

# The City of Geneva Table of Contents

[Article 1:01 Purpose](#)

<b>DEFINITIONS</b>	<b>PAGE</b>
<a href="#">Article 2:02 Administrator</a>	5
<a href="#">Article 2:03 Association</a>	5
<a href="#">Article 2:04 Board of Review Unincorporated</a>	5
<a href="#">Article 2:05 Business</a>	5
<a href="#">Article 2:06 Business Allocation</a>	5
<a href="#">Article 2:07 Business Deductions</a>	5
<a href="#">Article 2:08 City</a>	5
<a href="#">Article 2:09 Corporation</a>	5
<a href="#">Article 2:10 Deferred Compensation</a>	6
<a href="#">Article 2:11 Dishonored Check</a>	6
<a href="#">Article 2:12 Domicile</a>	6
<a href="#">Article 2:13 Earned Income</a>	6
<a href="#">Article 2:14 Employee</a>	6
<a href="#">Article 2:15 Employee Expenses</a>	6
<a href="#">Article 2:16 Employer</a>	6
<a href="#">Article 2:17 Final Return or Complete Return</a>	7
<a href="#">Article 2:18 Fiscal Year</a>	7
<a href="#">Article 2:19 Gross Receipts</a>	7
<a href="#">Article 2:20 Independent Contractor</a>	7
<a href="#">Article 2:21 Intangible Property</a>	7
<a href="#">Article 2:22 Joint Economic Development District</a>	7
<a href="#">Article 2:23 Net Profits</a>	7
<a href="#">Article 2:24 Non-Resident</a>	7
<a href="#">Article 2:25 Non-Resident Unincorporated Business Entity</a>	7
<a href="#">Article 2:26 Ordinance</a>	7
<a href="#">Article 2:27 Partnership</a>	7
<a href="#">Article 2:28 Pensions</a>	8
<a href="#">Article 2:29 Person</a>	8
<a href="#">Article 2:30 Personal Injury</a>	8
<a href="#">Article 2:31 Place of Business</a>	8
<a href="#">Article 2:32 Rental Income</a>	8
<a href="#">Article 2:33 Resident</a>	8
<a href="#">Article 2:34 Resident Unincorporated Business Entity</a>	8
<a href="#">Article 2:35 Salaries, Wages, Commissions and Other Compensation</a>	8
<a href="#">Article 2:36 Taxable Income</a>	8
<a href="#">Article 2:37 Taxable Year</a>	9
<a href="#">Article 2:38 Taxing Municipality or Community</a>	9
<a href="#">Article 2:39 Taxpayer</a>	9
<a href="#">Article 2:40 Unincorporated Business</a>	9
<a href="#">Article 2:41 Wage Continuation Plans</a>	9
<a href="#">Article 2:42 Working Day</a>	9

## **IMPOSITION OF TAX**

Article 3:01 Resident Employee	9
Article 3:02 Non-resident Employee	10
Article 3:03 Resident Unincorporated Business	10
Article 3:04 Resident's Distributive Share of Profits of a Resident Unincorporated Business Entity, Not Attributable to the City of Geneva	11
Article 3:05 Non-resident Unincorporated Businesses	11
Article 3:06 Resident's Distributive Share of Profits of a Non-Resident Unincorporated Business Entity Not Attributable to the City of Geneva	11
Article 3:07 Corporations	11
Article 3:08 Effective Period of Tax	12
Article 3:09 Amplification	12

## **DETERMINATION OF ALLOCATION OF TAX**

Article 4:01 Separate Accounting Method	15
Article 4:02 Business Allocation Percentage Method	16
Article 4:03 Sales made in the Taxing Community	17
Article 4:04 Total Allocation	18
Article 4:05 Rentals From Real Property	18
Article 4:06 Operating Loss Carry Forward	18

## **RENTALS FROM REAL PROPERTY**

Article 5:01 Rentals from Real Property	20
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## **EXEMPTIONS**

Article 6:01 Income, Members of Armed Forces and Certain Institutions	21
Article 6:02 Payments from Governments and Certain Organizations	21
Article 6:03 Insurance and Annuity Proceeds, Certain Employee Benefits and Gifts	22
Article 6:04 Receipts of Certain Organizations and Associations	23
Article 6:05 Alimony	23
Article 6:06 Natural Persons Under Age 18	23
Article 6:07 Personal Injuries and Damage to Property	23
Article 6:08 Interest, Dividends and Other Revenue from Intangible Property	23
Article 6:09 Involuntary Conversions and Other Exemptions	23
Article 6:10 Taxation Prohibited by Federal Government	24
Article 6:11 Taxation Prohibited by the State of Ohio	24
Article 6:12 General	24

