

# **CITY OF STOW INCOME TAX DIVISION RULES & REGULATIONS**

**EFFECTIVE JANUARY 1, 2016**

(REV. 1/1/2017)

*IN THE EVENT OF A CONFLICT WITH THESE RULES & REGULATIONS AND ANY PROVISION(S) OF THE ORDINANCE OF THE CITY OF STOW, THE CITY OF STOW ORDINANCE WILL SUPERSEDE.*

## **RULES AND REGULATIONS**

Adopted: Pursuant to Section 718.30 of the Ohio Revised Code, and Section 194.20 of Chapter 194 of the Codified Ordinances of the City of Stow.

### **ARTICLE I**

Section 194.012 of City of Stow Chapter 194 outlines the purposes to which funds raised are to be put and the items on which the tax is to be applied. Section 194.013 outlines the allocation of the fund collected.

### **ARTICLE II**

#### **DEFINITIONS**

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

"Administrator" means the Tax Administrator. The individual charged with direct responsibility for administration of the income tax levied by the City of Stow in accordance with the City of Stow Income Tax Ordinance.

"Association" means a partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons. Limited Liability Corporations (LLC's) and Subchapter S corporations (as defined in the Federal Tax Code, 26 U.S.C. 1361) shall be treated as Associations, for the purpose of this Chapter.

"Board of Review" has the same meaning as "Local Board of Review" and means the board created by and constituted as provided in Section 194.18 of the Chapter.

"Business" means an enterprise, activity, profession, public utility, public service or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity.

"Business Allocation" as used in these regulations, means the portion of net profits to be apportioned or allocated as having been made in the City of Stow as outlined in Section 194.062 of the Chapter.

"Chapter" means Chapter 194 of the Codified Ordinances of the City of Stow.

"City" means the City of Stow, Ohio.

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

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

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

"Fundamental change" means any substantial alteration in organizational form by an entity including liquidation, dissolution, bankruptcy and reorganizations such as merger, consolidation, acquisition, transfer or change in identity, form or organization.

"Gross Income" shall include all monies derived from any source whatsoever, including:

(a) All income, salaries, wages, commissions, and other compensation from whatever source earned or received by residents of the city, including distributive shares of an unincorporated business entity or association against which Stow municipal income tax is not already levied.

(b) All income, salaries, wages, commissions, and other compensation from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in the city.

(c) The portion attributable to the city of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in the city of Stow. Such portion shall be determined as provided in 194.062 and in accordance with the regulations adopted by the Board of Review pursuant to this chapter.

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

"Manager" means any of the employer's officers, partners, employees or persons having control or supervision of the employer's business, and/or employees or persons charged with the responsibility of filing the return, paying taxes, and otherwise complying with this chapter.

"Net Profits" means the net gain from the operation of a business, profession, enterprise, or other activity excluding capital gains and losses, after provision for all necessary and ordinary expenses paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, adjusted to the requirements of this chapter and the Rules & Regulations, but excluding Federal and other taxes based on income and the tax imposed by the chapter.

Net profits shall include any amount or value received, realized, or recognized in a sale or other disposition of tangible personal or real property used in business, in excess of book value.

"Non-Resident" means a person who is not a resident as herein defined.

"Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the City of Stow.

"The Ordinance" means the City of Stow Income Tax Ordinance and any amendments and supplements thereto effective on and after October 1, 1967. Note: Hereinafter this will be referred to as the "effective period of the Ordinance."

"Pension" means any amount paid to an employee or former employee that is reported to the recipient on an IRS Form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS Form W-2, Wage and Tax Statement, or successor form.

"Person" means every natural person, partnership, fiduciary, association, corporation, or other entity. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any

unincorporated entity or association shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

"Place of Business" means any Bona Fide office (other than a mere statutory office), factory, warehouse or other space which is regularly occupied and used by the taxpayer in carrying on any business activity whether in person or through one or more of his employees regularly in attendance.

"Resident" means a person domiciled in the City of Stow, Ohio as determined under Section 718.012 of the Ohio Revised Code.

"Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the City of Stow.

"Taxable Income" means wages, salaries, and other compensation paid by an employer or employers before deductions of any kind, and/or net profits from the operation of a business, profession and other enterprise or activity adjusted in accordance with the provisions of the Income Tax Ordinance and these regulations.

"Taxable Year" means the calendar year, or the fiscal year, used as the basis on which taxable income is to be computed under the 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.

"Taxpayer" means a person, whether an individual, partnership, association, corporation or other entity, required by this chapter to pay a tax. Any and all residents of the City of Stow are deemed to be included in this definition.

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

## ARTICLE III

### IMPOSITION OF TAX

#### A. Bases.

##### 1. Resident Individual:

a. In the case of residents of the City an annual tax of two percent (2%) is imposed on all income, salaries, wages, commissions, and other compensation earned (including earnings deposited by the employee into deferred compensation or medical coverage plans) during the effective period of the Chapter.

For the purpose of determining the tax on the income of resident taxpayers taxed under the rate and income taxable section of the ordinance, the source of the income and the place or places in or at which the services were rendered, are immaterial. All such earnings wherever earned are taxable. The location of the place from which payment is made or where payment is received is immaterial.

Unused losses are allowable as an operating loss carry forward under Section 194.03(1) (H) of the chapter and Article III B4g of these regulations.

All such incomes wherever earned or paid are taxable, except that tax shall not be levied on expenses reported in accordance with federal guidelines for Federal Form 2106, subject to audit and approval by the City Income Tax Division. Only those expenses for which the IRS requires the filing of Form 2106 are deductible. The allowable deduction must be reduced by the federal 2% adjustment as reported on Federal Schedule A. Expenses, for which the filing of Form 2106 is not required, are not deductible. If wage income is allocated between cities, the Form 2106 must also be allocated. Credit for taxes withheld or paid to other cities must be reduced. To receive the deduction you must attach a copy of pages 1 & 2 of your Federal Form 1040, Schedule A, and Form 2106.

b. The following are items, which are subject to the tax imposed by Section 194.011:

(1) Salaries, wages, bonuses and incentive payments earned by an individual, whether directly or through an agent, and whether in cash or in property for services rendered during the tax period as:

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

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

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

(d) An officer or employer (whether elected, appointed, or commissioned) of the United States Government or any of its agencies or of the State of Ohio or any of its political sub-divisions or agencies thereof; or any foreign country or dependency except as provided in Section 194.03(13) of the chapter;

(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 or other basis; and whether paid by an individual, partnership, association, corporation (including charitable and non-profit corporations), governmental administration, subdivision, section or unit, or any other entity.

(2) Commissions earned by a taxpayer, whether directly or through an agent, and whether in cash or in property for services rendered during the effective period of the chapter, regardless of how computed or by whom or wheresoever paid.

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

(b) Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expenses or

advances as such from his gross income for the purpose of determining his net profits taxable under Federal law, and the employee is not required to include such receipts as income on his Federal income tax return.

(3) Fees, unless such fees are properly includible as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity or association owned or partly owned by said individual and such net profits are subject to the tax under Section 194.011 of the chapter.

