tax.
- (6) All ordinary and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed (but no deduction may be claimed for “salary” or withdrawals of a proprietor or of the partners, members or other co-owners of an unincorporated business or enterprise).
- (7) 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 and real estate used in business, shall not be allowed as a deductible expense. Net operating loss carried forward, deduction on Federal Income Tax return, is not deductible.

- (8) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or (if the reserve method is used), a reasonable addition to the reserve may be claimed, but in not event shall the amount allowed exceed the amount recognized as a deduction for the purpose of the Federal Income Tax.
- (9) Taxes. Only taxes directly connected with the taxpayer's business may be claimed as a deduction . If for any reason the income from property is not subject to tax, then the tax on said property is not deductible. In any event, the following taxes are not deductible from income:
 - (1) The tax under the ordinance;
 - (2) Any Federal taxes based upon income;
 - (3) Gifts, estate or inheritance taxes; and
 - (4) Taxes for local benefits or improvements to property which tend to appreciate the value thereof.
 - (5) Any State taxes based upon income.
- (j) Capital gains and losses (including gains or losses from the sale, exchange, or other disposition of depreciable business property, and real property used in the taxpayer's trade or business) shall not be taken into consideration in arriving at "net profits earned".
- (k) If the taxpayer is a non-resident, only the amount of net profits applicable to the activities of the business in Salem shall be subjected to tax. If the non-resident taxpayer's records do not disclose the actual net profits for the Salem branch, office, store, or activity separately, then the basis of allocation shall be disclosed in the return. If such basis of allocation is not deemed correct, in view of all the known circumstances, the City Treasurer will make a reallocation based upon gross receipts or any other basis which shall, under the circumstances of the case, more accurately reflect the net profits.
- (l) In general, all business expense recognized and to the extent allowed as such for the purpose of determining Federal Income Tax will be recognized and allowed for determining the Salem Income Tax under the provisions of this ordinance. However, all expenses connected with the acquisition or carrying of securities, the income from which is not recognized as taxable under this ordinance, may not be deducted in determining taxable net profits hereunder.
- (m) In general, unearned income is not to be included in computing the tax levied hereunder. Gain or loss from the sale, exchange or other disposition of capital assets, including depreciable property and real estate used in business, shall not be included in determining net profits. Income from intangibles by way of dividends, interest and the like, should not be included if the property from which such income is derived is subject to taxation under the Intangible Personal Property Tax Laws of the State of Ohio, or is specifically exempted from taxation under said laws.

- (n) Rentals received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals, are derived (whether so rented, managed or operated by 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”;

- (1) Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates \$100.00 per month or more, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity or such taxpayer, and the net income of such rental property shall be subject to tax; provided that in case of commercial property the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$100.00 per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farms, whether or not the gross income exceeds \$100.00 per month; and provided further that the person who maintains two or more rooms in a private residence for rental purposes shall be considered in business whether or not the gross income exceeds \$100.00 per month.
- (2) 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.
- (3) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- (4) 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.
- (5) 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.
- (6) Residents of Salem are subject to taxation upon the net income from rentals (to the extent above specified) regardless of the location of the real property owned:

Non-residents of Salem are subject to such taxation only if the real property is situated within the City of Salem. Non-residents, in determining whether gross monthly rentals exceed One Hundred Dollars (\$100.00) shall take into consideration only real estate situated within Salem.
- (o) Income from royalties or copyrights is not to be included.

ARTICLE II - 10
RECONCILIATION WITH FEDERAL RETURN

In a form satisfactory to the City Treasurer, there shall be submitted with each return filed by a taxpayer subject to the Federal Income Tax, a reconciliation between the amount shown in the return filed with the City Treasurer and the business taxable income reported to the Federal Bureau of Internal Revenue, before net operating loss deduction.

If, as a result of a change made in business income by the Federal Bureau of Internal Revenue, or by a judicial decision, an additional amount will result as owing to the City of Salem, a report of such change shall be filed by the taxpayer within thirty days after receipt of the final notice of such change from the Federal authorities or after final decision of a Court adjudicating any such Federal Income Tax liability.