## **RETURNS**

Article 7:01 Dates and Requirements for Filing	24
Article 7:02 Information Required and Reconciliation With Federal Returns	25
Article 7:03 Extensions	26
Article 7:04 Consolidated Returns	26
Article 7:05 Allocation of Net Profits by Administrator	27
Article 7:06 Amended Returns	28

## **PAYMENT OF TAX**

<a href="#">Article 8:01</a> Payment with Annual Return	28
<a href="#">Article 8:02</a> Withholding Collection at Source	28
<a href="#">Article 8:03</a> Collection at Source -Return and Payment of Tax Withheld and Status of Employers	34
<a href="#">Article 8:04</a> Declaration of Estimated Tax (Tax on Income Not Collected at Source)	37

## **INTEREST AND PENALTIES**

<a href="#">Article 9:01</a> Interest	38
<a href="#">Article 9:02</a> Penalties	38
<a href="#">Article 9:03</a> Exceptions	38
<a href="#">Article 9:04</a> Abatement of Interest and Penalty	39
<a href="#">Article 9:05</a> Violations	39
<a href="#">Article 9:06</a> Limitations on Prosecutions	40
<a href="#">Article9:07</a> Failure to Receive Forms is no Excuse	40

## **COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS**

<a href="#">Article 10:01</a> Unpaid Taxes Recoverable As Other Debts	40
<a href="#">Article 10:02</a> Refunds of Taxes Erroneously Paid	40
<a href="#">Article 10:03</a> Limitation	41
<a href="#">Article 10:04</a> Erroneous Refund Recovery	41

## **TAXPAYER RELIEF**

<a href="#">Article 11:01</a> Residents of Taxing Communities	41
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## **DUTIES AND AUTHORITY OF THE ADMINISTRATOR**

<a href="#">Article 12:01</a> Duty To Receive Tax Imposed	42
<a href="#">Article 12:02</a> Duty to Enforce Collection	42
<a href="#">Article 12:03</a> Authority to Make and Enforce Regulations	42
<a href="#">Article 12:04</a> Authority to Arrange Installment Payments	42
<a href="#">Article 12:05</a> Authority to Determine Amount of Tax Due	42
<a href="#">Article 12:06</a> Authority to Make Investigations	43
<a href="#">Article 12:07</a> Authority to Compel Production of Records	43
<a href="#">Article 12:08</a> Refusal to Produce Records	43
<a href="#">Article 12:09</a> Confidential Nature of Information Obtained	44
<a href="#">Article 12:10</a> Taxpayer Required to Retain Records	44

## **BOARD OF REVIEW**

<a href="#">Article 13:01</a> Board of Review Established	44
<a href="#">Article 13:02</a> Duty to Approve Regulations and Hear Appeals	44
<a href="#">Article 13:03</a> Right of Appeal	44

**OTHER PROVISIONS**

<a href="#">Article 14:01</a> Declaration of Legislative Intent	45
<a href="#">Article 14:02</a> Collection of Tax after Termination of Title Ten	45
<a href="#">Article 14:03</a> Instructions for Filing a Notice of Appeal (Issued by the Board of Review)	45

## ARTICLE 1:00 PURPOSE

1:01 The first chapter of the various income tax ordinances set forth the purpose for which the tax collected will be used. They are not repeated here, other than for personal information they have no effect on these Rules and Regulations.

## ARTICLE 2:00 DEFINITIONS

2:01 As used in these Rules and Regulations the following words defined herein shall have the meaning ascribed to them herein. In all definitions contained in these regulations, the singular shall include the plural and the masculine shall include the feminine and the neuter with regard to the terms, phrases, words and their derivatives used herein.

2:02 **Administrator** means the individual designated to administer and enforce the provisions of the income tax ordinances of the The City of Geneva.

2:03 **Association** means any partnership, limited partnership, limited liability corporation and limited liability partnership, Subchapter S Corporation (hereinafter referred to as an 'S Corporation') as defined in the Federal Tax Code or any other form of unincorporated business or enterprise. The term 'association' and the term 'unincorporated business' are interchangeable terms.

2:04 **Board of Review** means the Board created by and constituted as provided for in the income tax ordinance of each of the City of Geneva.

2:05 **Business** means an enterprise, cooperative activity, profession, trade or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, proprietorship, partnership, association, corporation or any other entity, excluding, however, all non-profit corporations or non-profit associations which are exempt from the payment of Federal Income Tax due to their non-profit status. The administration of a decedent's estate by the executor or administrator and the mere custody, supervision and management of trust property under an intervivos or testamentary trust unaccompanied by the actual operation of a business, shall not be construed as the operation of a business.

Licensed professionals' earnings from the administration of a decedent's estate shall not be exempt from tax.

2:06 **Business Allocation** as used in these Rules and Regulations, means the portion of net profits to be allocated as having been made or earned in the the City of Geneva either under the separate accounting method or under the three-factor formula of property, payroll and sales, or under a substitute method, as provided for in the income tax ordinance.