(4) Other income and compensation, as reported on W-2's or 1099's, including but not limited to tips, bonuses, lump sum distribution from qualified pension and profit sharing trusts not made pursuant to employees retirement, profit sharing, "non-competition" covenants, portions of stock options that are not considered capital gains by the city of Stow, lottery winnings, sports winnings, or gifts of any type in connection with services rendered, and including compensation paid to domestic servants, casual employees and other types of employees.

(5) Payments made to an employee by an employer as sick leave, vacation pay, or any other types of payments made under a wage or salary continuation plan, including "sub" pay (such as pay received from unions by individuals in lieu of wages), during periods of absence from work are taxable when paid. All payments made under this provision are deemed to be days spent in the City of Stow for purposes of taxation, and therefore are not allocable to other municipalities.

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

(7) Moving expenses, to the extent that their employers reimburse them, are not taxable if deducted on Federal return.

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

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

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

## 2. Non-Resident Individual:

a. In the case of individuals who are not residents of the City, there is imposed under Section 194.011 of the chapter, a tax of two percent (2%) on all income, salaries, wages, commissions, and other compensation earned (including earnings deposited by the employee into deferred compensation or medical coverage plans) during the effective period of the chapter for work done or services performed or rendered within the City, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial. Tax shall not be levied on expenses reported in accordance with federal guidelines for Federal Form 2106, subject to audit and approval by the Income Tax Division. Only those expenses for which the IRS requires the filing of Form 2106 are deductible. The allowable deduction must be reduced by the federal

2% adjustment as reported on Federal Schedule A. Expenses, for which the Form 2106 is not required, are not deductible. If wage income is allocated between cities, the Form 2106 must also be allocated. Credit for taxes withheld or paid to other cities must be reduced. To receive the deduction you must attach a copy of pages 1 & 2 of your Federal Form 1040, Schedule A and Form 2106.

b. The items subject to tax under Section 194.011 of the chapter are the same as those listed and defined in Article III 1 above. For the methods of computing the extent of such work or services performed within the City, in cases involving compensation for personal services partly within and partly without the City, see Article VI, A6 of these regulations.

3. Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to this municipality, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in this municipality to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

a. An individual who is a resident of this municipality shall report the individual's net profit from all real estate activity on the individual's annual tax return for this municipality. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under this municipality's income tax ordinance

#### 4. Resident Unincorporated Businesses:

a. In the case of resident unincorporated businesses, professions, enterprises, undertakings or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax as reported in Section 194.012 (B) of the chapter on the net profits earned, accrued or received during the effective period of the chapter attributable to the City under the formula or separate accounting method provided in Section 194.062 of the chapter, derived from work done or services performed or rendered and business or other activities conducted in the City.

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

c. The tax imposed by Section 194.011 of the chapter is imposed on all resident unincorporated entities or associations having net profits attributable to the City under the method of allocation provided for in the chapter, regardless of where the owner or owners of such resident unincorporated business entities or associations reside.

d. In the case of a resident individual partner or part owner of a resident unincorporated entity or association, there is imposed an annual tax as reported in Section 194.012(B) of the chapter on such individual's distributive share of net profits earned, accrued or received during the effective period of the chapter not attributable to the City, under the method of allocation provided for in Section 194.062 of the chapter, and not taxed against the entity.

#### 5. Non-resident Unincorporated Businesses or Associations:

a. In the case of non-resident unincorporated businesses, associations, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax as reported in Section 194.012(B) of the chapter on the net profits earned, accrued or received during the effective period of the chapter attributable to the City, under the formula or separate accounting method provided for in Section 194.062 of the chapter.

b. The tax, imposed on non-resident unincorporated entities or associations owned by two or more persons, is upon the entities rather than the individual members or owners thereof. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III, A5d and e below.

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

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

e. In the case of a resident individual partner or part owner of non-resident unincorporated entity or association, there is imposed an annual tax as reported in Section 194.012(B) of the chapter on such individual's distributive share of net profits earned, accrued or received during the effective period of the chapter not attributable to the City under the method of allocation provided for in Section 194.062 of the chapter and not taxed against the entity.

#### 6. 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 the City, there is imposed an annual tax as reported in Section 194.012(B) of the chapter on the net profits earned, received or accrued during the effective period of the chapter attributable to the City under the formula or separate accounting method provided for in Section 194.062 of the chapter.

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

#### **B. Amplification:**

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

##### 1. Net Profits:

a. Net Profits as used in the chapter and these regulations means net profits derived from any business, profession or other activity or undertaking carried on for profit or normally carried on for profit.

b. Net Profits as disclosed on any return filed pursuant to the provisions of the chapter shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service, providing such method does not conflict with any provisions of the chapter or these regulations.

##### 2. Gross Receipts:

a. Gross Receipts shall include, but not be limited to, income in the form of commissions, fees, rentals from real and tangible personal property and other compensation, for work done or services performed or rendered as well as income from sales of stock in trade.

b. From gross receipts there shall be deducted allowable expenses to arrive at the net profit subject to tax.

##### 3. Expenses:

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

(1) If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated for by insurance or otherwise, of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the Federal income tax. Provided, however, that loss on the sale, exchange or other disposition of depreciable property or real estate used in the taxpayer's business shall not be allowed as a deductible expense.

(2) Current amortization of emergency facilities under the provisions of the Internal Revenue Code, if recognized as such for Federal income tax purposes, may be included as an expense deduction hereunder.

(3) Where depreciable property is voluntarily destroyed only the cost of such demolition and the undepreciated balance thereof will be allowed as an expense in the year of such demolition, to the extent allowable for Federal income tax purposes.

(4) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Tax Administrator (if the reserve method is used), a reasonable addition to the reserve may be claimed; but in no event shall the amount exceed the amount allowable for Federal income tax purposes.

(5) Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax, then taxes on, and other expenses of, said property are not deductible. In any event, the following taxes are not deductible from income; (1) the tax under the chapter; (2) Federal or other taxes based upon income; (3) gift, estate or inheritance taxes; and (4) taxes for local benefits or improvements to property which tend to appreciate the value thereof.

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

#### 4. Other Income or Losses:

a. Capital gains and losses from sale, exchange or other disposition of property used in the trade or business shall not be taken into consideration in arriving at net profits earned. However, any amount or value received, realized or recognized on a sale or other disposition of tangible personal property or real property used in business, in excess of book value, shall be treated as taxable income under the chapter to the extent of depreciation allowable after January 1, 1963. The balance shall be treated as a capital gain.

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

(a) Property of a kind that would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year;

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

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

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

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

d. The Tax Administrator, upon submission by the taxpayer of satisfactory evidence showing the amount of expenses attributable to non-taxable income, shall permit the taxpayer to include in his return expenses attributable to non-taxable income in an amount agreed to by the taxpayer and the Tax Administrator. In lieu of such evidence, five percent (5%) of non-taxable income shall be considered to be attributable expenses.

e. Rentals from real property received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived

(whether so rented, managed or operated by taxpayer individually or through agents or other representative) constitutes a business activity of the taxpayer in whole or in part.

(1) Where the gross monthly rental of any real properties, regardless of number and value, aggregates in excess of \$250.00 per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to tax:

(a) Provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$250.00 per month.

(b) Provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds \$250.00 per month.

(c) Provided further that the person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds \$250.00 per month.

