

**CITY OF MONTGOMERY
INCOME TAX ORDINANCE**

**RULES AND REGULATIONS
ADOPTED UNDER AUTHORITY OF
SECTION 44.08 - B**

Revised: 8/28/2012

These Rules and Regulations (“Regulations”) are adopted by the Board of Review (“Board”) under the authority delegated to the Board by Section 44.08 of the Montgomery Code of Ordinances. The purpose of these Regulations is to supplement the Montgomery Tax Code to assist in the enforcement and interpretation of the Tax Code.

ARTICLE I

Section 44.01 of the Ordinance deals only with the purpose for which the tax collected will be used.

ARTICLE II DEFINITIONS

Unless otherwise defined in the Montgomery Tax Code, Chapter 44 of the Montgomery Code of Ordinances, which is incorporated herein, the following words shall have the meaning ascribed to them in these Rules and Regulations, except as and if the context clearly indicates or requires a different meaning:

ASSOCIATION means a partnership, limited partnership, or any other form of unincorporated enterprise owned by one or more persons.

BOARD means the Board of Review provided for by the Ordinance.

BUSINESS means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit whether by an individual, partnership, association, corporation or any other entity, including but not limited to the renting or leasing of property: real, personal, or mixed. The ordinary administration of a decedent’s estate by the executor or administrator, and the mere custody, supervision and management of trust property under passive trust, whether intervivos or testamentary, unaccompanied by the actual operation of a business as herein defined, shall not be construed as the operation of a business.

BUREAU means an office administering the Income Tax Ordinance.

BUSINESS APPORTIONMENT means the portion of net profits to be apportioned to Montgomery as having been made in Montgomery either under a separate accounting method, or under the three factor formula of property, payroll, and sales, provided for in the tax ordinance.

CITY means the City of Montgomery, Ohio. The terms Municipality, City and Montgomery may be used interchangeably to reference the City of Montgomery.

CORPORATION means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, foreign country, or dependency except those that are treated as an association for purposes of the ordinance.

DOMICILE means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A domicile, once acquired, is presumed to continue until it is shown to have been changed. Intention to change domicile will not effect such a change unless accompanied by actual removal. Where a change of domicile is alleged, the burden of proving it rests upon the person making the allegation.

EMPLOYEE means one who works for wages, salary, commission, or other type of compensation in the service of an employer. Any person upon whom an employer is required to withhold taxes for either federal income or social security, or on whose behalf coverage is required under the Ohio Workmen's Compensation law shall prima facie be an employee.

EMPLOYER means an individual, partnership, association, corporation (including a corporation not for profit), governmental agency, board, body, bureau, department, subdivision or unit, or any other entity, who or which employs one or more persons on a salary, wage, commission or other compensation basis, whether or not such employer is engaged in business. It does not include a person who employs only domestic help for such person's private residence.

FISCAL YEAR means an accounting period of twelve (12) months, or less, ending on any day other than December 31st. Only fiscal years accepted by the Internal Revenue Service for federal income tax purposes may be used for municipal tax purposes.

FORM 2106 means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code and ORC 718.01(F).

GENERIC FORM means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a refund claim that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income. Any municipality that requires taxpayers to file income tax returns, reports, or other documents shall accept for filing a generic form of such a return, report, or document if the generic form, once completed and filed, contains all of the information required to be submitted with the municipality's prescribed returns, reports, or documents.

GROSS RECEIPTS means total income of taxpayers from whatever source derived without deductions or adjustments.

INCOME FROM A PASS-THROUGH ENTITY means partnership income of partners, membership income of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership income of other pass-through entities.

INTANGIBLE INCOME means 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 Ohio 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, nor does it include fees, commissions, or other income attributable to the brokering or facilitating the sale or transfer of an intangible asset.

INTERNAL REVENUE CODE (IRC) means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any specific IRS Code reference set forth in these Regulations shall include the IRS Code section cited and that IRS Code section as it may be amended or recodified between updates to these Regulations, so that the intent of the cited section in the Regulations is properly carried out in the interpretation and enforcement of the Montgomery tax ordinance.

INTERNET means the international computer network of both federal and non-federal interoperable packet switched data networks, including the graphical sub-network known as the World Wide Web.

JOINT ECONOMIC DEVELOPMENT DISTRICT means districts created under the Ohio Revised Code Sections 715.70 through 715.83, as amended.

LIMITED LIABILITY COMPANY means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

MUNICIPALITY means the City of Montgomery, Ohio, except where the meaning is otherwise obvious.

NON-QUALIFIED DEFERRED COMPENSATION means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.

NON-RESIDENT means a person, whether an individual, association, corporation or other entity, domiciled outside the City of Montgomery.

NON-RESIDENT INCORPORATED BUSINESS means an incorporated business entity not having an office or place of business within the City of Montgomery.

NON-RESIDENT UNINCORPORATED BUSINESS means an unincorporated business entity not having an office or place of business within the City of Montgomery.

OHIO REVISED CODE (ORC) means adopted laws of the State of Ohio, as amended. Any specific ORC reference set forth in these Regulations shall include the ORC section cited and that ORC section as it may be amended or recodified between updates to these Regulations, so that the intent of the cited section in the Regulations is properly carried out in the interpretation and enforcement of the Montgomery tax ordinance.

THE ORDINANCE means Ordinance No. 1-1972, enacted by the City Council of Montgomery and Chapter 44 of the Montgomery Code of Ordinances and any amendments and supplements.

OTHER ACTIVITY means any undertaking, not otherwise specifically defined herein, which is normally entered into for profit, including, but not limited to, rental of real or personal property and a business conducted by a trust or estate.

OTHER PAYER means any person, other than an individual's employer or the employer's agent that pays an individual any amount included in the federal gross income of the individual.

OWNER means the owner/operator of a sole-proprietorship, a partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.

OWNER'S PROPORTIONATE SHARE, with respect to each owner of a pass-through entity, means a ratio of (a) the owner's income from the pass-through entity that is subject to taxation by the municipal corporation, to (b) the total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.

PARTNERSHIP means an association of two or more persons to carry-on, as co-owners, a business for profit and including such an association that has limited liability under the Ohio Revised Code 1775.61, its successor statute, or similar statute of another state.

PASS-THROUGH ENTITY means a partnership, limited liability company, S corporation, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code. These entities may also be referred to as *disregarded entities*.

PERSON includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity. Whenever used in any clause prescribing or imposing a penalty, the term person as applied to any association shall mean the partners or members thereof, and as applied to a corporation, the officers thereof.

PLACE OF BUSINESS means a bona fide office (other than a mere statutory office), factory, warehouse, any temporary on-site or field office 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 employees and/or agents regularly in attendance.

PRINCIPAL PLACE OF BUSINESS means in the case of an employer having its headquarters' activities at a place of business within a taxing municipality, the term shall mean the place of business at which the headquarters is situated. In the case of an employer not having its headquarters' activities at a place of business within a taxing municipality, principal place of business shall mean the largest place of business located in a taxing municipality.