2:07 **Business Deductions** are the ordinary and necessary expenses actually incurred in the operation of the business. See Article 3:09 hereof.

2:08 **City** as used herein means the City of Geneva.

2:09 **Corporation** means a corporation, joint stock company, 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. The term 'corporation' as used in these Rules and Regulations does not include S Corporations as defined by the Federal Income Tax Code or any other entity defined as an association or unincorporated business entity.

2:10 **Deferred Compensation** means income that is earned by an employee for services rendered or performed in one year but not paid to the employee until a future year. Deferred compensation is considered to be earned income and is taxable to an employee in the year of deferral.

2:11 **Dishonored Check** means any check received in payment of taxes, penalty, interest or service charge that is returned unpaid by the bank.

2:12 **Domicile** is that place where an individual has his true, fixed and permanent home, and principal establishment, and to which whenever he is absent he has the intention of returning. Actual residence is not necessarily the domicile of an individual. A person may have more than one residence but not more than one domicile.

Among other factors indicating domicile may be where the person is registered to vote, receives mail, where their automobile is registered, where their children attend school. This is not an exhaustive list of criteria to determine domicile but merely representative examples of some criteria that may be used to determine a person's domicile.

In the event of a business, the domicile is that place considered as the center of business affairs and the place where its functions are primarily discharged.

2:13 **Earned Income** is used in determining whether certain income is taxable within the effective dates of the ordinance. Unless specified elsewhere in the Rules and Regulations, earned income is earned when services giving rise to the income are performed and when there is no substantial risk of forfeiture to the right to the income. Earned income includes any elective deferrals of income made by an individual, or that may be made by the employer for or on the behalf of the individual. Earned income includes hobby income.

2:14 **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. Generally, the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished but also as to the details and means by which that result is accomplished. Any person for whom an employer is required to withhold for Federal Income Tax purposes shall, prima facie, be deemed an employee.

2:15 **Employee Expenses** when required to travel, an employee may deduct travel expenses when not reimbursed for the same by their employer to the same extent allowed for Federal Income Tax purposes unless specifically allowed or disallowed in these Rules and Regulations.

2:16 **Employer** means an individual, proprietorship, association, corporation or other entity including nonprofit associations or corporations that employs one or more persons on a salary, wage, commission or other compensation basis, whether or not such employer is engaged in business as herein before defined. The term 'employer' includes the State of Ohio, its political subdivisions and its agencies, instrumentalities, boards, bureaus, departments, and any and all other governmental units as well as other governmental subdivisions, agencies, instrumentalities, boards, bureaus, departments to the extent that any such body withholds tax on a mandatory or voluntary basis. No rights, duties or obligations are imposed with respect to any such body not otherwise authorized by law.

The term 'employer' shall be further defined to be an individual, partnership, association, corporation or any other entity which books or contracts for individuals and/or groups to

perform or entertain at their place of business or rents facilities for the purpose of providing such entertainment.

The term 'employer' does not include any person who employs only domestic help for such person's private residence.

**2:17 Final Return or Complete Return** means a return signed by the taxpayer complete with all necessary schedules and attachments and all necessary information present on the form. A final return has the same meaning as a complete return.

**2:18 Fiscal Year** means an accounting period of twelve months or less ending on any day other than December 31<sup>st</sup>. Only fiscal years accepted by the Internal Revenue Service for Federal Income Tax purposes may be used for municipal income tax purposes.

**2:19 Gross Receipts** means the gross receipts or sales as indicated on a taxpayer's Federal Income Tax return as filed with the Internal Revenue Service.

**2:20 Independent Contractor** is a person who while performing services for another, is not under the direction and/or control of such other person, as to the result to be accomplished by his work and as to the details and means by which that result is accomplished.

**2:21 Intangible Property** is defined as the following:

- a) Shares of stock in corporations, joint stock associations and joint stock companies, but does not include shares of stock in S Corporations;
- b) Interest bearing obligations, notes, corporate bonds, bonds, governmental bonds issued by Federal, State or local agencies allowed by law to issue bonds and savings accounts;
- c) Income from purchased annuities;
- d) Royalties from patents and copyrights.

For purposes of these Rules and Regulations, income from intangible property excludes any income from deferred compensation.

**2:22 Joint Economic Development District** means a District created under Ohio Revised Code Section 715.69 and 715.71 as amended from time to time.

**2:23 Net Profits** means the net gain from the conduct or operation of a trade, business, profession, enterprise, or other activity after provision for all ordinary and necessary business expenses deducted by the taxpayer for Federal Income Tax purposes, except as otherwise indicated in these Rules and Regulations, and without deduction for taxes imposed by the income tax ordinance, Federal, State and/or other taxes based on income; and in the case of an association, without deduction of salaries and payments to partners and other owners.