(2) In determining the amount of gross rental of any real property periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.

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

(4) Real property, as the term is used in this Article, shall include commercial property, residential property, farm property, and any and all other types of real estate.

(5) In determining the taxable income from rentals, the deductible expenses therefrom shall be of the same nature, extent and amount as allowed by the Internal Revenue Service for Federal income tax purposes.

(6) Residents of the City are subject to taxation upon the net profit from rentals (to the extent above specified), regardless of the location of the real property owned.

(7) Non-residents of the City are subject to such taxation only if the real property is situated within the City. Non-residents, in determining whether gross monthly rentals exceed \$250.00 shall take into consideration only real estate situated within the City.

(8) To be considered non-taxable as ground rents, the property must be under perpetual leasehold by the term of which the lessor performs no services of any type, including the payment of taxes on the property.

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

(10) All persons engaged in the rental of real estate shall, in filing their annual returns, or as requested by the Administrator, complete and file with the Administrator a form SR4, obtainable at the Income Tax Office, specifying their tenants' names, apartment number, and such other information as requested if known.

f. Income from patents or copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to taxation under the intangible personal property laws of the State. Income in the form of royalties is taxable if the taxpayers' activities produced the publication or other product, the sale of which produces the royalties.

g. Net operating losses.

Any net operating loss carry forward shall be calculated and deducted in the same manner as provided in RC Chapter 718.

“Pre-2017 net operating loss carry forward” is defined in Chapter 194.

(1) Net operating losses, allocable to Stow, may be carried forward until exhausted, but, in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of a prior year.

(2) In the event net profits are allocated both within and without Stow, the portion of the net operating loss sustained shall be allocable to Stow in the same manner as provided herein for allocation net profits to Stow. The portion of a net operating loss is sustained, on the basis of the allocation factors applicable to that year. The same method of accounting and allocation must be used in the year to which the operating loss is applied.

(3) A short fiscal year (a fiscal year of less than twelve (12) months) in cases where there has been a change in accounting period, where a new taxpayer selects a short fiscal year, or where a new taxpayer operates in Stow for less than his full accounting period, shall be considered as a full taxable fiscal year.

(4) In any return in which a net operating loss deduction is claimed, a schedule must be attached showing:

(a) Year in which net operating loss was sustained.

(b) Method of accounting and allocation used to determine portion of net operating loss allocable to Stow.

(c) Amount of net operating loss used as a deduction in prior years.

(d) Amount of net operating loss claimed as a deduction in current year.

(5) The net operating loss of a business, which loses its identity through merger, consolidation, etc., shall not be allowed as a carry-forward loss deduction to the surviving business entity.

### **C. Allocation of Business Profits:**

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

#### **1. Separate Accounting Method:**

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

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

c. In determining the income allocable to the City from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the City.

#### **2. Business Allocation Percentage Method:**

a. STEP 1: Ascertain the percentage which the average net book value of real and tangible personal property, including lease-hold improvements, owned or used in the business and situated within Stow is of the average net book value of all real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.

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

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

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

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

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

b. STEP 2: Ascertain the percentage which the total wages, salaries, commissions and other compensation paid to employees for services performed within the City is of the total wages, salaries, commissions and other compensation of all the business or profession's employees, for services performed within and without the City, during the period covered by the return.

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

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

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

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

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

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

c. STEP 3: Ascertain the percentage, which the gross receipts of the business or profession derived from sales and rentals made, work done and services rendered in the City is of the total gross receipts, wherever derived, during the period covered by the return.

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

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

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

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

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

(e) Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.

(2) In the application of the foregoing sub-paragraphs, a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale; and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside the City by mail or phone from an office or place of business within the City shall not be considered a solicitation of sales outside the City.

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

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

### 3. Substitute Method:

a. In the event a just and equitable result cannot be obtained under the Business Allocation Formula, the Administrator, upon application of the taxpayer, may substitute other factors in the formula or prescribe other methods of allocating net income calculated by an alternative apportionment method involving one or more of the following:

(i) Separate accounting (i.e., books and records). If the Administrator approves the use of books and records as an alternative method, the following shall apply:

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

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

(c) In determining the income allocable to the City from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the City.

(ii) The exclusion of one or more of the factors.

(iii) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation.

(iv) A modification of one or more of the factors.

b. Application to the Administrator to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing and shall accompany a timely filed tax return, timely filed appeal of an assessment, or timely file amended tax return. The application shall state the specific grounds on which the substitution of factors or use of different method is requested and the relief sought to be obtained. No specific form need be followed in making such application.

4. A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by division (A) of Section 194.19 of this Chapter.

### D. Consolidated Returns:

1. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership provided such group files consolidated returns for Federal income tax purposes. For a subsidiary

corporation to be included in a consolidated return 80% of its stock must be owned by the other members of the affiliated group. A consolidated return must include all companies, which are so affiliated.

2. For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the Municipal income tax is that taxable year and if the affiliated group of corporations filed a consolidated federal income tax return with respect to the taxable year.

(A) The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law.

(B) The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under 2(D) of this section; or

(C) A taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(D) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division (B) of Section 194.063 of this Chapter. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.

An election made under this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

3. If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income from the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group, but separate returns must be filed for the period after it ceases to be a member. If a corporation has been a member of the affiliated group for less than one month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one month.

If a subsidiary is a member of a consolidated group for only part of a taxable year, the income considered to be earned in such fractional part of the year shall be that portion of the net income for the entire year which the number of days it was a member of the group bears to the total number of days in the taxable year.

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

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

6. In consolidating the net income, the taxable income of each corporation shall be computed in accordance with the provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of the affiliated group.

7. In determining expenses that are not allowable because they are allocable to non-taxable income, such calculations shall be based on the consolidated net income. As an example, intercompany dividends, which are eliminated in the consolidation, will not be taken into consideration in determining non-taxable income.

#### **E. Exceptions:**

The following shall not be considered taxable:

1. The military pay or allowance of members of the armed forces of the United States and of members of their reserve components, including the Ohio national guard.

2. The gross income of any charitable, educational, fraternal or other type of non-profit association or organization to the extent such income is derived from tax-exempt real estate, tax exempt tangible or intangible property, or tax-exempt activities.

a. Any association or organization falling in the category listed in the preceding paragraph not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the tax levied under the chapter on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.

b. Where such non-profit association or organization conducts income-producing business both within and without the City, it shall calculate its profits allocable to the City under the method or methods provided in Article III C.

3. Unemployment insurance benefits, welfare benefits, and pensions paid as a result of retirement.

4. Proceeds of insurance paid by reason of death of the insured; retirement disability benefits, annuities, or gratuities not in the nature of compensation for services rendered from whatever source derived;

5. Alimony and child support received.

6. Receipts from seasonal or casual entertainment, amusements, fund raising, sports events and health and welfare activities when conducted by bona fide charitable, religious and educational organizations and associations.

7. The income of individuals under 18 years of age. Income earned on and after the individuals eighteenth birthday is taxable.

8. Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the State from which the City of Stow is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business).

9. Salaries, income, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or by act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce.

10. Salaries, wages, commissions and other compensation, other income and net profits, including interest and dividends as provided in 718 O. R. C., the taxation of which is prohibited by the Constitution of the State or by any act of the Ohio General Assembly limiting the power of the City of Stow to impose net income tax.