QUALIFIED PLAN means a retirement plan satisfying the requirements under Section 401 of the Internal Revenue Code.

QUALIFYING WAGES means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with Section 718.03(A) of the Ohio Revised Code.

RESIDENT means a person, whether an individual, association, corporation or other entity domiciled in Montgomery. In the case of an individual, continuous residence within Montgomery for three (3) months or more shall prima facie constitute domiciliary residence.

RESIDENT INCORPORATED BUSINESS ENTITY means an incorporated business entity whose office, place of operation, or business situs is within Montgomery.

RESIDENT UNINCORPORATED BUSINESS ENTITY means an unincorporated business entity having an office or place of business within Montgomery.

RETURN PREPARER means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.

SCHEDULE C means Internal Revenue Service Schedule C (form 1040 or of form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

SCHEDULE E means Internal Revenue Service Schedule E (form 1040 or of form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

SCHEDULE F means Internal Revenue Service Schedule F (form 1040 or of form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

S CORPORATION means a corporation that has made an election under subchapter S of Chapter 1 of subtitle A of the Internal Revenue Code for its taxable year.

TAXABLE INCOME means qualifying wages, including but not limited to, severance pay, vacation pay and supplemental unemployment benefits paid by an employer or employers, commissions, compensation for personal services, other income defined by statute as taxable, and/or the adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity, adjusted in accordance with the provisions of the Ordinance and these Regulations.

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

TAX COMMISSIONER means the person appointed to administer Montgomery's Income Tax Ordinance and to direct the operation of the municipal Income Tax Department, or a person authorized to execute the duties of the Tax Commissioner.

TAXING MUNICIPALITY means a municipality levying a tax on income earned by non-residents working within such municipality and on income earned by its residents.

TAXPAYER means a person subject to a tax on income levied by a municipal corporation. Taxpayer does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but taxpayer includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

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

ARTICLE III IMPOSITION OF TAX

A. Basis of Imposition:

1. Resident Taxpayers

- a) In the case of residents, an annual tax of one percent (1%) is imposed on all salaries, wages, commissions, and other compensation. For the purpose of determining the tax on the earnings of resident taxpayers taxed under the Ordinance, the sources 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.
- b) The following are items which are subject to the tax imposed by the Ordinance:
 - (1) Qualifying wages, bonuses, incentive payments and any other compensation earned by an individual whether directly or through an agent and whether in cash or in property for services rendered during the tax period as:
 - (a) An officer, director or employee of a corporation (including charitable and other non-profit organizations), joint stock associations, or joint stock company;
 - (b) An employee (as distinguished from a partner or member) of a partnership, limited partnership, or any form of unincorporated enterprise owned by one or more persons;
 - (c) An employee (as distinguished from a proprietor) of a business, trade, or profession conducted by an individual owner;
 - (d) An officer or 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 except as provided in the Ordinance;

- (e) An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates, and whether paid by an individual, partnership, association, corporation (including charitable and other non-profit corporations), governmental administration, agency, authority, board, body, branch, bureau, department, division, sub-division, section or unit, or any other entity.
- (2) Commissions earned by an individual 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 repaid to, or otherwise deducted by, the employer, the tax is payable on the amounts received as a drawing account.
 - (b) Amounts received from an employer for expenses, and not as compensation, 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 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 of which the individual receiving such commission is owner or part owner and therefore subject to the tax under Section 44.03(A)(3) and (4) of the Ordinance, they shall not be taxed under Section 44.03(A)(1). In such case, such net earnings shall be taxed under the Ordinance.
 - (3) Fees, unless such fees are properly includable as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity owned or partly owned by said individual and such net profits are subject to the tax under the Ordinance.
 - (4) Other compensation, including tips, bonuses or gifts of any type, and including compensation paid to domestic servants, casual employees, and other types of employees.
 - (5) Payments made to an employee by an employer as sick leave, vacation pay, or wages under any other wage continuation plan during periods of disability or sickness are taxable when paid. Payments made by third parties (insurance companies) to an employee for sick or disability pay are taxable if the amount appears on a reportable IRS form and the resident taxpayer has not paid the premium for this insurance coverage.

- (6) Losses from the operation of a business or profession are not deductible from employee earnings but may be carried forward as provided in Article III-C of these regulations.
- (7) Sums deducted from gross wages or other compensation for retirement purposes (deferred compensation) are taxable.
- (8) If the income appears on a W-2 form or any other federal tax form such as a 1099 form or Schedule K-1 denoting income which is subject to the Medicare tax, and is not shown to be an exception in accordance with sub-paragraph F hereof (Exceptions), it shall be considered other compensation and therefore taxable to the individual. This includes, but is not limited to:
 - (a) Tips, bonuses, fees, gifts in lieu of pay, gratuities;
 - (b) Supplemental unemployment compensation benefits described in Section 3402 (o)(2) of the Internal Revenue Code;
 - (c) Strike pay; grievance pay;
 - (d) Incentive payments, no matter how described, including, but not limited to payments to induce early retirement;
 - (e) Severance pay;
 - (f) Car allowance or personal use of employer-provided vehicle;
 - (g) Group term life insurance to the extent taxable by the federal government;
 - (h) Sick pay or disability pay whether paid by the employer to the employee or through a third party;
 - (i) Contributions by an employee or on behalf of an employee from gross wages, into an employee or third party trust or pension plan as permitted by any provision of the Internal Revenue Code which may be excludable from gross wages for federal income tax purposes (401K plans and similar plans);
 - (j) The ordinary income portion of a stock option or employee stock purchase plan to the extent that it is shown on the W-2 as ordinary income and is includable on the taxpayer's federal income tax return;
 - (k) Nonqualified Deferred Compensation Plans or programs described in Section 3121(v)(2)(C) of the Internal Revenue Code;
 - (l) Trusts not made pursuant to employee's retirement.

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

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

(2) Housing allowance paid to, or a parsonage provided to clergy, are not to be considered as income.

2. Non-Resident Taxpayer

a) In the case of individuals who are not residents, there is imposed under the Ordinance, a tax of one percent (1%) on all qualifying wages, commissions, other compensation, and other taxable income earned or received for work done or services performed or rendered within Montgomery, 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 the Ordinance are the same as those listed and defined in Article III-A1 of the Regulations. See Article VI-A6 of the Regulations in cases involving compensation for personal services partly within and partly without the Municipality for the methods of computing the extent of such work or services performed within the Municipality.

c) Montgomery shall not tax the compensation of an individual if all of the following apply:

(1) The individual does not reside in Montgomery;

(2) The compensation is paid for personal services performed by the individual in Montgomery on twelve (12) or fewer days during the calendar year; For purposes of the 12-day calculation, "Day" means any part of a 24-hour calendar day where compensation is earned in Montgomery. Beginning with the thirteenth (13th) day, the individual shall no longer be considered an occasional entrant and is liable for taxes on income earned for the first twelve (12) days and all subsequent days.