ARTICLE III
RETURN AND PAYMENT OF TAX

- (1) (a) Each taxpayer shall, whether or not a tax is due thereon, make and file a return on or before April 15th of each year following the effective date of this ordinance. When the return is made for a fiscal year or other period different from the calendar year, the return shall be made within 105 days from the end of the fiscal year or other period.
- (b) The return shall be filed with the Treasurer on a form or forms furnished by or obtainable upon request from such Treasurer setting forth:
 - (2) The aggregate amounts of salaries, wages, commissions and compensations earned and gross income from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to the tax.
 - (3) The amount of the tax imposed by this chapter on such earnings and profits; and
 - (4) Such other pertinent statements, information returns or other information as the Treasurer may require.
- (c) Losses from any business activity or occupation not subject to withholding under the ordinance may not be deducted from income received or tax withheld for services performed for an employer or from income received from net profits of any other business activity or occupation, in whatsoever form.

(ORD 860415-31 - Passed 05-07-1986)

- (2) In all returns filed hereunder there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation received and /or net profits earned (all as hereinbefore defined) by and during the preceding year and subject to said tax, together with such

pertinent information as the City Treasurer may require.

- (3) If the return is made for a fiscal year or for any period other than a calendar year, the said return shall be made within one hundred five (105) days from the end of said fiscal year or other period.
- (4) The return shall also show the amount of the tax imposed by the ordinance on such earnings, or net profits, or both.
- (5) The taxpayer making the return shall at the time of filing thereof, pay to the City Treasurer the amount of tax shown to be due and unpaid by the return. If, pursuant to the provisions of Article V-2, 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 therefor, or (b) request that the amount thereof be credited against the amount of which will be required to be paid by the taxpayer on the next succeeding installment of tax which may become due, provided the claim for refund has been filed by the taxpayer within three years of the due date or filing date of the tax return, whichever is later.

(ORD 901120-112 - Passed 12-18-1990)

- (6) Where any portion of the tax otherwise due shall have been deducted at the source and shall have been paid to the City Treasurer 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 the filing of the said return.
- (7) Upon written request of the taxpayer prior to the due date, the City Treasurer 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 and granted by the Bureau of Internal Revenue for filing of the Federal Income Tax Return.

**ARTICLE IV - 1
COLLECTION AT SOURCE**

- (1) It is the duty of each employer (as hereinbefore defined) who employs one or more persons on a salary, wage, commission, or other compensation basis, to deduct from compensation paid to any employee subject to the ordinance, the tax of one percent of such salary, wage, bonus, incentive payment, commission, or other compensation 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 of Salem for services rendered, work performed, or other activities engaged in to earn such compensation, within the City of Salem; and

- (1) From the gross amount of all salaries, wages, bonuses, incentive payments, commission or other forms of compensation paid to employees who are residents of the City of Salem, regardless of the place where the services are rendered.
- (2) All employers who or which maintain an office or other place or business in Salem are required to make the collection and deductions in this Article specified, regardless of the fact that the services on account of which any particular deduction is required as to residents of the City of Salem, were performed at a place of business of any such employer situated outside the City of Salem.
- (3) 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.
- (4) Commissions and fees paid to professional men, 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 2 or of Section 3 of the ordinance. (See Article II-3 and II-4).
- (5) In the case of employees who are non-residents of Salem the amount to be deducted is one percent of the compensation paid with respect to personal services rendered in Salem.

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

- (a) 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 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 of Salem bears to the volume of business transacted by him within and outside the City of Salem.
- (2) The deducting and withholding 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 total number of working days employed within the City of Salem bears to the total number of working days employed within and outside the City of Salem.
- (3) If it is impossible to apportion the earnings as provided above, because of (1) the peculiar nature of the service of the employee, or (2) the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly.
- (4) The occasional entry into the City of Salem of a non-resident employee who performs the duties for which he is employed entirely outside the City, but enters the City for the purpose of reporting, receiving instructions, accounting, etc., incidental to his duties outside the City, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the City.

- (6) 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 - but see Paragraph 7 below) where such advances are in excess of commissions earned.
- (7) 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 must be of the kind and in the amount recognized and allowed as deductible expenses for Federal Income Tax purposes.