## **ARTICLE IV**

### **RETURN AND PAYMENT OF THE TAX**

#### **A. Forms, Date and Filing Requirements.**

1. On or before the fifteenth (15<sup>th</sup>) day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due must be paid with the return in accordance with section 194.091 of this Chapter. The fact that a taxpayer is not required to file a Federal tax return does not relieve him from filing a Stow tax return.
2. For taxpayers who are not individuals, and are reporting and filing on a fiscal year basis or any period other than a calendar year, the annual return is due on the fifteenth day of the fourth month following the end of the taxable year or period.
3. Any taxpayer who received taxable income not subject to withholding under the chapter must file a return.
4. Any taxpayer having income, wages, or other compensation for which a return must be filed, and also having net profits from a business covering the same or a different period, is required to file only one return.
5. Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof.
6. Except as provided for herein, the tax is on the association or partnership as an entity, whether resident or non-resident, and a return is required disclosing the net profits allocable to the City and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity or association is required to make a return and pay the tax in accordance with Article III A4d of these regulations.
7. A husband and wife may file a joint return.
8. The City of Stow accepts generic forms for estimated tax payments and for Stow's annual tax return. However, to be acceptable the generic form must contain all the information required on forms supplied by the City of Stow, and must be in a similar format that will allow processing of the generic forms without changing Stow's existing procedures for processing forms.

Determination as to whether a generic form meets the above criteria shall be the responsibility of the Tax Administrator.

#### **B. Information Required and Reconciliation with Federal Returns:**

1. Every person subject to the provisions of Section 194.011 of the chapter shall, except as hereinafter provided, file a return setting forth, for the period covered by the return:
  - a.
    - (1) The amount of salaries, wages, commissions and other compensation earned. The name of the municipality in which the income was earned and the amount of municipal income tax withheld and/or paid to that municipality.
    - (2) The gross income from a business, profession or other activity less ordinary, reasonable and necessary expenses incurred in the acquisition of such gross income earned during the preceding year and subject to the tax derived from activities conducted with the City of Stow.
    - (3). The gross income from a business, profession or other activity less ordinary, reasonable and necessary expenses incurred in the acquisition of such gross income earned during the preceding year and subject to the tax derived from activities conducted outside of the City of Stow.
    - (4) All other taxable income.
  - b. The amount of tax imposed by this chapter on the above.
  - c. Where figures of total income, total deductions, and net profits are included, as shown by a Federal return, a copy of that Federal return or schedule should be attached and any items of income which are not subject to the City of Stow tax and non-allowable expenses shall be eliminated in determining net income subject to the City of Stow tax.

d. Other pertinent statements, information returns or other information as the Administrator may require.

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

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

#### **C. Extensions:**

1. Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of the Municipality's income tax return. The extended due date of the Municipality's income tax return shall be the fifteenth day (15<sup>th</sup>) of the tenth month (10<sup>th</sup>) after the last day of the taxable year to which the return relates.

2. Any taxpayer that qualifies for an automatic federal extension for a period other than six-months for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as that of the extended federal income tax return.

3. A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's Municipal income tax return. If the request is received by the Tax Administrator on or before the date the municipal income tax return is due, the tax administrator shall grant the taxpayer's requested extension.

4. An extension of time to file under this Chapter is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

5. If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of section 5747.08 of the Ohio Revised Code, a taxpayer shall automatically receive an extension for the filing of the Municipal income tax return. The extended due date of the Municipality's income tax return shall be the same as the extended due date of the state income tax return.

#### **D. Payment with Return.**

1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 194.05 of the chapter, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 194.09 of the chapter, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 194.08 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. Should the return or the records of the Administrator indicate an overpayment of the tax to which the City of Stow is entitled under the provisions of this chapter, the overpayment shall first be applied against any existing liability and the balance, if any, at the election of the taxpayer communicated to the Administrator, shall be refunded or transferred against any subsequent liability. However, no additional taxes or overpayments shall be collected or refunded unless the tax or overpayment is more than ten dollars (\$10.00)

#### **E. Amended Returns.**

1. Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained

in Sections 194.096 and 194.081 of the chapter. Such amended return shall be on a form obtainable, upon request, from the Administrator. A taxpayer may not change the method of accounting, filing status or method of apportionment of net profits after the due date for filing the original return. A taxpayer may not amend a return that was previously filed correctly in an effort to change the taxpayer's status from separate to consolidated or consolidated to separate if the original return status was deemed proper, even when the taxpayer could have elected either status during its original filing.

2. If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the Tax Administrator before filing the amended return. Nothing in this division shall require the Tax Administrator to accept such amended returns.

3. Within sixty (60) days from the final determination of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City of Stow return showing income subject to the tax based upon such final determination of Federal tax liability, and pay any additional tax shown thereon or make claim for refund of any overpayment, unless the tax or overpayment is ten (\$10.00) dollars or less. See Article XI B1 of these regulations.

**ARTICLE V**

**THERE IS NO ARTICLE V IN THESE REGULATIONS**

## **ARTICLE VI**

### **COLLECTION OF TAX AT THE SOURCE**

#### **A. Duty of Withholding.**

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within the City, who employs one or more persons whether as an employee, officer, director or otherwise, to deduct each time any compensation is paid to or earned and deferred by an employee subject to the Ordinance, the tax of two percent (2%), the current rate as specified in Section 194.012 of the Ordinance, from all compensation paid for service rendered, work performed or other activities engaged in within the City. All withholdings shall be in compliance with the Ordinance of the City of Stow and Section 718 of the Ohio Revised Code.

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

3. Commissions and fees paid to independent contractors are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and return and pay the tax pursuant to the provisions of the chapter and Article XV and VII of these regulations. All individuals, businesses, employers, brokers or others doing business who engage persons either on a commission basis or as independent contractors, subcontractors, or contract employees who are not subject to withholding should indicate the total amount of earnings, payments, commissions and bonuses to residents of the City of Stow (or to non-residents who conduct business in the City of Stow) on copies of Federal Form 1099 or successor form, or should attach a list which should indicate social security numbers, names, addresses and amount paid.

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

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

6. 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.

#### **B. Occasional Entrant - Withholding**

(A) The following terms as used in this section:

(1) "Employer" includes a person that is a related member to or of an employer.

(2) "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.

(3) "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.

(4) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.

(5) "Fixed location" means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.

(6) "Worksite location" means a construction site or other temporary worksite in this state at which the employer provides services for more than twenty days during the calendar year. "Worksite location" does not include the home of an employee.

(7) "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (B)(1)(a) of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

For the purposes of this division, the location at which an employee spends a particular day shall be deemed in accordance with division (B) (2) of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

(B) (1) Subject to divisions (C), (E), and (F) of this section, an employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in a municipal corporation that imposes such a tax if the employee performed such services in the municipal corporation on twenty or fewer days in a calendar year, unless one of the following conditions applies:

(a) The employee's principal place of work is located in the Municipality.