**2:24 Non-Resident** means an individual, a general or limited partnership, association or other business entity domiciled outside of the boundaries of the City of Geneva.

**2:25 Non-Resident Unincorporated Business Entity** means an unincorporated business entity not having an office or place of business within the boundaries of the City of Geneva.

**2:26 Ordinance** means the Ordinance enacted by the Council of the City of Geneva, and any amendments and/or supplements thereto effective and continuing until repealed.

**2:27 Partnership** means a general or limited partnership, or a limited liability company partnership, or any other entity treated as a partnership for Federal Income Tax purposes.

2:28 **Pensions** means distributions from retirement plans as reported on Federal Form 1099R, or its equivalent or successor form, in the year paid, and which are designed to provide primarily for the retirement income of employees.

Pension distributions are not taxable; contributions to pension plans, retirement plans, deferred compensation plans, as well as any other type of deferred compensation arrangement or income deferral arrangement or plan, are taxable in the year the income is earned and deferred.

2:29 **Person** means every natural person, partnership, fiduciary, association, corporation, S Corporation or other entity. Whenever the term 'person' is used in any clause prescribing or imposing a penalty, the term as applied to an unincorporated entity shall mean the partners, members, or owners thereof, and as applied to a corporation, the officers thereof.

2:30 **Personal Injury** means (1) the underlying cause of action giving rise to the recovery was based upon tort or tort-type rights; and (2) the compensatory damages received on account of personal injuries or sickness. Punitive damages are taxable.

2:31 **Place of Business** means any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance. A taxpayer does not have a place of business outside of the City of Geneva solely by consigning goods to an independent factor for sale outside of said community.

2:32 **Rental Income** means payments received from the use or occupancy of property. Rental income includes, but is not limited to, lease cancellation payments, advance rent, interest, expenses paid by a tenant in lieu of rent, and property or services provided in lieu of rent. The value of the property or services paid in lieu of rent should be reported as rental income. All ordinary and necessary expenses, i.e., depreciation, property taxes, and repairs are deductible from rental income.

2:33 **Resident** means an individual, partnership, association or other business entity domiciled in the City of Geneva.

2:34 **Resident Unincorporated Business Entity** means an unincorporated business entity having an office or place of business within the City of Geneva.

2:35 **Salaries, Wages, Commissions** and other **Compensation** shall include salaries, wages, commissions, bonuses, incentive payments, fees and tips or other earned income, including distributive share income from an unincorporated business entity or association, that may accrue or be received by an individual, whether directly or through an agent and whether in cash or in property for services rendered.

2:36 **Taxable Income** means earned income in the form of compensation, to include wages, salaries, and other compensation, bonuses, incentive payments, fees, tips, commissions, or other income that may accrue to or be received by an individual, whether directly or through an agent and whether in cash or in property for services rendered.

Taxable income includes a resident individual's distributive share income from an association against which the individual's community of residence has not already levied a tax.

Taxable income includes other income that may accrue or be received by an individual resident, whether directly or through an agent and whether received or paid in cash or in property.

Taxable income also means the 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 of the City of Geneva and these Rules and Regulations.

2:37 **Taxable Year** means the calendar year or the fiscal year used as the basis on which net profits or other taxable income are to be computed under the ordinance, and in the case of a return for a fractional part of a year, the period for which such return is required to be made.

2:38 **Taxing Municipality** means any municipal corporation or joint economic development district levying a municipal income tax on salaries, wages, commissions and other compensation, and other income earned by individuals, and on the net profits earned from the operation of business, profession or other activity.

2:39 **Taxpayer** means a person, whether an individual, partnership, association, trust, or any other entity, required by the ordinance to file a return of earnings or of net profits.

2:40 **Unincorporated Businesses** mean all businesses not specifically incorporated as a C corporation for Internal Revenue Service purposes. All unincorporated businesses are taxable as partnerships for municipal tax purposes. S Corporations are defined as unincorporated businesses under these Rules and Regulations.

2:41 **Wage Continuation Plans** include all types of plans in displacement and/or termination of employees, regardless of whether voluntarily chosen by the employee or revocable by the employer, or whether amounts are paid by installments or in a lump sum. These plans are taxable to the community where the taxpayer worked.

2:42 **Working Day** means a day for which an employee receives compensation whether the services are performed or not performed.

## ARTICLE 3:00 IMPOSITION OF TAX

### 3:01 Resident Employee

(A) In the case of residents of the City of Geneva, an annual tax at the rate specified in the ordinance is imposed on all salaries, wages, commissions, other income, and other compensation earned and received, earned and accrued, or earned and deferred during the effective period of the Ordinance.

For the purpose of determining the tax on earnings of resident taxpayers under the rate and income taxable section of the ordinance, the source of earnings 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.