(3) In the case of an individual who is an employee, the principal place of business of the individual's employer is located outside Montgomery and the individual pays tax on compensation described in item (2) of this section to the municipality, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual;

(4) The individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably determined by the Municipality.

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

- (i) In the case of resident unincorporated businesses, professions, enterprises, undertakings or other entities conducted, operated, engaged in, prosecuted or carried on, irrespective of whether such taxpayer has an office or place of business in Montgomery, there is imposed an annual tax of 1% on the net profits attributable to Montgomery, derived from sales made, work done, services performed or rendered, and business or other activities conducted in Montgomery.
- (ii) The tax imposed on resident associations or other unincorporated entities owned by two or more persons is upon the entity rather than the individual members or owners thereof, but the tax imposed on an unincorporated resident entity owned by one person is upon the individual owner. (See Article III-A. 3b of the Regulations for determining the tax on that part of a resident owner's distributive share of net profits not taxed against the entity).
- (iii) The Ordinance imposes a tax on all resident unincorporated entities having net profits attributable to the Municipality under the business apportionment percentage formula, regardless of where the owner or owners of such resident unincorporated business entity reside.
- (iv) Resident associations owned by two or more persons, all of whom are residents of Montgomery, may disregard the business apportionment percentage formula and pay the tax on their entire net profits thereof. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits; however, an additional 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.
- (v) The tax imposed shall not apply to income derived within Montgomery by any person from interstate commerce by any non-resident person or entity if the only business activities within the State of Ohio by or on behalf of such person, are either, or both the following:
 - (a) Solicitation of orders by such person, or his representative, in the State of Ohio for sales of intangible personal property, which orders are sent outside of the State of Ohio for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State of Ohio; and
 - (b) The solicitation of orders by such person, or his representative in the State of Ohio, in the name of or for the benefit of a prospective customer of

such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitations are orders described in paragraph (a) above; provided, however, that the provisions of this sub-section shall not apply to any corporation which is incorporated under the laws of the State of Ohio or any individual who is domiciled in or a resident of the State of Ohio. For the purpose of this subsection, a person shall not be considered to have engaged in a business activity within the State of Ohio during any taxable year merely by reason of sales in the State of Ohio, or the solicitation of orders for sales within the State of Ohio, of tangible personal property on behalf of such person by one or more independent contractors whose activities on behalf of such person in the State of Ohio consist solely of making sales, or soliciting orders for sales of tangible personal property. For the purpose of this sub-section the term “independent contractor” means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for sales of tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities. For the purpose of this sub-section, the term “representative” does not include an independent contractor.

3. b) Imposition of Tax on Resident’s Distributive Share of Profits of a Resident Unincorporated Business Entity Not Attributable to Montgomery.

- (1) A resident individual who is sole owner of a resident unincorporated entity shall disregard the business apportionment percentage formula and pay the tax on the entire net profits of his resident unincorporated business entity.
- (2) In the case of a resident individual partner or part owner of a resident unincorporated entity, there is imposed an annual tax of one percent (1%) on such individual’s distributive share of net profits earned under the business apportionment percentage formula provided in the Ordinance, and not taxed against the entity.

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

- (1) In the case of non-resident associations or other non-resident unincorporated entities, whether or not they have an office or any place of business in Montgomery, there is imposed a tax of one percent (1%) on net profits attributable to the Municipality under the business apportionment percentage formula.
- (2) The tax imposed on non-resident associations or other non-resident unincorporated entities owned by one or more persons is upon the entities rather than the individual members or owners thereof. (See Article III-A 4b for tax on that part of a resident owner’s distributive share of net profits not taxed against the entity.)

- (3) The tax imposed by the Ordinance is imposed on all non-resident associations and other non-resident unincorporated entities having net profits attributable to Montgomery under the business apportionment percentage formula regardless of where the owner or owners of such non-resident unincorporated associations or non-resident entities reside.
 - (4) Non-resident unincorporated entities owned by one or more persons, all of whom are residents of Montgomery, may elect to disregard the business apportionment percentage formula and pay the tax on their entire net profits. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of the net profits; however, a return shall be required from such owner or member having taxable income other than the distributive share of the net profit for the entity.
4. b) Imposition of Tax on Resident's Share of Profits of a Non-Resident Unincorporated Business Entity Not Attributable to Montgomery.
- (1) A resident individual who is sole owner of a non-resident unincorporated business entity shall disregard the business apportionment percentage formula and pay the tax on the entire net profits of his unincorporated entity. If allocation to another municipality applies, the taxpayer may qualify for credit for tax paid to another municipality.
 - (2) In the case of a resident individual partner or part owner of a non-resident unincorporated entity, there is imposed an annual tax of one percent (1%) on such individual's distributive share of net profits not attributable to Montgomery under the business apportionment percentage formula and not taxed against the entity.
5. Imposition of Tax on Net Profits of Corporations.
- a) In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in Montgomery, there is imposed an annual tax of one percent (1%) on the net profits attributable to Montgomery under the business apportionment percentage formula provided for in the Ordinance.
 - b) In determining whether a corporation is conducting a business or other activity in this community, the provisions of Article III-B of these Regulations shall be applicable.
6. Amplification:
- In amplification of the definition contained herein, but not in limitation thereof, the following additional information respecting net business profit is furnished.
- a) Net Profit

- (1) Net profit for a taxpayer other than an individual means adjusted federal taxable income and “net profit” for a taxpayer who is an individual means the individual’s profit, other than amounts described in division (F) of Section 44.03, required to be reported on Schedule C, Schedule E, or Schedule F.
- (2) Adjusted federal taxable income means, as set forth on the Internal Revenue form 1120, a C corporation’s federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:
 - (a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
 - (b) Add an amount equal to five percent (5%) of intangible income deducted under division (A)(1)(a) 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;
 - (c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly related to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;
 - (d)
 - (i) Except as provided in division (A)(1)(d)(ii) of this section, 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 Sections 1221 or 1231 of the Internal Revenue Code.
 - (ii) Division (A)(1)(d)(i) of this section does not apply to the extent the income or gain is income or gain described in Sections 1245 or 1250 of the Internal Revenue Code.
 - (e) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
 - (f) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.
 - (g) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except;

(i) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and

(ii) Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in division (A)(1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

Nothing in this chapter shall be construed as limiting or removing the ability of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

b) Gross Receipts

(1) Gross receipts shall include but not be limited to income in the form of commissions, fees, capital gains, director's fees, subpay (supplemental unemployment benefits), profit sharing from nonqualified plans, rentals from real and tangible personal property, and other compensation for work or services performed or rendered as well as income from sales of stock in trade.