(b) The employee performed services at one or more presumed worksite locations in the Municipality. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in this state at which the employer provides services that can reasonably be expected by the employer to last more than twenty days in a calendar year. Services can "reasonably be expected by the employer to last more than twenty days" if either of the following applies at the time the services commence:

(i) The nature of the services is such that it will require more than twenty days of actual services to complete the services;

(ii) The agreement between the employer and its customer to perform services at a location requires the employer to perform actual services at the location for more than twenty days.

(c) The employee is a resident of the Municipality and has requested that the employer withhold tax from the employee's qualifying wages as provided in section 194.051 of this Chapter.

(d) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure within the Municipality.

(2) For the purposes of division (B)(1) of this section, an employee shall be considered to have spent a day performing services in a municipal corporation only if the employee spent more time performing services for or on behalf of the employer in that municipal corporation than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:

(a) Traveling to the location at which the employee will first perform services for the employer for the day;

- (b) Traveling from a location at which the employee was performing services for the employer to any other location;
  - (c) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;
  - (d) Transporting or delivering property described in division (B)(2)(c) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;
  - (e) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.
- (C) If the principal place of work of an employee is located in another municipal corporation that imposes an income tax in accordance with this chapter, the exception from withholding requirements described in division (B) (1) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to that municipal corporation.
- (D) (1) Except as provided in division (D) (2) of this section, if, during a calendar year, the number of days an employee spends performing personal services in the Municipality exceeds the twenty-day threshold described in division (B) (1) of this section, the employer shall withhold and remit tax to the Municipality for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in the Municipality.  
 (2) An employer required to begin withholding tax for the Municipality under division (D)(1) of this section may elect to withhold tax for the Municipality for the first twenty days on which the employer paid qualifying wages to the employee for personal services performed in the Municipality.  
 (3) If an employer makes the election described in division (D)(2) of this section, the taxes withheld and paid by such an employer during those first twenty days to the Municipality are refundable to the employee.
- (E) Without regard to the number of days in a calendar year on which an employee performs personal services in any municipal corporation, an employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the municipal corporation in which the employer's fixed location is located if the employer qualifies as a small employer as defined in Section 194.03 (45) of this Chapter. To determine whether an employer qualifies as a small employer for a taxable year, the Tax Administrator may require the employer to provide the Tax Administrator with the employer's federal income tax return for the preceding taxable year.
- (F) Divisions (B)(1) and (D) of this section shall not apply to the extent that the Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of section 194.051 of this Chapter.

### **C. Return and Payment of Tax Withheld and Status of Employers.**

1. The deductions from salaries, wages and other compensation required to be made by employers are to begin with the compensation earned on and after the effective date of the chapter.

2. Monthly payments of taxes withheld shall be made by each employer, if the taxes deducted and withheld or required to be deducted and withheld on behalf of the City of Stow in the prior calendar year exceeded two thousand three hundred and ninety-nine dollars (\$2,399), or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the City of Stow in any month of the preceding calendar quarter exceeded two hundred dollars (\$200.00) per month. The payment shall be made to the City of Stow by the fifteenth (15<sup>th</sup>) day of the month after the close of each calendar month.

Any employer, agent of an employer, or other payer not required to make payments under division (C)(2) of this section of taxes required to deducted and withheld shall make quarterly payments to the Tax Administrator not later than the last day of the month following the end of each calendar quarter.

3. If more than the amount of tax required to be deducted by the chapter is withheld from any employee's pay, such excess may be refunded by the employer or the Administrator. In those cases in which too much has been withheld by the employer from an employee and remitted to the Administrator and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain a refund by application to the Administrator, except that refunds will not be made unless claimed within three (3) years after the year for which the tax was withheld as provided in Section 194.096 of the chapter and Article XI of these regulations. If less than the amount of tax required to be deducted is deducted and withheld by the employer in any pay period or pay periods, the deficiency shall be withheld in subsequent pay periods.

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

a. Every manager is deemed to be a trustee of the City in collecting and holding the tax required under this chapter to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every manager is liable directly to the City for payment of such trust funds, whether actually collected by such employer or not.

b. All managers shall be personally liable, jointly and severally, with the employer, to the extent of the tax, interest and penalty for failure to file the employer's return or to pay the employer's tax, interest and penalty as required under this chapter.

c. No change in structure or organization by an employer, including a fundamental change, discharges its manager from liability for the employer's or manager's failure to remit funds held in trust, to file a tax return or to pay taxes.

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

6. On or before the last day of February of each year, an employer is required to file a Withholding Reconciliation Return with the Tax Administrator listing the names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the Municipality during the preceding calendar year, the amount of tax withheld, if any, from each such employee's qualifying wage, the total amount of qualifying wages paid to such employee during the preceding calendar year, the name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year, any other information required for federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee, and other information as may be required by the Tax Administrator.

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

a. Those employers using Form W-2 furnished commercially may submit a copy of such commercial Form W-2 providing the copy furnished to the City clearly shows the information required in paragraph 6 above.

b. Where the furnishing of this information as indicated above will create a distinct hardship, the employer, upon written request to the Administrator, may be permitted to furnish a list of all employees subject to the tax, which list shall show the information required in paragraph 6 above. Such list may be compiled on any mechanical equipment used by the employer, provided the listing is legible. The employer's name must be indicated on each sheet, each sheet must be numbered, and the total number of sheets comprising the complete report indicated on the first page.

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

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

9. On or before the last day of February, following any calendar year in which any person who, in the course of their trade or business, including activities deemed non-profit, makes payments to any person for work done or services performed, other than a corporation and such payments are not subject to withholding tax (i.e., not reported on an individual IRS form W-2) and are not reported on withholding statements shall file with the Administrator a copy of all Form 1099's issued and for such additional amounts not required to be reported on form 1099 an information list showing for each person, the full name, last known address, social security number and the gross amount paid.

**C. Fractional Parts of Cent.**

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

**D. Domestic Servants.**

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 chapter.

**E. Contractors performing work in the City.**

An individual, partnership, association, corporation or other entity engaged in the business of construction work and who will perform construction work in the City of Stow shall obtain a tax account number, issued by the Income Tax Department, prior to beginning construction work. The Income Tax Department shall also issue a certificate of registration, which the contractor shall file with the Building Department and the Engineering Department. Failure to possess a valid certificate shall be cause for suspension of work by the Building Department, the plans and permits center, the Engineering Department and/or Income Tax Department prior to the construction work commencing and/or during the performance of the construction work. Proof of possession of a valid certificate shall be necessary to commence or resume suspended construction work. The certificate of registration may be revoked by the Income Tax Department for failure by the contractor to remain current in the filing of required tax documents, for failure to remain current in the required payment of taxes, and for failure to comply with any section of Chapter 194. Any discrepancy as to amounts of tax due and owing under this paragraph may be assessed at the discretion of the Tax Administrator.

**F. Contractors performing work for the City.**

Every contractor performing work for the city shall be bound by the requirements of Section 195.26 of the Ordinance, and shall assure that all of its subcontractors performing work for the city adhere to the same provisions.

## **ARTICLE VII**

### **DECLARATIONS**

#### **A. Requirements of Filing:**

1. A declaration of estimated tax shall be filed by every taxpayer, who may reasonably be expected to have taxable income, the tax on which is not or will not be withheld in full by an employer or employers. The declaration must be filed only if the estimate of tax that will not be withheld is at least two hundred (\$200.00) dollars. Where required, such declaration must be filed on or before the date prescribed for the filing of municipal income tax returns on or before the fifteenth (15<sup>th</sup>) day of the fourth month of the first taxable year after the taxpayer becomes subject to tax for the first time.