ARTICLE IV - 2
RETURNS OF TAX WITHHELD AND PAYMENT

Each employer within the City of Salem who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct monthly, or more often than monthly, and at the time of the payment of such salary, wage, commission, or other compensation, the tax of one percent of salaries, wages, commissions or other compensation due by the said employer to the said employee.

If the amount of tax due is less than \$500.00 per month, the employer shall make a return and pay to the City Treasurer the amount of taxes so deducted as follows:

- For the three (3) months ending March 31st, on or before April 30th;
- For the three (3) months ending July 30th, on or before July 31st;
- For the three (3) months ending September 30th on or before October 31st;
- For the three (3) months ending December 31st, on or before the following January 31st.

If the amount of tax due is \$500.00 or greater per month, the employer shall make a return and pay to the treasurer the amount of taxes so deducted on a monthly basis, due on or before the last day of the month following the filing month.

The reporting periods referred to in the preceding paragraphs are elastic to this extent: The employer will use the same quarterly accounting period for reporting taxes withheld under the Salem Income Tax ordinance as he uses in reporting quarterly taxes withheld to the Federal Government.

Said return shall be on a form prescribed by and obtainable from the City Treasurer and shall be subject to the rules and regulations prescribed therefor by the City Treasurer. Such employer, in collecting said tax, shall be deemed to hold same until payment is made by such employer to the City of Salem as a Trustee for the benefit of the City of Salem and any such tax collected by such employer from his employees shall until the same is paid to the City of Salem, be deemed a trust fund in the hands of such employer.

For adjustment of errors in returns of tax withheld by employers see Article VI-3 of these regulations.

(ORD 901120-112 - Passed 12-18-1990)

ARTICLE IV - 3
LIMITATION ON CREDIT FOR TAX
PAID AT SOURCE

The failure of any employer, residing either within or outside the City of Salem, to collect the tax and to make any return prescribed herein, shall not relieve the employee from the payment of such tax in compliance with these regulations respecting the making of returns and the payment of taxes.

ARTICLE IV - 4
STATUS AND LIABILITY OF EMPLOYERS

Every employer is deemed to be a trustee of the City of Salem 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.

Every such employer required to deduct and withhold the tax at the source is liable directly to the City of Salem for the payment of such tax, whether actually collected by such employer or not.

ARTICLE V - 1
DECLARATIONS

1. An employee whose entire wages, salaries, or other compensation for any taxable year will be subjected to the withholding provisions under Article IV of these Regulations, whose tax will accordingly be withheld as to his entire earnings for such year by his employer, and who during such taxable year expects to derive no other compensation or other income which is subject to tax under the ordinance, need not file a declaration as provided in this Article.
2. All other taxpayers (as defined in the ordinance and in these Regulations) subject to the taxes imposed in Section 2 of the ordinance, and every taxpayer who anticipates any income or net profits not subject to total withholding as provided in the next preceding paragraph, shall file with the City Treasurer a declaration of his estimated tax as follows:
3. On or before April 15, 1983, every such taxpayer shall file a declaration of his estimated tax for the taxable period beginning January 1, 1983 and each year thereafter.
4. A similar declaration shall be filed by each such taxpayer on or before the 15th day of April of each subsequent year during the life of the ordinance, and each such declaration shall contain a statement of the taxpayer's estimated tax for the full taxable year in which such declaration is filed.
2. Taxpayers who or which are permitted, pursuant to the provisions of Article II-8, to return and pay their tax upon a fiscal year basis, shall file their first declaration within 105 days after the beginning of the first fiscal year beginning after January 1, 1983, and the subsequent declaration for each year thereafter on or before the 15th day of the fourth month following the beginning of each such fiscal year.

3. The estimated tax may be paid in full with the declaration or in equal installments on or before April 15, June 30, September 30 and December 31, the first filing being as of April 15, 1983. Those taxpayers on a fiscal year basis shall make quarterly payments on or before the 15th day of the fourth month and on or before the last day of the sixth, ninth, and twelfth months following the beginning of such fiscal year. The first installment, equal to at least one-fourth of the estimated tax, must accompany the declaration. Estimated declarations in the amount of \$5.00 or less shall be paid in full at the time of filing.