(2) Gross receipts shall include ordinary income from Form 4797 (sale of business property), or substitute IRS form.

c) Expenses

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

(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) Current amortization of emergency facilities under the provisions of the Internal Revenue Code, if recognized as such for federal income tax purposes, may be included as an expense deduction hereunder.
- (c) Where depreciable property is voluntarily destroyed, the cost of demolition of the building, less any increase in the value of the land caused by such demolition, will be allowed as an expense and may be completely taken in the year of demolition or over a period of not to exceed five years.
- (d) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Commissioner (if the reserve method is used), as reasonable addition to the reserve may be claimed, but in no event shall the amount exceed the amount allowable for federal income tax purposes.
- (e) 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 benefit or improvements to property which tend to appreciate the value thereof, and; (5) self-employment taxes for unincorporated businesses or other entities, including credit for employment taxes as allowed for federal tax purposes.
- (f) If the taxpayer reports income that is non-taxable under Chapter 44 and such amounts are deducted in order to reconcile the municipal return with the taxpayer's federal return, expenses attributable to this non-taxable income shall not be allowed as a deduction from the remaining taxable income. The expenses attributed to such non-taxable income shall be: five percent (5%) of the non-taxable income. Non-taxable income given capital gain treatment on the federal return, from which attributable expenses were already deducted, is not subject to the foregoing.
- (g) An employee who is paid on a commission or other compensation basis and who pays his business expenses from his commissions or other compensation, without reimbursement from his employer, may deduct from his gross commissions or other compensations, business expenses allowed by the Internal Revenue Service for federal income tax purposes but only to the extent said expenses are incurred in earning commissions or other compensations subject to the tax imposed by the Ordinance. Business expenses allowed shall be those expenses allowed to be claimed on the federal Form 2106 and upon the request of the Tax Commissioner, verifiable with supporting schedules and/or receipts. No expenses claimed on federal Form Schedule A, Itemized Deductions, shall be allowed and failure to produce the

supporting schedules and/or receipts upon request by the Tax Commissioner shall result in disallowance of the expenses in question.

- (h) Income from the sale of, or lease of, mineral rights is not taxable, and expenses or loss in connection therewith are not deductible for tax purposes except in cases where taxpayer conducts the activities by which the minerals are extracted from the land.
- (i) Funds allocated by an employer to employees' retirement fund are not taxable to the employee if the employee has no vested right in the money so allocated.
- (j) Expenses incurred for or while attending education courses may not be deducted from wages.
- (k) Moving expenses included in gross earnings shall be an allowance as a deductible expense. No deduction will be allowed if the taxpayer does not provide the federal Form 3903, or substitute IRS form *Employee Moving Expenses Information* for his moving deductions. Only moving expenses incurred as part of income included in gross earnings will be allowed.
- (l) No deduction shall be allowed for self-employed health insurance against income as allowed for federal or state tax purposes for unincorporated entities or the like.

7. Rental from Real Property

- a) The rental of real estate is ordinarily a business activity, and the income from such rentals is taxable, provided, however, where the taxpayer's entire rental activity produces gross rentals of twelve hundred dollars per year or less, it will be prima facie evidence that such rental activities are not a business activity. If gross rentals exceed two hundred fifty dollars per year, the entire net income from rentals is taxable. 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.
- b) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- c) Real property shall include commercial property, residential property, farm property, and any and all other types of real estate.
- d) In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for federal income tax purposes.

- e) Residents of Montgomery are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned. However, if any such property is located outside the Municipality, and is subject to another municipal income tax, credit shall be claimed in accordance with the Ordinance.
- f) Non-residents of Montgomery are subject to such taxation only if the real property is situated within Montgomery.
- g) Other than a business whose principal offices are located in Montgomery, businesses owning or managing real estate are taxed only on that portion of income derived from property located in Montgomery.

8. Royalties

- a) Income in the form of royalties is taxable if taxpayer's activities produced the publication or other product, the sale of which produces the royalties.

9. Gambling Winnings

- a) Gambling winnings as reported on Internal Revenue Service Form W-2G, Form 5754 and/or any other forms required by the Internal Revenue Service that reports winnings from gambling, prizes and lottery winnings.

B. Apportionment of Business Profits

A request to change the method of apportionment must be made in writing before the end of the tax year.

1. Business Apportionment Percentage Method

- a) STEP 1: Ascertain the percentage which the original cost of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within Montgomery is of the original cost of all real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.

(1) The percentage of taxpayer's real and tangible personal property within Montgomery is determined by dividing the original cost of such property within Montgomery (without deduction of any encumbrances) by the original cost of all such property within and without Montgomery. In determining such percentage, property rented to the taxpayer as well as real and tangible personal property owned by taxpayer must be considered as follows.

- (a) The original cost of real and tangible personal property rented by taxpayer shall be determined by multiplying gross annual rents by eight (8).

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

(i) 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:

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

b) STEP 2: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made and services rendered in Montgomery is of the total gross receipts wherever derived during the period covered by the return. All resident corporations, unincorporated businesses, or other entities whose principal place of business is within the City, shall be considered a resident business within the City and be subject to the following provision:

If the sales apportionment percentage is less than one hundred percent (100%), a statement shall be submitted with the return indicating: (1) other municipalities to which sales are apportioned; (2) percentage of sales apportioned to each municipality; (3) whether or not a return was filed and tax paid on the sales apportioned to each municipality. Failure to submit this statement (or when the statement indicates no other municipal tax was filed and paid), shall result in all sales being considered as sales of Montgomery.

(1) The following rules govern municipal sales:

(a) All sales made through retail stores located within Montgomery to purchasers within or without Montgomery that are directly attributable to regular solicitations made outside the City personally by taxpayer's employees.

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

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

(d) All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within Montgomery to purchasers

outside of the City if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place of delivery.

- (e) Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.
- (2) In the application of the foregoing sub-paragraphs a carrier shall be considered the agent of the seller, regardless of the FOB point or other conditions of the sale, and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside Montgomery by mail or phone from an office, or place of business within Montgomery, shall not be considered a solicitation of sales outside of the City.
- c) STEP 3: Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within Montgomery is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without Montgomery during the period covered by the return.
 - (1) Salaries and reasonable compensation paid owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purpose of this computation.
 - (2) Wages, salaries, and other compensation shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.
 - (3) In the case of an employee who performs services both within and without Montgomery the amount treated as compensation for services performed within the City are governed as follows:
 - (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 Montgomery;
 - (b) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services within Montgomery bears to the value of all his services; and
 - (c) In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within Montgomery is of his total working time;

In all cases, all employees regularly connected with or working out of a place of business maintained by the taxpayer in Montgomery who performs 75% or more of their services within the City are employees within Montgomery.

- (4) Non-resident professional persons shall use the factor of days spent within Montgomery to total working days.

All employees regularly connected with or working out of a place of business maintained by the taxpayer outside the City who perform 25% or less of their services within the City shall be considered employees outside Montgomery. (The provisions of this sub-paragraph are not applicable in determining the tax liability of a non-resident who works in and outside Montgomery.)