2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year, after taking into consideration known factors, which might alter, anticipated income. This provision is further subject to the provisions in Article VII C2.

#### **B. Date of Filing:**

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

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

#### **C. Form for Filing:**

1. Such declaration shall be filed upon a form or forms furnished by, or obtainable upon request from, the Tax Administrator. Credit shall be taken for City of Stow tax to be withheld from any portion of such income. In accordance with the provisions of Section 194.081 of the Chapter, credit may be taken for tax to be paid or to be withheld and remitted to another taxing municipality.

2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any subsequent quarterly payment day as provided in division (D) of the section.

#### **D. Dates of Payments:**

1. The estimated tax may be paid in full with the declaration or in installments as follows:

- (a) On or before the fifteenth (15<sup>th</sup>) day of the fourth month after the beginning of the taxable year.
- (b) On or before the fifteenth (15<sup>th</sup>) day of the sixth month after the beginning of the taxable year.
- (c) On or before the fifteenth (15<sup>th</sup>) day of the ninth month after the beginning of the taxable year.
- (d) On or before the fifteenth (15<sup>th</sup>) day of the twelfth month after the beginning of the taxable year.

2. The declaration must be accompanied by at least one installment of the estimated tax shown due thereon.

3. In the event an amended declaration has been filed the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

## **ARTICLE VIII**

### **DUTIES AND POWERS OF THE TAX ADMINISTRATOR**

#### **A. Collection of Tax and Retention of Records:**

1. It shall be the duty of the Administrator to receive the tax imposed by the chapter in the manner prescribed therein from the taxpayers; to keep an accurate record thereof and to report daily all monies so received.

2. It shall be the duty of the Administrator to enforce payment of all taxes owing the City of Stow, to keep accurate records for a minimum of six (6) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

#### **B. Enforcement Provisions:**

1. The Administrator is charged with the administration and enforcement of the provisions of the chapter 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 chapter. The Administrator has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the chapter.

2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the chapter or these rules and regulations, should submit to the Administrator in writing all the facts involved and the ruling sought. Promulgation of a special ruling shall be at the sole discretion of the Tax Administrator. An opinion of the Tax Administrator issued under this section may not be appealed.

3. These regulations, together with all amendments and supplements hereto and all changes herein, will be on file at the office of the Administrator and will be open to public inspection.

4. The Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has proved to the Administrator that, due to certain hardship conditions, they are unable to pay the full amount of the tax due. Authorization shall not be granted until the taxpayer files proper returns for all amounts owed by him under this chapter.

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 Section 194.132 of the chapter.

6. If any taxpayer or other debtor owes multiple debts and makes any single, partial payment to the City of Stow with respect to such debts, such municipality shall apply such payment in accordance with debtor's directions. Otherwise such payments received shall first be applied to the taxpayer's oldest unpaid delinquent taxes, and then to oldest interest, and then to oldest 01 interest.

#### **C. Estimation of Tax by Administrator:**

In any case where a taxpayer or employer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may ascertain the tax due under this chapter.

#### **D. Right to Examine**

1. The Tax Administrator, or any authorized agent or employee thereof may examine the books, papers, records, and federal and state income tax returns of any employer, taxpayer, or other person that is subject to, or that the Tax Administrator believes is subject to, the provisions of this Chapter for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due under this Chapter. Upon written request by the Tax Administrator or a duly authorized agent or employee thereof, every employer, taxpayer, or other person subject to this section is required to furnish the opportunity for

the Tax Administrator, authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.

(B) The records and other documents of any taxpayer, employer, or other person that is subject to, or that the Tax Administrator believes is subject to, the provisions of this Chapter shall be open to the Tax Administrator's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the Tax Administrator, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The Tax Administrator of the Municipality may require any person, by notice served on that person, to keep such records as the Tax Administrator determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by the Municipality or for the withholding of such tax.

(C) The Tax Administrator may examine under oath any person that the Tax Administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Tax Administrator may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and federal and state income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

(D) No person issued written notice by the Tax Administrator compelling attendance at a hearing or examination or the production of books, papers, records, or federal and state income tax returns under this section shall fail to comply.

## **ARTICLE IX**

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

#### **A. Investigation by Administrator:**

1. The Administrator, or his duly authorized employee, is empowered to examine the books, papers, records and copies of Federal income tax returns of any employer, taxpayer or person subject to the chapter, for the purpose of verifying the accuracy of any return made to the City; or if no return was made, to ascertain the tax due under the chapter.
2. The Administrator's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Tax Administrator.
3. Persons required to attend any hearing 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, paper or records the witness is to make available at such hearing.
4. The Administrator, or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The Administrator may compel the production of books, papers and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transactions of the taxpayer.
5. The Administrator may order the appearance before him, or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Administrator is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
6. The notice shall be served by the Administrator or his duly authorized agent, by delivering it to the person named in the notice or by leaving the notice at his usual place of business or residence, or by mailing it to the person by certified mail, return receipt requested, addressed to his usual place of business or residence.

#### **B. Penalty for Non-Compliance.**

Refusal of any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Administrator or his duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 195.99 of the chapter.

#### **C. Confidential Nature of Examinations.**

Any information gained as a result of any returns, investigations, verifications or hearings before the Administrator required by the chapter or authorized by Ohio Revised Code Section 718 or by charter of the City of Stow shall be confidential and no disclosure thereof shall be made except for official tax purposes or as ordered by a court of competent jurisdiction or upon receipt of a waiver signed by the individual who has submitted the return. The Administrator or designee thereof may furnish copies of returns filed or otherwise received under this chapter and other related tax information to the Internal Revenue Service, the State Tax Commissioner, and Tax Administrators of other municipal corporations.

This section does not prohibit the City of Stow from publishing or disclosing statistics in a form that does not disclose information with respect to particular taxpayers.

#### **E. Retention of Records.**

Everyone required to file a return shall 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 retained for a period not less than six years from the date the final return is filed and paid or the withholding taxes are paid.

## **ARTICLE X**

### **INTEREST AND PENALTIES**

#### **A. Interest:**

Interest shall be imposed at the rate defined as the federal short-term rate, rounded to the nearest whole number percent, plus five per cent. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined. Federal short-term rate means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year. This section does not apply to returns required to be filed or payment required to be made before January 1, 2016, regardless of the filing or the payment date. Returns required to be filed or payments required to be made before January 1, 2016, but file or paid after that date shall be subject to the ordinances or rules or regulations, as adopted before January 1, 2016 of the City of Stow.

Interest shall be imposed to unpaid income tax and unpaid estimated income tax and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month. Interest applies to any balance of tax due that is not paid by the due date of the return, even if the return is filed under extension.