4. The declarations so required shall be filed upon a form furnished by or obtainable from the City Treasurer. Any taxpayer who has filed an estimate for Federal Income Tax purposes may, in making the declaration, required hereunder, simply state therein that the figures therein contained are the same figures used by the taxpayer in making the declaration of his estimate for the Federal Income Tax. However, in addition to such statement, any such taxpayer may, in such declaration, modify and adjust such declared income so as to exclude therefrom income which is not subject to tax under the ordinance.

5. Any estimate filed hereunder may be amended by the filing of an amended estimate at the time prescribed for the payment of any installment of tax paid in accordance with Article V-2 of these Regulations.

6. Non-payment of any quarterly installment of the required declaration shall result in a penalty of fifty cents or one-half of one percent of the amount of the declaration payment, whichever is the greater, being added to any subsequent installment payment notice.

The total annual penalty for non-payment of quarterly installments shall not exceed \$2.00 or 2% of the original amount of the declaration, whichever is the greater.

If no payment on the required Declaration of Estimated Tax is made, a penalty of \$2.00 or 2% of the gross amount of the declaration, whichever is greater, shall be imposed on any subsequent Final Return filed by the individual or business enterprise.

ARTICLE V - 2 PAYMENT OF TAX INSTALLMENTS

1. At the time of filing each declaration (required by Article V-1) each taxpayer shall pay to the City Treasurer one-fourth (1/4) of the amount of his estimated annual tax. Thereafter, on or before the 30th day of June, September and December 31st of each year during the life of the ordinance, such taxpayer shall pay at least a similar amount. However, if any such taxpayer shall, on or before any such payment date, file an amended declaration showing an increase or decrease of the estimated tax, the installments then and thereafter due shall be increased or diminished (as the case may be) in such manner that the balance of the estimated tax shall be fully paid on or before December 31st of the taxable year involved through the payment of quarterly installments in equal amounts during the quarterly periods remaining from and after the filing of any such amended declaration.

2. Taxpayers who or which are permitted to make returns and pay their tax on a fiscal year basis (see Article II-8), may make the quarterly payments on their declaration of estimated tax pursuant to Article

V-1 (5) (6) of these Regulations.

3. For final returns and final adjustment of tax due, see Article III.

**ARTICLE V-3
RECIPROCITY PROVISION
CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES**

Every individual taxpayer who resides in the City of Salem but receives net profits, salaries, wages commissions, or other personal service compensation for work done or services performed or rendered outside of said City, if it be made to appear that he has paid a municipal city income tax on such net profits, salary, wages, commission, or other compensation to another municipality, shall be allowed a credit on the tax imposed by this ordinance of the amount so paid by him or in his behalf to such other municipality. The credit shall not exceed the tax assessed by this ordinance on such net profit, salary, wages, commission, or compensation earned in such other municipality or municipalities where such city income tax is paid.

**ARTICLE VI - 1
INQUISITORIAL POWERS OF THE CITY TREASURER**

The City Treasurer personally, or his agents or employees, is authorized and empowered to examine the books, papers, and records of any employer, or supposed employer, or of any taxpayer, or supposed taxpayer, in order to verify the accuracy of any return made; or if no return was made, to ascertain the tax imposed by the ordinance.

Every employer or supposed employer, and every taxpayer or supposed taxpayer, is required to furnish to the City Treasurer or his duly authorized agents or employees, the means, facilities and opportunity for such examinations, investigations and audits as are authorized in and by the ordinance.

The City Treasurer or his duly authorized agent or employee is further authorized and empowered to examine under oath any person concerning any income which was or should have been returned for taxation, and to this end the City Treasurer has the right and power to compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such income.

Refusal of any examination by any employer or person subject to the tax, or presumed to be such employer or person so subject, constitutes a misdemeanor punishable by fine or imprisonment, or both. See Article IX, Penalties.

**ARTICLE VI - 2
RECORDS TO BE KEPT BY EMPLOYERS
AND TAXPAYERS**

Employers and others 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 earnings or net profits, or both, and such records are to be preserved to enable the City Treasurer, or any agent or employee of the City Treasurer, to verify the correctness of the returns filed.