- d) STEP 4: Add the percentages determined in accordance with Steps 1, 2 and 3 and divide the total by the number of percentages used in the total. The result is the business apportionment percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be apportioned entirely in or outside the City. A factor is excluded only when it does not exist.
- e) STEP 5: The business apportionment 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 apportioned to Montgomery.

2. Substitute Method.

- a) In the event a just and equitable result cannot be obtained under the business apportionment percentage formula, the Board, upon application of the taxpayer or the Commissioner, may substitute other factors in the business apportionment percentage formula or prescribe other methods of apportioning net income calculated to effect a fair and proper apportionment.
- b) Application to the Board to substitute other factors in the business apportionment percentage formula or to use a different method to apportion net profits must be made in writing before the end of the tax year and 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. A copy thereof shall be served at the time of filing upon the taxpayer or Commissioner as the case may be. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method he must continue to so file unless given permission to change by the Board of Review.

3. Professional and Personal Service. In the case of professional people and others furnishing personal services, if their only place of business is within Montgomery, all their net profits shall be attributable to the City.

C. Operating Loss Carry-Forward

1. The portion of a net operating loss sustained in any taxable year apportioned to Montgomery may be applied against the portion of the profit of succeeding years apportioned to Montgomery until exhausted, but in no event more than the five (5) years immediately following the year in which the loss was sustained. No portion of a net operating loss shall be carried back against net profits of any prior year.
 - a) Losses from the operation of business, profession or any other type of unincorporated entity are not deductible against other employee earnings of a resident taxpayer (as reported on W-2 or 1099-Misc), but may be carried forward as set forth herein. However, if a taxpayer is engaged in two or more taxable business activities to be included in the same return, the net loss of one unincorporated business activity (except any portion of a loss separately reportable for municipal tax purposes to another taxing entity) may be used to offset the profits of another for purposes of arriving at overall net profits.
2. In the event net profits are apportioned both within and without Montgomery, the portion of a net operating loss sustained shall be allocated to Montgomery in the same manner as provided here for allocating net profits to Montgomery. The portion of a net operating loss to be carried forward shall be determined in the year the net operating loss is sustained on the basis of the apportionment factors applicable to that year.

The same method of accounting and apportionment must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained.

3. A short fiscal year [a fiscal year of less than twelve (12) months] brought about by a change in accounting period, a new taxpayer selecting a short fiscal year, or a taxpayer operating in Montgomery for less than his full accounting period, shall be considered as a full taxable fiscal year for purposes of loss carry-forward.
4. In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:
 - a) Year in which net operating loss was sustained;
 - b) Method of accounting and apportionment used to determine portion of net operating loss apportioned to Montgomery;
 - c) Amount of net operating loss used as a deduction in prior years; and
 - d) Amount of net operating loss claimed as a deduction in current year.

5. The net operating loss of a taxpayer that loses its identity through merger, consolidation, etc., shall not be allowed as a carry forward loss deduction to the surviving or new taxpayer.
6. In the case of a net operating loss sustained by taxpayers filing a consolidated return, see Article III, paragraph D.
7. A loss sustained in a given year must be filed and reported in the same year in order to be carried forward to offset future net profits.

D. Consolidated Returns

1. Consolidated returns may be filed by a group of corporations which are affiliated through stock ownership provided the group files consolidated returns for federal income tax purposes. For a corporation to be included in a consolidated return 80% of its stock must be owned by the other members of the affiliated group. A consolidated return must include all affiliated companies.
2. Once a consolidated return has been filed for any taxable year the consolidated group must continue to file consolidated returns in subsequent years unless:
 - a) Permission in writing is granted by the Tax Commissioner to file separate returns;
 - b) A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year; or
 - c) A corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.

E. Capital Gains

Capital Gains from the sales of depreciable property shall be taxable to the extent of the aggregate amount of the depreciation taken on such property for income tax purposes of this Municipality. The taxable amount shall be the ordinary portion recognized on Federal Form 4797, or substitute IRS form, "Sales of Business Property." Only losses sustained in prior years on such property shall apply against any gains.

F. Exceptions.

The following are not considered taxable:

1. Proceeds from welfare benefits, unemployment insurance benefits, pensions, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.

2. Proceeds of insurance, annuities, workman's compensation insurance, compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits or lost wages.
3. Dues, contributions and similar payments received by charitable, religious, educational organizations, or labor unions, trade or professional associations, lodges and similar organizations.
4. Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations and income of decedent's estate during the period of administration (except such income from the operation of a business).
5. Alimony is not taxed to the recipient nor is it allowed as a deduction by the payor.
6. Compensation for damage to property by way of insurance or otherwise.
7. Interest and dividends from intangible property.
8. Military pay and allowance received as a member of the armed forces of the United States.
9. Income of any charitable, religious, educational, fraternal or other type of non-profit association or organization enumerated in Section 718.01 of the Ohio Revised Code to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.

Any association or organization falling in the category listed in the preceding paragraph is required to file declarations and final returns and remit the taxes levied under this Ordinance on all net profits from activities, the income from which is not specifically exempt from taxation in Section 718.01 of the Ohio Revised Code.

Where such non-profit association or organization conducts income producing business both within and without the corporate limits, it shall calculate its profits allocable to the Municipality under the method or methods provided above.

10. Income from a fellowship is exempt only when given for attendance as a student at a recognized college or university and exempt for federal income tax purposes.
11. The rental value of a home furnished to a minister of the gospel as part of his compensation, or the rental allowance paid to a minister of the gospel as part of his compensation, to the extent used by him to rent or provide a home pursuant to Section 107 of the Internal Revenue Code.
12. Precinct official compensation paid under Section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such

compensation in excess of one thousand dollars (\$1,000) may be subjected to taxation. The payer of such compensation is not required to withhold municipal tax from that compensation.

13. Transit authority compensation paid to an employee including regional transit authority, or regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the City, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in Montgomery, or the headquarters of the authority or commission is located within the Municipality.
14. The income of a public utility when that public utility is subject to the tax levied under Section 5727.24 or 5727.30 of the Ohio Revised Code, except a municipal corporation may tax the following, subject to Chapter 5745 of the Ohio Revised Code:
 - a) The income of an electric company or combined company;
 - b) The income of a telephone company.
 - c) As used in this section, “combined company”, “electric company”, and “telephone company” have the same meanings as in Section 5727.01 of the Ohio Revised Code.
15. Compensation attributable to a plan or program described in Section 125, “Cafeteria Plans,” of the Internal Revenue Code.

Generally the above noted items in this section are the only forms of income not subject to the tax. Any other income, benefits, or other forms of compensation shall be taxable.

ARTICLE IV EFFECTIVE PERIOD OF TAX

- A. The tax imposed by the Ordinance is levied, collected and paid with respect to all income and net profits, subject to the tax, earned on and after January 16, 1972.