(B) The following are items subject to the tax imposed by the rate and income taxable section of the City of Geneva ordinance.

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

(a) An officer, director or employee of a corporation (including charitable and other non-profit organizations), joint stock associations, or joint stock company, or any other type of entity;

- (b) An employee (as distinguished from a partner, member or owner) of a partnership, limited partnership, S Corporation, Limited Liability Partnership and Limited Liability Corporation or any form of unincorporated enterprise;
  - (c) An employee (as distinguished from a proprietor) of a business, trade, or profession conducted by an individual owner;
  - (d) An officer or employee (whether elected, appointed or commissioned) of the United States Government or of a corporation created and owned or controlled by the United States Government, or any of its agencies; or of the State of Ohio or any of its political subdivisions or agencies thereof; or any foreign country or dependency except as provided in the section of the ordinance indicating sources of income not taxable.
  - (e) An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, annual, unit of production or piecework rates; and whether paid by an individual, partnership, association, corporation (including charitable and other non-profit corporations and associations), governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision, section or unit or any other entity.
- (2) Commissions earned by a taxpayer whether directly or through an agent and whether in cash or in property for services rendered during the effective period of the ordinance, regardless how computed or by whom or wheresoever paid.
- (a) if the 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 (or has directly offsetting business expenses) on his Federal Income Tax return.
  - (c) If commissions are included in the net earnings of the trade, business, profession, enterprise, or activity, carried on by an unincorporated entity of which the individual receiving such commission is owner or part owner and therefore subject to the tax on the net profits provision of the ordinance, they shall not be taxed under the provisions relating to salaries, wages, or commissions earned.
- (3) Fees, unless such fees are properly included as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity owned or partly owned by said individual. Examples of fees which are taxable are those fees received by a director or officer of a corporation.
- (4) Other compensation and other income shall include but are not limited to:
- (a) Tips received by waiters, waitresses and others;
  - (b) Bonuses;
  - (c) Gifts and gratuities in connection with employment;
  - (d) Compensation paid to domestic servants, casual employees and other types of employees;
  - (e) Benefits resulting from employers assuming a tax;

- (f) Fellowships, grants, or stipends paid to a graduate student in the full amount except that any amount allocated in writing for tuition, books and laboratory fees shall be excluded;
  - (g) Dismissal pay which is demandable as a matter of right by virtue of the contract of employment;
  - (h) Incentive payments;
  - (i) Contributions by employees and/or employers on behalf of employees to retirement plans are not deductible by such employee. If such contributions are deducted by an employer from the earnings of an employee, such amounts are subject to withholding tax;
  - (j) If an employer pays into a retirement or deferred compensation plan on behalf of an employee in lieu of paying said amount as wages, said payments are considered additional compensation to the employee and are subject to withholding tax.
  - (k) Contributions by employers to a pension, annuity, retirement or deferred compensation plan, including simplified pension plans and similar plans, are deemed to be other compensation subject to withholding;
  - (l) Income received on account of covenants not to compete;
  - (m) Severance pay;
  - (n) Jury fees, if not paid over to a taxpayer's employer;
  - (o) Contributions made by or on behalf of employees to cafeteria plans and profit sharing plans;
  - (p) Income deemed taxable per Federal Code Section 89 or it's substantial equivalent;
  - (r) Ordinary gains reported on Federal Form 4797 or its substantial equivalent;
  - (s) Punitive damages on account of personal injury;
  - (t) Hobby income
- (5) Vacation, sickness, or any other types of payments made under a wage or salary continuation plan including 'sub pay' received from a union or other third party in lieu of wages during periods of absence from work are taxable when paid. Payments made by an employer to an employee during periods of absence from work are taxable when paid and at the tax rate in effect at the time of payment. Sick leave or sick pay, disability pay, vacation pay, terminal pay, supplemental unemployment pay, and severance pay may not be excluded from taxable income.
- Payments made to an employee under a wage continuation plan, either directly or by an insurance company or another third party may not be excluded from taxable income. Such payments are attributable to the city of employment.
- (6) Where compensation is paid or received in property, its fair market value at the time of receipt shall be subject to the tax and to withholding. Board, lodging and similar compensation shall be included in earnings at fair market value.
- (7) Group term life insurance protection not paid by the employee or if the coverage paid by the employer exceeds \$50,000.00.
- (8) Stock options given as compensation. When exercised, regardless of the treatment by the Internal Revenue Service, the employer is required to withhold on the difference between the fair market value and the amount paid by the employee.

Employers must withhold municipal income tax on the exercise of stock options (qualified or nonqualified) if the employee acquired the option as compensation or in lieu of wages.