#### **B. Penalties:**

All taxes due from taxpayers and all moneys withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they have become due and payable shall be subject to a penalty as follows:

1. A penalty may be imposed on the unpaid income tax balance and the unpaid estimated income tax balance, equal to fifteen percent (15%) of the amount not timely paid.
2. A penalty may be imposed on the unpaid withholding tax balance equal to fifty percent (50%) of the amount not timely paid.
3. A penalty may be imposed on a municipal income tax return, other than an estimated income tax return, not filed timely, of twenty-five dollars (\$25.00) each month or any fraction, during which the return remains unfiled, regardless of the liability. The penalty shall not exceed one hundred fifty dollars (\$150.00) for each return not filed timely.

#### **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 thirty (30) days from the date the taxpayer was notified of such findings.
2. In the absence of fraud neither penalty nor interest shall be assessed on any additional taxes resulting from a Federal audit for Federal income tax purposes provided an amended return is filed and the additional tax paid within three (3) months after final determination of the Federal tax liability.

#### **D. Appellate Review.**

1. Right to appeal: An Appeal may be filed when a Taxpayer:
  - a. Disputes an Assessment issued by the Tax Administrator regarding an underpayment of municipal income tax.
  - b. Disputes a reduction in or elimination of a claim for refund, and the Tax Administrator has issued an Assessment notice.

c. Disputes any Assessment including denial of alternative apportionment issues by the Tax Administrator.

2. A Taxpayer may appeal to the Local Board of Tax Review by filing a request with the Local Board of Tax Review. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty (60) days after the receipt of the Assessment notice from the Tax Administrator. Article XIII of this document further describes the procedures and the duties of the Local Board of Tax Review.

## **ARTICLE XI**

### **COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENT**

#### **A. Unpaid Sums--A Legal Debt:**

1. All taxes imposed by the chapter and not paid when due become, together with interest and penalties thereon, a debt due the City from the taxpayer and are recoverable as are other debts by suit. Employers who are required under Section 194.04 of the chapter, to withhold and remit the taxes required to be withheld at the source, and who fail to withhold and/or remit, become liable to the City in a suit to enforce the payment of the debt created by such failure.

2. No additional tax liability determination shall be made by the Administrator after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be a six (6) year period of limitation on such additional tax liability determinations 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.

No tax liabilities of ten dollars (\$10.00) or less will be due, except in cases of taxes withheld by an employer.

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 the Administrator may make an assessment is extended to one (1) year from the time of final determination of the Federal tax liability.

4. Those officers or employees having control or supervision of, or charged with, the responsibility of filing the return and making payments for a corporation or association shall be personally liable for failure to file the return or pay the taxes due as required. The dissolution, bankruptcy, or reorganization of any employer does not discharge the officers' or employees' liability for a prior failure of such business to file a return or pay the taxes due.

#### **B. Refunds and Overpayments:**

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

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

No refund or credit will be made for amounts of ten dollars (\$10.00) or less.

3. Items included on Federal Form 2106 are eligible as deductions, subject to review and approval by the Administrator, and subject to limitations imposed by the Federal government. Only those expenses for which the IRS requires the filing of Form 2106 are deductible. The allowable deduction must be reduced by the federal two percent (2%) adjustment as reported on Federal Schedule A. Expenses for which the filing of Form 2106 is not required, are not deductible.

4. Should the return or the records of the Administrator indicate an overpayment, the overpayment shall first be applied against any existing liability and the balance, if any, at the election of the taxpayer communicated to the Administrator, shall be refunded or transferred against any subsequent liability.

Where no election has been made, overpayments of any year's taxes shall be applied as follows:

- a. To the taxes owed for any previous year in the order in which such taxes became due.
- b. To unpaid penalty and interest assessments.
- c. To his current estimated tax liability. If the taxpayer chooses to credit the current year's tax overpayment to the next tax year, and thereafter requests a refund of the credited amount, no

interest is due on the refunded amount until 90 days after the filing date of the refund request complete with all necessary attachments and documentation.

5. Refunds for days worked out of Stow are available only to non-residents, and refunds shall be computed by dividing total wages by total days worked in order to determine an average daily wage. The work year shall be considered two hundred sixty (260) days. Saturdays and Sundays shall not normally be considered workdays. Additions, deletions, or other changes to the method for calculating refunds shall be at the discretion of the Administrator.

**C. Limitations:**

1. Amounts of ten dollars (\$10.00) or less shall not be refunded or collected.

## **ARTICLE XII**

### **PROHIBITIONS; PROSECUTION**

#### **A. No person shall:**

1. Fail, neglect or refuse to make any return or declaration required by this chapter; or
2. Make any incomplete, false or fraudulent return; or
3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
4. Fail, neglect or refuse to withhold the tax from their employees or remit such withholdings to the Administrator; or
5. Refuse to permit the Administrator or any duly authorized agent or employee to examine their books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
6. Fail to appear before the Administrator and to produce their books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or
7. Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
8. Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby; or
9. Give to an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
10. Fail to use ordinary diligence in maintaining proper records of employees; residence addresses, total wages paid and the City of Stow tax withheld, or knowingly give the Administrator false information; or
11. Evade or attempt to evade in any manner the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

B. Anyone who violates any part of Chapter 194 shall be guilty of a first-degree misdemeanor and shall be subject to a fine of not more than one thousand dollars (\$1,000.00) or imprisonment for a term of up to six months, or both.

#### **C. Prosecutions.**

All prosecutions under this section or any other provision of this chapter shall be commenced within three years from the time of the offense complained of except in the case of failure to file a return or in the case of filing a false or fraudulent return, or the omission of at least twenty-five percent (25%) of the income required to be reported, in which event the limitation of time within which prosecution must be commenced shall be six years from the date the return was due or the date the false or fraudulent return was filed, or the commission of the offense, whichever is later.

#### **D. Failure to Receive Forms--Not a Defense.**

The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse them (1) from making any information return, declaration, or return, (2) from filing such form, or (3) from paying the tax.

## **ARTICLE XIII**

### **BOARD OF REVIEW**

#### **A. Local Board of Tax Review**

(1) The legislative authority of the Municipality shall maintain a Local Board of Tax Review to hear appeals as provided in Ohio Revised Code Chapter 718.

(2) The Local Board of Tax Review shall consist of three members:

(a) The three members of the Local Board of Tax Review must be domiciled in the Municipality. Two members shall be appointed by the legislative authority of the Municipality, and may not be employees, elected officials, or contractors with the Municipality at any time during their term or in the five years immediately preceding the date of appointment. One member shall be appointed by the top administrative official of the Municipality. This member may be an employee of the Municipality, but may not be the director of finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(3) The term for members of the Local Board of Tax Review appointed by the legislative authority of the Municipality shall be two years. There is no limit on the number of terms that a member may serve should the member be reappointed by the legislative authority. The board member appointed by the top administrative official of the Municipality shall serve at the discretion of the administrative official.

(4) Members of the Local Board of Tax Review appointed by the legislative authority may be removed by the legislative authority as set forth in Section 718.11(A)(4) of the Ohio Revised Code.

(5) A member of the board who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.

(6) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the board shall impair the power and authority of the remaining members to exercise all the powers of the board.

(7) If a member is temporarily unable to serve on the board due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the board in the member's place. This appointment shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

(8) No member of the Local Board of Tax Review shall receive compensation, fee, or reimbursement of expenses for service on the board.