ARTICLE V RETURN AND PAYMENT OF THE TAX

- A. Date and Requirement for Filing:
 1. On or before April 30th of each year for tax years prior to 2004 and April 15th of each year thereafter, every person subject to the provisions of the Ordinance shall, except as hereinafter provided, make and file with the Commissioner, a return on a form prescribed by and obtainable upon request from the Commissioner, whether or not a tax is due. The Tax Commissioner shall accept a generic form of any return, report, or document required to be filed if the generic form once completed and filed, contains all of the

information required to be submitted with Montgomery's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of Montgomery.

2. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the end of the fiscal year or period, except as provided under ORC Section 718.01.
3. The return shall be accompanied by payment of any taxes due thereon.
4. Every person subject to the provisions of the Ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of qualifying wages, commissions and other personal service compensation, net profits from business or other activities, including the rental from use of real and personal property, distributive shares from partnerships and other income taxable under the Ordinance, received for the period covered by the return and such other pertinent facts and information in detail as the Commissioner may require.
5. Where a non-resident employee's entire earnings for the tax period are paid by an employer or employers, and the one percent (1%) tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire earnings of such employee-taxpayer, and where the employer of such employee has filed a report or return in which such employee's entire and only earnings are reported to the Commissioner, and where such employee has no taxable income other than such earnings and the tax so withheld has been paid to the Commissioner, such employee need not file a return.
6. An employee who is permitted to deduct business expenses from qualifying wages, commissions, other compensation, and other taxable income must file a return in order to claim such deductions even though all or part of such qualifying wages, commissions, other compensation, and other taxable income are subject to withholding. Such amounts must be properly reported on Form 2106, or substitute IRS form, as filed with the Internal Revenue Service, and must be verifiable.
7. Any taxpayer who received taxable income not subject to withholding under the Ordinance must file a return.
8. Any taxpayer having income, wages, or other compensation for which a return must be filed, and also having net profits from a business is required to file only one return.
9. Trustees are required to file returns on the trusts and give the name and address of the beneficiaries, even though the latter individually pays the tax.
10. Except as provided for therein, the tax is on the partnership or association as an entity whether resident or non-resident and a return is required disclosing the net profits

apportioned to Montgomery and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity is required to make a return and pay the tax in accordance with Article III-A-3b.2 of these regulations.

11. A husband and wife may file a joint return either when engaged in the same or separate businesses, but may not deduct business losses of either from compensation paid by an employer. If a joint return is made, the tax shall be computed on the aggregated taxable income and the liability with respect to the tax shall be joint and several.
12. Executors and administrators are liable for the payment of any taxes due by a deceased from an estate of said deceased.
13. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions.

B. Information Required and Reconciliation with Federal Returns

1. In returns filed hereunder, there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation subject to the tax earned from each employer, taxable net profits, and other pertinent information as the Commissioner may require.
2. Where figures of total income, deductions, and net profits are included, as shown by a federal return, any items or income which is not subject to Montgomery tax and unallowable expenses shall be eliminated in determining net income subject to Montgomery tax. The fact that any taxpayer is not required to file a federal tax return does not relieve him from filing a Montgomery tax return.
3. If a change in federal income tax liability made by the Internal Revenue Service, or by a judicial decision results in an additional amount of tax payable to Montgomery, a report of such change shall be filed by the taxpayer within three (3) months after receipt of the final notice from the Internal Revenue Service or final court decision.
4. If a change in federal income tax liability results in a reduction of taxes owed and paid to Montgomery, a claim for refund shall be filed with the Commissioner as prescribed in the Ordinance.

C. Extensions.

1. Upon filing a copy of the taxpayer's request for filing a federal extension, or a written request of the taxpayer made on or before the original date for filing the return as prescribed in the Ordinance, the Commissioner may extend the time for filing such return for a period to the last day of the month following the month to which the due date of the federal income tax return has been extended. Whenever deemed necessary, the Commissioner may require a tentative return accompanied by payment of the estimated tax. An extension of time for filing does not extend the time for payment of the tax;

hence, interest and penalty, as defined in the Ordinance, may apply to any unpaid tax from the original due date of the return until said filing of the return. No penalty or interest will be assessed in those cases in which the return is filed and the final tax paid within the period as extended, provided all other filing and payment requirements of the Ordinance have been met.

- a) The Commissioner may deny the taxpayer's request for extension if the taxpayer fails to timely file the request, fails to file a copy of the federal extension request (if applicable), owes Montgomery any delinquent income tax or any penalty, interest, assessment or other charge for late payment of income tax, or has failed to file any required income tax return, report, or other related document for a prior tax period.
2. Information returns, schedules, and statements needed to support tax returns are to be filed within the time limits set forth for filing the tax returns.

D. Payment with Return

1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Commissioner the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of the Ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of the Ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with the tax ordinance hereof, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.
2. A taxpayer who has overpaid the amount of tax to Montgomery is entitled under the provisions of the Ordinance to have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than \$1.01 shall be collected or refunded.
3. An application for refund of overpayment of taxes withheld must be made by the employer or by the taxpayer with a letter of authorization from the employer. Refunds will be made payable to the employee.

E. Amended Returns.

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

2. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's municipal tax liability, such taxpayer shall make and file an amended municipal return showing income subject to the municipal tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.
3. If the amount credited against the tax due Montgomery representing taxes paid another municipality is later amended to be credited or refunded to the taxpayer, the taxpayer shall file an amended return with Montgomery and shall then pay the tax due Montgomery as a result of the reduction in such credit. If the refund or credit is as a result of excluding all or any portion of the taxpayer's income previously attributed to such other municipality, the tax due Montgomery shall be assessed against the amount excluded by the other municipality.

ARTICLE VI

COLLECTION OF TAX AT THE SOURCE

A. Duty of Withholding

1. It is the duty of each employer who employs one or more persons whether as an employee, officer, director or otherwise, on a salary, wage or other personal service compensation basis, to deduct each time any such compensation is paid, allocated or set aside to an employee the tax of one percent (1%) of such qualifying wages, bonus, incentive payment, commission or other compensation subject to the municipal income tax paid by said employer to said employee. However, the Commissioner shall have the authority to grant to employers with three or less resident employees, permission for said employees to file individually. The tax shall be deducted by the employer from:
 - a) The gross amount of all qualifying wages, bonuses, incentive payments, severance payments, fees, commissions or other forms of compensation allocated, set aside, or paid to residents of Montgomery, regardless of the place where the services are rendered; and
 - b) All compensation allocated, set aside, or paid non-residents for services rendered, work performed or other activities engaged in within Montgomery.
 - c) An employer is liable for the payment of the tax required to be deducted and withheld, whether or not such tax in fact has been withheld.
2. All employers within or doing business within Montgomery are required to make the collections and deductions specified in this article, regardless of the fact that the services on account of which any particular deduction is required as to residents of Montgomery were performed outside the Municipality.
3. Employers who do not maintain a permanent office or place of business in Montgomery, but who are subject to tax on net profits attributable to this Municipality, under the

method of business apportionment percentage formula provided for in the Ordinance, are considered to be employers within Montgomery and subject to the requirements of withholding.

4. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation paid. If the employer has withheld the tax and failed to pay the tax withheld to the Commissioner, the employee is not liable for the tax so withheld.
5. 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 a declaration and return and pay the tax pursuant to the provisions of the Ordinance and Article V and VII of the Regulations.
6. Where a non-resident receives compensation for personal services rendered or performed partly within and partly without the Municipality, the withholding employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within the Municipality in accordance with the following rules of apportionment:
 - a) If the non-resident is a salesman, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within the Municipality bears to the total volume of business transacted by him within and outside the Municipality.
 - b) The deducting and withholding of personal service compensation of other non-resident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee which the total number of his working hours within the Municipality is of the total number of working hours.
 - c) The fact that non-resident employees are subject to call at any time does not permit the apportionment of pay for time worked within the Municipality on a seven-day per week basis. The percentage of time worked in the Municipality will be computed on the basis of a forty-hour week unless the employer notifies the Commissioner that a greater or lesser number of hours per week is worked.
 - (1) The determination of tax liability of non-residents working in and out of the corporate limits is to be computed on the formula of the total number of days worked in the Municipality divided by the total number of days worked during the year and the resulting percentage applied to the total annual income from wages including sick leave and vacation pay. Where no record can be substantiated of the number of days worked, the number 254 is to be used as the total number of days worked.

- d) Wages of occasional entrants as defined in the Ordinance and Regulations are not subject to withholding.
 - e) Wage continuation plans paid by the employer for purpose of health, rest, recuperation, or other reward are deemed to have the same situs as the primary job assignment or job location of the employee and are taxable on the same ratio as the normal earnings of such employee for this primary job assignment.
7. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commission.
 8. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided such expenses are incurred in earning compensation, including commissions, and are not deducted as a business expense by the employee under Article III of these Regulations.
 9. An employer whose records show that an employee is a non-resident of Montgomery and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside the Municipality by such employee, provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Commissioner notifies said employer in writing that such employee is a resident of this Municipality. All employees are required to notify the employer of any change of residence and the date thereof.
 10. Regulation defines an employer to be any individual, partnership, association, corporation, and any other entity that hires, books, or contracts for individual/groups to work, perform or entertain at their place of business or rents facilities for the purpose of providing such work, entertainment, and as such, is responsible for the collecting and remitting of the Municipal income tax.

B. Employer Deemed Trustee of Taxes Withheld.

1. Every employer is deemed to be a trustee for Montgomery 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.
2. Every such employer required to deduct and withhold the tax at the source is liable directly to Montgomery for payment of such tax whether actually collected from such employee or not.

C. Responsibility of Officers for Collecting Tax

1. It shall be the responsibility jointly and severally, of the President, Treasurer, Managing Member, Managing Partner, Tax Partner, and other fiscal officer(s) responsible for oversight of payroll and financial accounting of each corporation or pass-through entity required to withhold taxes on employees' wages to see that all taxes so withheld are paid to Montgomery in accordance with the provisions of the Ordinance. In the event taxes withheld by a corporation from the wages of its employees are not paid to Montgomery in accordance with the provisions of the Ordinance, the President, Treasurer, and other fiscal officer(s) responsible for oversight of payroll and financial accounting of said corporation shall each be criminally liable under the provisions of the Ordinance.

D. Return and Payment of Tax Withheld and Status of Employers.

1. The Commissioner may require an employer to file returns of and to remit taxes withheld more frequently than quarterly in cases where the employer will be present within the corporate limits of the Municipality for a period of less than a year. The return required to be filed under this article shall be made on a form (Form W-1) furnished by or obtainable on request from the Commissioner.
2. If more than the amount of tax required to be deducted by the Ordinance is withheld from the employee's pay, the excess shall be refunded by the employer to the employee. If less than the amount of tax required to be deducted is deducted and withheld by the employer in any pay period or pay periods, the deficiency shall be deducted in subsequent pay periods.
3. On or before the 28th day of February, following any calendar year in which deductions have been made by an employer, such employer shall file with the Commissioner, in the form prescribed by the Commissioner, an information return for each employee from whom Montgomery income tax has been withheld, showing the name and address of the employee, the total amount of compensation paid during the year and the amount of Montgomery income tax withheld from such employee.
4. In addition to such information returns, and at the time the same are filed, such employer shall file with the Commissioner a form (Form W-3) to enable the Commissioner to reconcile the sum total of compensation paid and taxes withheld as disclosed by information return W-2, or list of employees, and prior returns and remittances made pursuant to the Ordinance.

E. Withholding Not Required on Domestic.

1. No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed exclusively in or about such person's residence, but such employee shall be subject to all of the requirements of the Ordinance.

- F. Fractional parts of cent: In deducting and withholding the tax at the source and in payment of any tax due under the Ordinance, a fractional part of a cent shall be disregarded unless it amounts one-half cent (1/2c) or more in which case it shall be increased to the next larger cent.

ARTICLE VII DECLARATIONS

A. Requirement of Filing.

1. A declaration of estimated tax shall be filed by every taxpayer who may reasonably expect to have taxable income, the tax on which is not or will not be withheld by an employer or employers. Where required such declaration shall be filed within four (4) months after the beginning of the tax year.
2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith.

B. Date of Filing.

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

C. Form for Filing and Dates of Payments

1. Such declaration shall be filed upon a form or forms furnished by, or obtainable from, the Commissioner. Provided, however, credit shall be taken for Montgomery tax to be withheld from any portion of such income. In accordance with the provisions of the Ordinance, credit may be taken for tax to be withheld and remitted to another taxing municipality.
2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any quarterly payment date.
3. The estimated tax may be paid in full with the declaration or in equal installments on or before the last day of the fourth, seventh, tenth, and thirteenth month after the beginning of the tax year.

D. Amended Declaration.

1. Amended declaration must be filed on or before the last day of the month following the close of the taxpayer's tax year. If it appears that the original declaration made for such fiscal year underestimated the taxpayer's income by 30% or more, at such time a payment which, together with prior payments is sufficient to pay taxpayer's entire estimated liability, shall be made. If upon the filing of the return required by the Ordinance hereof, it appears that the taxpayer did not pay 70% of his tax liability, as shown on said return, on or before the last day of the month following the close of a tax year, the difference between 70% of said taxpayer's tax liability and the amount of estimated tax he actually paid on or before said date shall be subject to the interest and penalty provisions of the Ordinance.
2. In the event an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

E. Final Returns Required.

1. The filing of a declaration does not relieve the taxpayer of the necessity of filing a final return even though there is no change in the declared tax liability. A final return must be filed to obtain a refund of any overpayment of over \$1.01.

ARTICLE VIII
DUTIES OF THE TAX COMMISSIONER

A. Collection of Tax and Retention of Records

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

B. Enforced Provisions

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

2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the Ordinance or these Rules and Regulations, should submit to the Commissioner in writing all the facts pertinent to the matter on which the ruling is sought.
3. These regulations, together with all amendments and supplements hereto and all changes herein, will be on file at the office of the Commissioner and will be open to public inspection.
4. The Commissioner is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Commissioner that due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until the proper returns are filed by the taxpayer for all amounts owed by him under the Ordinance.
5. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of the Ordinance shall apply.