- (9) Losses from the operation of a business or profession are not deductible from employee earnings. Rental and business losses may not be used to offset wage income.
- (10) 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 taxable compensation.
- (11) Intrastate, over-the-road drivers and others with similar situations reporting to a terminal, office, etc. in the City of Geneva must have a minimum of 25% of wages withheld and allocated to the city where their terminal, office, etc. is located.

### **3:02 Non-Resident Employee**

(A) In the case of individuals who are not residents of the City of Geneva there is imposed under the ordinance, a tax on all salaries, wages, commissions and other compensation earned and received, earned and accrued, or earned and deferred on and after the effective date of the ordinance for work done or services rendered or performed within said the City of Geneva whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial.

(B) The items subject to tax under the rate and income taxable section of the ordinance are the same as those listed and defined in Article 3:01(B) hereof. For the methods of computing the extent of such work or services performed within the City of Geneva, in cases involving compensation for personal services partly within and partly without said taxing community, See Article 8:02 hereof.

### **3:03 Resident Unincorporated Business**

(A) In the case of resident unincorporated businesses, professions, enterprises, undertakings or other activities conducted, operated, engaged in, prosecuted or carried on, irrespective of whether such taxpayer has an office or place of business in the City of Geneva, there is imposed an annual tax on the net profits earned during the effective period of the ordinance attributable to the City of Geneva determined by the separate accounting method or formula provided for in thru ordinance, derived from sales made, work done or services performed or rendered and business or other activities conducted in the City of Geneva.

(B) The tax imposed on resident associations or other unincorporated entities 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 3:04 hereof.)

(C) The tax imposed by the income tax ordinance is imposed on all City of Geneva unincorporated entities having net profits attributable to the City of Geneva under the method of allocation provided for in the ordinance, regardless of where the owner or owners of such resident unincorporated business entity reside.

(D) Resident unincorporated entities owned by one or more persons all of whom are residents of the City of Geneva and having all income allocable to said the City of Geneva or having any income allocable to other municipalities not levying a similar tax, shall disregard the method of allocation provided for in the ordinance and pay to the resident community, the tax on the entire net profits thereof. Payment of the tax by the entity on the entire net profits thereof shall constitute

payment of all the tax due from the owners or members thereof on their distributive shares of the entity net profits.

### **3:04 Resident's Distributive Share of Profits of a Resident Unincorporated Business Entity, Not Attributable to the City of Geneva**

In the case of a resident individual who is a member, partner, shareholder owner or part owner of a resident unincorporated entity, there is imposed an annual tax on such individual's distributive share of net profits earned during the effective period of the tax ordinance not attributable to the resident community under the method of allocation provided for in the tax ordinance, and not taxed against the entity. Provided, however, if any portion thereof is allocable to another taxing community, credit for tax due or paid to such other taxing community shall be claimed in accordance with the City of Geneva ordinance.

### **3:05 Non-Resident Unincorporated Businesses**

(A) In the case of non-resident unincorporated businesses, professions, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax on the net profits earned during the effective period of the ordinance attributable to business in the City of Geneva under the formula or separate accounting method provided for in the ordinance.

(B) The tax imposed on non-resident unincorporated entities is upon the entities rather than the individual members or owners thereof, irrespective of where the members or owners reside (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article 3:06 hereof).

### **3:06 Resident's Distributive Share of Profits of a Non-Resident Unincorporated Business Entity Not Attributable to the City of Geneva (See Article 11:00 for credits)**

In the case of a resident individual who is a member, partner, owner or part owner of a non-resident unincorporated entity, there is imposed an annual tax on such individual's distributive share of net profits earned during the effective period of the tax ordinance not attributable to the owner's resident community under the method of allocation provided for in the ordinance. Provided, however, that such resident shall be entitled to credit for tax paid to another taxing municipality in accordance with the City of Geneva ordinance.

### **3:07 Corporations**

(A) In the case of C Corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the City of Geneva, there is imposed an annual tax on the net profits earned during the effective period of the ordinance attributable to said taxing community under the formula or separate accounting method provided for in the ordinance.

(B) In determining whether a C Corporation is conducting a business or other activity in a taxing community, the provisions of Article 4:00 of these regulations shall be applicable.

(C) C Corporations which are required by the provisions of Section 5727.38 to 5727.41 of the Ohio Revised Code to pay an excise tax in any taxable year as defined by the ordinance, may exclude that part of their gross receipts upon which the excise tax is paid from their net profits for that taxable year. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to the tax imposed by the ordinance.

### **3:08 Effective Period of Tax**

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

(B) The tax imposed the ordinance, with respect to net profits of trade, businesses, professions, enterprises, undertakings and other activities is on the net profits earned during the effective period of the ordinance.

### **3:09 Amplification**

In amplifications of the definition contained in Article 2:00 of these regulations but not in limitation thereof, the following additional information respecting net business profits is furnished.