ARTICLE VI - 3
COLLECTION OF DEFICIENCIES -
ALLOWANCE OF CREDIT FOR OVERPAYMENT

If, as a result of investigation conducted by the City Treasurer, a return is found to be incorrect, the City Treasurer is authorized to assess and collect any underpayment of tax withheld at source or any underpayment of tax owing by any taxpayer with respect to earnings or net profits, or both. If no return has been filed and a tax is found to be owing, the tax actually owing may be assessed and collected with or without the formality of obtaining a delinquent return from the employer or taxpayer.

Should it be disclosed, either as a result of an investigation by the City Treasurer or through the medium of the filing of a claim or petition for refund or credit, that an overpayment has been made, the City Treasurer will refund such overpayment.

The employer will in every instance be required to pay the full tax which should have been withheld, even though he may fail to withhold from the employee. If too much has been withheld the excess shall be refunded by the employer to the employee. While the withholding agent (employer) will be expected to maintain complete records of such adjustments with the employees, any such adjustment made during any month will not need to be reflected in the withholding return or disclosed by schedules or statements thereto attached.

In those cases in which too much has been withheld by an employer from an employee and remitted to the City Treasurer and there has been a termination of the employee - employer relationship, the taxpayer (employee) may obtain an adjustment by application to the City Treasurer.

ARTICLE VI - 4
PENALTY FOR DIVULGING
CONFIDENTIAL INFORMATION

Tax returns, and all audits connected therewith, are confidential. Any information gained by the City Treasurer, by his agents or employees, or by any other official or agent of the City, as a result of any returns, investigations, hearings, or verifications required or authorized by the ordinance, shall be held confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law. Violation of this provision in the ordinance constitutes a misdemeanor, punishable by fine not exceeding \$500.00 or imprisonment for not more than six months, or both. Every such breach of confidence constitutes a separate offense.

**ARTICLE VII
INTEREST AND PENALTIES**

All taxes imposed by this chapter, including taxes withheld from wages by an employer and remaining unpaid after they have become due, shall bear interest on the amount of the unpaid tax at the rate of eighteen (18%) percent per annum.

The taxpayer upon whom such taxes are imposed in addition thereto, a late filing penalty of twenty five dollars (\$25.00), to a late payment penalty of one and one half percent (1 ½%) of the amount of the unpaid tax for each month or fraction of a month of non payment with a minimum late payment penalty of ten dollars (\$10.00).

The employers required by this chapter to deduct, withhold and pay taxes imposed by the chapter shall be liable in addition to a withholding late filing penalty to twenty five dollars (\$25.00), to a withholding late payment penalty of three percent (3%) of the amount of the unpaid tax for each month or fraction of a month of nonpayment with a minimum late payment penalty of ten dollars. (\$10.00).

Failing to pay required quarterly payments of declaration of estimated tax shall result in the imposition of a penalty in the amount of fifty cents (50¢) per quarter or one-half of one percent (½%) whichever is the greater, being added to any subsequent payment notice or to the subsequent final return filed by an individual or business enterprise, not to exceed two dollars (\$2.00) or two percent (2%) of the gross amount, whichever is the greater.

Any person required to file a tax return with the city who fails to timely file a return shall be liable to pay a penalty of twenty-five dollars (\$25.00) even if no tax is found to be due.

The City Treasurer or his designee or the Board of Review may abate any interest or penalty as may be just or as the circumstances may require.

(ORD 901120-112 - Passed 12-18-1990)

**ARTICLE VIII
COLLECTION OF UNPAID TAXES**

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 Solicitor.

Employers who or which, although obliged under the ordinance to withhold and remit to the City Treasurer the taxes required to be withheld at the source (Article IV), shall fail to so withhold and / or remit, become liable to the City in a civil action to enforce the payment of the debt created by such failure.

When a final return is filed as prescribed in Article III hereof and a deficiency is determined to be due to the City of Salem, action to collect the same shall not be commenced after three (3) years from the due date of said return and when a taxpayer fails to file a return, action to collect tax due to the City of Salem shall not be

commenced after six (6) years from the due date of said return.