#### **(B) Issuance of Assessment**

Whenever the Tax Administrator issues an assessment, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment, and the address to which the appeal should be directed, and to whom the appeal should be directed.

#### **(C) Appealing the Assessment**

Any person who has been issued an assessment may appeal the assessment to the Local Board of Tax Review by filing a request with the board. The request shall be in writing, shall specify the reason or reasons

why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty days after the taxpayer receives the assessment.

**(D) Hearings**

The Local Board of Tax Review shall schedule a hearing to be held within sixty days after receiving an appeal of an assessment under division (C) of this section, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Local Board of Tax Review and/or may be represented by an attorney at law, certified public accountant, or other representative. The Local Board of Tax Review may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within one hundred twenty days after the first day of the hearing unless the parties agree otherwise.

**(E) Final Determination**

The Local Board of Tax Review may affirm, reverse, or modify the Tax Administrator's assessment or any part of that assessment. The Local Board of Tax Review shall issue a final determination on the appeal within ninety days after the Local Board of Tax Review's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the Local Board of Tax Review's final determination as provided in Section 5717.011 of the Ohio Revised Code.

**(F) Rules Governing Local Board of Tax Review**

The Local Board of Tax Review created pursuant to this section shall adopt rules governing its procedures, including a schedule of related costs, and shall keep a record of its transactions. The rules governing the Local Board of Tax Review procedures shall be in writing, and may be amended as needed by the Local Board of Tax Review. Such records are not public records available for inspection under section 149.43 of the Ohio Revised Code. For this reason, any documentation, copies of returns or reports, final determinations, or working papers for each case must be maintained in a secure location under the control of the Tax Administrator. No member of the Local Board of Tax Review may remove such documentation, copies of returns or reports, final determinations, or working papers from the hearing. Hearings requested by a taxpayer before a Local Board of Tax Review created pursuant to this section are not meetings of a public body subject to section 121.22 of the Ohio Revised Code. For this reason, such hearings shall not be open to the public, and only those parties to the case may be present during the hearing.

## **ARTICLE XIV**

### **ALLOCATION OF FUNDS**

The funds collected under the provisions of the chapter shall be paid into the General Fund of the Municipality. Forty percent (40%) of the net tax collected after providing for the payment of all costs of installation, collecting, enforcing and administering the tax levied by Codified Ordinance Chapter 194 shall be transferred to the General Improvements Fund and subsequently to other funds or sub-funds, including the Street Construction Fund, to be used for existing and future capital projects and/or expansion or for debt service for existing and future capital improvements, or for equipment or other expenditures for purposes approved by City Council, but only for expenses related to capital improvements which have an estimated life or usefulness of five years or more, as defined by the Ohio Public Securities Law or as City Council may approve.

## **ARTICLE XV**

### **CREDIT ALLOWED FOR TAX PAID IN ANOTHER MUNICIPALITY**

#### **A. Limitation.**

Where a resident of the City of Stow is subject to a municipal income tax in another municipality or in a Joint Economic Development District, he shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.

#### **B. Credits to Residents.**

Every individual taxpayer who resides in the City of Stow who receives net profit, salaries, wages, commissions or other compensation, and other income from a resident or nonresident business entity or association of which he is a partner or owner, for work done or services performed or rendered outside of the city, if it is made to appear that he or such business entity has paid a municipal or a Joint Economic Development District income tax on or with respect to the same income taxable under this chapter to another municipality or to a Joint Economic Development District, shall be allowed a credit against the tax imposed by this chapter in an amount paid by him, in his behalf or by such business entity, to the other municipality or Joint Economic Development District. In no event, however, shall any municipal income tax or any Joint Economic Development District tax and allowed as a credit hereunder be deductible in computing the net profit of such taxpayer or such business entity. In addition, the credit shall not exceed the tax assessed by this chapter on income earned in such other municipality or municipalities or Joint Economic Development District(s) where the tax is paid.

#### **C. Method of Applying for Credit.**

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

#### **D. Aggregation of Net Profits and Distributive Share Gains and Losses**

Ohio Revised Code Section 718 requires that the resident municipality aggregate all net profits and distributive share gains and losses on business income for taxable years 2016 and later when determining the amount of net profit and distributive share income taxable by resident municipality. The City of Stow may allow a credit for municipal income taxes on any income taxed by the both the workplace municipality and the resident municipality. To comply with both provisions and to determine the proper amount of credit, the resident municipality must track the source of the net taxable income back to the workplace municipality. Worksheet III, and its' instructions, of the City of Stow income tax return, shall be utilized for the calculation.

1. Net Operating Loss (NOL) Offset: Losses are allocated against gains based on the same percentage that each individual income represents a total of all taxable income.
2. When determining the amount of income taxable by the resident municipality, NOL's that have been included in the resident municipality calculation of taxable income in prior years cannot be considered in calculation of taxable income for the resident municipality in the current year.

If an overall gain results from the offsetting, and losses did occur in one or more State of Ohio municipalities, the losses shall be allocated to the municipalities where net profits and distributive share income were reported and apportioned in Ohio. To determine the loss allocation:

- a) First, calculate the sum of all of the net profit and distributive share income for the municipalities where positive net profit occurred.
- b) If the taxpayer has multiple business activities in the current year within one jurisdiction, those business activity current year profits and losses must be offset to determine that jurisdiction's resultant current year taxable business net profits, if any. If the offsetting results in positive taxable income, that jurisdiction is deemed to have "taxable current year net profits". This offset calculation must be done for each jurisdiction in which the taxpayer has multiple business activities.
- c) Determine each municipality's percentage of the total positive net profits.
- d) Allocate the total reported Ohio current year apportioned losses to each municipality where positive net profit occurred using the percentage obtained in 2(c) above.
- e) If the apportioned losses exceed the gains reported, the resulting NOL shall be carried forward by the resident municipality.
- f) The resultant amount of current year taxable net profits shall be multiplied by the respective jurisdiction's tax rate, if any, to determine the amount of tax paid to that jurisdiction that may be eligible for credit from the City of Stow.
- g) The income tax credit available to residents for net profits and distributive share income for tax years 2016 and after is determined by multiplying the lower of:
  - i. The amount of tax withheld or paid to the municipality where the net profit and distributive share income was earned or apportioned;
  - ii. The amount of net profit and distributive share income actually subject to tax by the municipality in which the net profit and distributive share income was earned or apportioned multiplied by that municipality's tax rate;
  - iii. The amount of net profit and distributive share income actually subject to tax by the resident municipality multiplied by the residence municipality tax rate;
  - iv. The amount of net profit and distributive share income actually subject to tax by the resident municipality, multiplied by the workplace municipality's tax rate,by the percentage of credit allowed in this chapter.

## **ARTICLE XVI**

### **SAVINGS CLAUSE**

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

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

## **ARTICLE XVII**

### **AMENDMENTS AND SUPPLEMENTS**

From time-to-time amendments and supplements to these regulations may be issued by the Administrator, subject to the approval of the Board of Review.

The City of Stow Income Tax Board of Review has approved and adopts this revision of these Rules and Regulations:

\_\_\_\_\_  
Kara Kelly, Member

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Lynn Schrier, Member

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C. Michael Walsh, Member

\_\_\_\_\_  
David Brown, Member

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Bruce McBrian, Member