#### **(A) Net Profits**

1. Net profits as used in the ordinance 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.
2. Net profits as disclosed in any return filed pursuant to the provisions of the ordinance shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service (provided such method does not conflict with any provisions of the ordinance).
3. Income from patents and copyrights is not to be included in net profits subject to the tax.

#### **(B) Expenses**

1. All ordinary and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed but no deduction may be claimed for salary, payment, or withdrawal of a proprietor or of the partners, members, or other owners of an unincorporated business or enterprise, when such salaries, payments or withdrawals are not required to be reported as wages for Federal Income Tax purposes on Federal Form W-2.
  - (a) If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated by insurance or otherwise, of property used in the trade or business, but the amount may not exceed that recognized for Federal Income Tax purposes. Provided, however, that loss on the sale, exchange or other disposition of depreciable property or real estate, used in the taxpayer's business shall not be allowed as a deductible expense.
  - (b) Current amortization of emergency facilities under the provision of the Internal Revenue Code, if recognized as such for Federal Income Tax purposes, may be included as a deduction expense there under.

(c) 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.

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

(e) Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax, then taxes on and other expenses of said property are not deductible. The following taxes are not deductible from income:

- (1) the tax under the ordinance;
- (2) Federal, State or other taxes based upon income;
- (3) gift, estate or inheritance taxes; and
- (4) taxes or assessments for direct benefits or improvements to property that tend to appreciate the value thereof.

(f) In general, non-taxable income and expenses incurred in connection therewith are not to be considered in determining net profits.

(g) If the taxpayer reports income that is non-taxable under the ordinance and such amounts are deducted in order to reconcile the tax return for the City of Geneva with the taxpayer's Federal Income Tax return, expenses attributable to this non-taxable income shall not be allowed. In the absence of records showing the actual expenses attributable to such non-taxable income, and upon approval of the Administrator, such amount shall be deemed to equal five percent of such non-taxable income.

(h) Corporate contributions not to exceed five percent of the taxable income before the deduction is made to qualified charitable organizations recognized as such by the Internal Revenue Service will be permitted as a business expense.

(i) Capital gains and losses from sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned. Any amount received on a sale or other disposition of tangible personal property and/or real property used in business, in excess of book value, shall be treated as taxable income under the ordinance to the extent of depreciation allowable under the ordinance. The balance shall be treated as capital gain. Gains or losses from involuntary conversion shall not be taken into consideration in arriving at net profits.

#### **ARTICLE 4:00 DETERMINATION OF ALLOCATION OF TAX**

A request to change the method of allocation must be made in writing and submitted to the Administrator before the end of the taxable year.

##### **4:01 Separate Accounting Method**

A. The net profits allocable to a taxing community from business, professional, or other activities conducted in said taxing community by corporations or unincorporated entities (whether resident or non-resident) shall be determined from the records of the

taxpayer if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within the City of Geneva.

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 Administrator to determine whether the net profits attributable to his taxing community are apportioned with reasonable accuracy.

C. In determining the income allocable to a taxing community 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 said taxing community.

#### 4:02 **Business Allocation Percentage Method**

##### A. **Step 1:**

Ascertain the percentage which the average net book value (the total cost of an asset less accumulated depreciation, as reported by the entity for Federal Income Tax purposes) of real and tangible personal property, including leasehold improvements, owned or used in the business and situated the City of Geneva is of the average net book value of real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return. Average net book value of property may be computed on a monthly, quarterly, semi-annual, or annual basis, provided such method is consistently followed each year.

1. The percentage of the taxpayer's real and tangible personal property within the City of Geneva is determined by dividing the average net book value of such property within the taxing community (without deduction of any encumbrances) by the average net book value of all such property within and without the City of Geneva. 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 as deducted for Federal Income Tax purposes by eight.

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

(1) Any amount paid 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 paid 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, other income and other compensation of employees within the City of Geneva is of the total wages, salaries, commissions, other income and other compensation of all the taxpayer's employees within and without the City of Geneva 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, other income, and other compensation shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire taxable income or loss of the taxpayer.
- (3) In the case of an employee who performs services both within and without the City of Geneva, the amount treated as compensation for services performed within the taxing community shall be deemed to be:
  - (a) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the City of Geneva.
  - (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 of Geneva 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 for time worked within the City of Geneva to his total working time.

### **C. Step 3**

Ascertain the percentage which gross receipts or sales of the taxpayer derived from sales made and services rendered in the City of Geneva is of the total gross receipts or sales wherever derived during the period covered by the return, (i.e. line 1 of the entity's Federal Tax Return as filed). Income not taxable and deducted on Schedule X is not to be included in Schedule Y.