All applications for refund shall be made within six (6) months of the due date of a final return or shall be forever barred thereafter. Provided, however, an extension may be granted by the City Treasurer on written application.

ARTICLE IX VIOLATIONS - PENALTIES

- A. The following shall be considered violations of this ordinance:
- (2) Failing, neglecting or refusing to make any return or declaration required by this ordinance; or
 - (3) Making any incomplete, false or fraudulent return; or
 - (4) Failing, neglecting or refusing to pay the tax, penalties or interest imposed by this ordinance; or
 - (5) Failing, neglecting, or refusing to withhold the tax from employees or to remit such withholding to the City Treasurer; or
 - (6) Refusing to permit the City Treasurer or any duly authorized agent or employee to examine books, records and papers relating to the income or net profits of a taxpayer; or
 - (7) Failing to appear before the City Treasurer and to produce books, records and papers relating to the income or net profits of a taxpayer under order or subpoena of the City Treasurer; or
 - (8) Refusing to disclose to the City Treasurer any information with respect to the income or net profits of a taxpayer; or
 - (9) Failing to comply with the provisions of this ordinance or any order or subpoena of the City Treasurer authorized hereby; or
 - (10) Attempting to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this ordinance.
- B. Any person who violates any of the provisions of Article. IX (A) above shall be guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned not more than six (6) months, or both, for each offense.
- C. All prosecutions under this section must be commenced within three (3) years from the time of the offense complained of, except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which cases the limitation of time within which prosecution must be commenced shall be six (6) years from the date the return was due or the date the false or fraudulent return was filed.
- D. The failure of any employer or taxpayer or person to receive or procure a return, declaration or other

required form shall not excuse him from making any information return or declaration, from filing such form, or from paying the tax.

Agents and employees charged with the duty of inspection or auditing of records of employers and taxpayers will carry proper identification, which shall be subject to examination by any person whose records are sought to be examined.

The penalties provided in this section are in addition to and not exclusive of the penalties provided by all pertinent criminal statutes of the State of Ohio, and to the civil remedies provided in the ordinance.

ARTICLE X BOARD OF REVIEW

- A. A Board of Review, consisting of three (3) electors of the City of Salem, one to be appointed by the Mayor, one to be appointed by the City Treasurer, and the third to be selected by the two so appointed, is hereby created. No member shall be appointed to the Board of Review who holds other public office or appointment. The members of the Board of Review shall serve without pay.
- B. A majority of the members of the Board of Review shall constitute a quorum. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions.
- C. All hearings of the Board shall be conducted privately and the provisions of Section 9 of the ordinance with reference to the confidential character of information required to be disclosed by the ordinance shall apply to such matters as may be heard before the Board of Review on appeal.
- D. Any person dissatisfied with any ruling or decision of the City Treasurer which is made under the authority conferred by the ordinance may appeal therefrom to the Board of Review within thirty (30) days from the announcement of such ruling or decision by the City Treasurer, and the Board of Review shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.
- E. Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision.
- F. The Board of Review, as hereinbefore created, shall serve during the life of the ordinance.

ARTICLE XI APPLICABILITY

This resolution 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.

**ARTICLE XII
CONSTRUCTION - SEPARABILITY
OF PROVISIONS**

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

**ARTICLE XIII
COLLECTION OF TAX AFTER
TERMINATION OF ORDINANCE**

For purposes of collection of delinquent or unpaid taxes, actions or proceedings for such collection and / or the collection of interest and penalties thereon, or enforcing any provisions of the ordinance (including prosecutions under the criminal sections of the ordinance), the ordinance remains in force and effect 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.

ARTICLE XIV

That this resolution is hereby determined to be an emergency measure necessary for the immediate preservation of the public peace, health and safety in the City of Salem, and shall go into immediate effect for the reason that it is immediately necessary to provide funds so that the City can operate in a continuous manner paying its bills and maintaining its proper credit rating.

PASSED: December 21, 1982

President of Council

ATTEST: _____
Clerk of Council

APPROVED:

APPROVED AS TO FORM:

Mayor

Date

Law Director