C. Estimation of Tax by Commissioner

1. Whenever the Commissioner has been unable to secure information from the taxpayer as to his taxable income for any year, he may determine the amount of tax appearing to be due and assess the taxpayer upon the basis of such determination, together with interest and penalties as prescribed in the Ordinance.
2. Such determination of tax may be adjusted upon submission by the taxpayer of actual records from which his tax may be computed.

D. Compromise Authority.

1. Subject to the consent of the Board of Review or pursuant to regulation approved by the Board of Review, the Tax Commissioner shall have the power to compromise any liability imposed by this chapter, including tax, interest and penalty.

ARTICLE IX **EXAMINATION OF BOOKS AND RECORDS, INFORMATION SO OBTAINED** **CONFIDENTIAL: PENALTY**

A. Investigations by Commissioner.

1. The Commissioner, or his duly authorized agent, is authorized to examine the books, papers, records and federal income tax returns of any employer, taxpayer or person subject to the Ordinance, or whom the Commissioner reasonably believes is subject to the provisions of the Ordinance (“Supposed Taxpayer”), 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 a person or entity who the Tax Commissioner reasonably believes to be the employer (“Supposed Employer”) and every taxpayer shall furnish, within ten (10) days following a written request by the Commissioner, or his duly authorized agent, the means, facilities and opportunity for making examinations and investigations authorized by the Ordinance.

B. Subpoena of Records and Persons.

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

C. Penalty for Non-Compliance.

Refusal by any employer, Supposed Employer, taxpayer, or Supposed Taxpayer, or the refusal of any such person to appear before the Commissioner or his duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by the Ordinance.

D. Retention of Records.

All employers and taxpayers are required to keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits, or both. Such records shall be preserved for a period of not less than six (6) years from the date the final return is filed and paid or the withholding taxes are paid.

E. Confidential Nature of Examinations.

Any information gained as a result of any returns, investigations, verifications or hearings before the Commissioner or the Board, required by the Ordinance or authorized by these Regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information in violation of this section may be charged criminally and shall be fined not more than five hundred (\$500.00) dollars and imprisoned not more than six (6) months or both, for each offense. In addition to the above penalty, any employee of Montgomery who violates the provisions of this section relative to the disclosure of confidential information may be disciplined up to and including immediate dismissal.

ARTICLE X
INTEREST & PENALTIES

A. Interest

Except as provided in paragraph C of this article, all taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this Ordinance and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of one percent (1%) per month or fraction thereof.

B. Penalties.

In addition to interest as provided in Paragraph A hereof, penalties for failure to file tax returns in a timely manner, failure to pay taxes and to withhold and remit taxes pursuant to the provisions of this chapter are hereby imposed as follows:

1. In the case of taxpayers failing to file a return required by this chapter within the time frames set forth herein, and including any lawfully permitted extensions, the taxpayer shall pay a penalty of \$25 upon a first (1st) offense, \$50 upon a second (2nd) offense, \$100 upon a third (3rd) offense and \$150 upon a fourth (4th) or any subsequent offense.
2. In the case of taxpayers failing to pay the full amount of tax due, a penalty as follows:
 - a) A penalty of 1% per month, or fraction thereof, of the amount of the unpaid tax, if the tax is paid during the first six (6) months after the tax became due;

b) A penalty of 2% per month, or fraction thereof, of the amount of the unpaid tax, if the tax is paid during the seventh (7th) and twelfth (12th) month after the tax became due; and

c) A penalty of 4% per month, or fraction thereof, of the amount of the unpaid tax, if the tax is paid later than twelve (12) months after it became due. The percentages herein specified, when used, shall apply from the first month of delinquency.

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 or the audit and revision of any taxpayer's return by another municipality provided an amended return is filed and the additional tax paid within three (3) months after final determination of such federal or municipal tax liability.
3. A taxpayer or employer shall have thirty (30) days after receipt of notice of any proposed imposition of interest and penalties within which to file a written protest or explanation with the Commissioner. If no protest or explanation is filed within the prescribed time, the proposed imposition of interest and penalties shall become and be the final assessment. Upon filing of a written protest or explanation, the Commissioner shall determine the assessment which may or may not be the same as the proposed assessment.

D. Appeal from Assessment.

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

ARTICLE XI
COLLECTION OF UNPAID TAXES AND
REFUND OF OVERPAYMENTS

A. Unpaid Sums - A Civil Debt

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

2. No additional assessment shall be made by the Commissioner after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be no period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report 25% or more of gross income shall be considered a substantial omission.
3. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations, the period within which an assessment may be made by the Commissioner is extended to one (1) year from the time of final determination of federal tax liability.

B. Refunds and Overpayments

1. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment(s) was made, or the return was due, or three (3) months after the determination of federal income tax liability, whichever is later.
2. No refund shall be made to any taxpayer until he has complied with all provisions of the Ordinance and has furnished all information required by the Commissioner.
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 by the taxpayer, overpayments of any year's taxes shall be applied as follows:
 - a) To taxes owed for any previous years in the order in which such taxes became due.
 - b) To his current estimated tax liability.

C. Limitation.

Where the total amount due or refund claimed for a tax year is less than \$1.01, such amount shall not be collected or refunded, or credited to the taxpayer or his account.

ARTICLE XII

CREDIT ALLOWED FOR THE TAX PAID IN ANOTHER MUNICIPALITY

A. Method of Applying for Credit.

1. No credit will be given unless the taxpayer claims such on his final return or other form prescribed by the Commissioner, and presents such evidence of the payment of a similar tax to another municipality, as the Commissioner may require.
2. The amount of tax credited against the obligation due Montgomery shall only apply to that portion of the taxpayer's income reported to and taxed by the other municipality.

Any excess credit may not be applied against other income that would otherwise be taxable by Montgomery.

3. A refund must be claimed by the taxpayer or his employer within three (3) years of the date of filing the final return for the year for which such refund is claimed. The Commissioner shall prescribe rules for verification.
 4. Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the complete return is filed, whichever is later, no interest shall be allowed on the refunded overpayment. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by Ohio Revised Code 5703.47. (Ohio Revised Code 718.06)
- B. A statement satisfactory to the Commissioner from the taxing authority of the municipality to which the taxes are paid that a Montgomery resident or his employer is paying the tax shall be considered as fulfilling the requirement of this article.

ARTICLE XIII SAVINGS CLAUSE

These Rules and Regulations contain changes from the Rules and Regulations adopted for previous years in an effort to affect uniform administration of municipal income taxes throughout Ohio, and changes in these Regulations from those of previous years do not imply any intent to effect a substantial change in the Rules and Regulations, but are merely changes in form.

ARTICLE XIV AMENDMENTS & SUPPLEMENTS

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