#### **4:03 Sales Made in the Taxing Community**

- A. All sales made through retail stores located within the taxing community to purchasers within or without the City of Geneva except such of said sales to purchasers outside of the City of Geneva that are directly attributable to regular solicitations made outside the City of Geneva personally by the taxpayer's employees.
- B. All sales of tangible personal property delivered to purchasers within the City of Geneva community if shipped or delivered from an office, store, warehouse, factory, or from any other place of business or place of storage located within the City of Geneva.
- C. All sales of tangible personal property delivered to purchasers within the City of Geneva even though transported from a point outside of the City of Geneva if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Geneva 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 from any other place of business or place of storage within the City of Geneva to purchasers outside of the City of Geneva 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 sales.

F. In the application of the foregoing subparagraphs a carrier shall be considered the agent of the seller regardless of the freight on board point or other conditions of the sale; and the place at which orders are accepted or contracts legally consummated shall be immaterial.

All solicitation of customers outside of the City of Geneva by mail, telephone, fax, electronic mail or other electronic media from an office or place of business within the City of Geneva shall be considered a solicitation of sales within the City of Geneva

#### **4:04 Total Allocation**

##### **A. Step 4:**

Add the percentage determined in accordance with Steps 1, 2 and 3 in Articles 4:02 and 4:03 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, however, if one of the factors, (property, receipts or payroll) is missing, the other two percentages are added and the sum is divided by two, and if two of the factors are missing the remaining percentage is the business allocation percentage.

##### **B. Step 5:**

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

##### **C. Substitute Method**

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

(b) Application to the Board of Review to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing not less than sixty days before the end of the taxable year and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. A copy thereof shall be served at the time of filing upon the taxpayer or Administrator as the case may be. No specific form need be followed in making such application.

Once a taxpayer has filed under a substitute method, he must continue to file until given permission to change. In the event a substitute method of allocation is authorized, a statement should be attached to each annual return indicating that the allocation is in conformity with the ruling and setting forth the date of the filing.

#### **4:05 Rentals From Real Property—See Article 5:00**

#### **4:06 Operating Loss Carry Forward**

A. The portion of loss based on income taxable under the ordinance, sustained in any taxable year subsequent to the effective date of the income tax ordinance, and allocable to the City of Geneva may be applied against the portion of the profit of succeeding year(s) allocable to the City of Geneva until exhausted,

but in no event for more than five years. No portion of a net operating loss shall be carried back against net profits of prior years.

The loss may continue to be carried forward in subsequent years only when in each year following that in which the loss occurred the taxpayer has offset the profits of such years up to the entire amount of such profit by the amount of carry forward loss needed to offset such profit. Any amount of carry forward loss not so used is lost for subsequent years.

When succeeding losses are experienced, the first year loss can be carried forward for five years, and the second, third, etc. need not be claimed until the first year loss has been used up. However, even in such cases the five-year limitation is followed.

B. In the event net profits are allocated both within and without the City of Geneva, the portion of net operating loss sustained shall be allocated to the City of Geneva in the same manner as provided therein for allocating net profits to the City of Geneva. The portion of a net operating loss to be carried forward shall be determined in the year the net operating loss is sustained, on the basis of the allocation factors applicable to that year.

C. In the case of fiscal years beginning prior to the effective date of the ordinance, the net operating loss deduction will be that portion of the operating loss that the number of months of the fiscal year after the effective date of the ordinance bears to the total number of months in such fiscal year.

1. A short fiscal year (fiscal year of less than twelve 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 the City of Geneva for less than his full accounting period, shall be considered as a full taxable fiscal year.

D. In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:

1. Each year in which the net operating loss was sustained.
2. Method of accounting and allocation used to determine portion of net operating loss allocable to the taxing community.
3. Amount of net operating loss used as a deduction in prior years.
4. Amount of net operating loss claimed as a deduction in the current year.

E. The five year loss carry forward will not be allowed unless all Net Profit tax returns for the business have been timely filed.

Individuals with Federal Schedule C income, and/or Federal Schedule K-1 income, and/or Federal Schedule E rental income must also timely file all municipal income tax returns prior to taking a loss carry forward. Any loss carry forward will be disallowed if all municipal income tax returns were not timely filed.

F. Loss from one taxing community may never be used to offset a gain in another community.

Partnership and S Corporation distributive share losses are not deductible from an individual's rental or sole proprietorship income.

G. The net operating loss of a business which loses its identity through merger, consolidation, etc., shall be allowed as a carry forward loss deduction to the surviving business entity to the extent permitted by the Internal Revenue Code.

H. In the case of a net operating loss in the filing of consolidated returns, see Article 7:04 hereof.

## **ARTICLE 5:00 RENTALS FROM REAL PROPERTY**

### **5:01 Rentals from Real Property**

A. Rentals received by the taxpayer are to be included in the computation of net profits from business activities only if and to the extent that the rental, ownership, management or operation of the real estate from such rentals are derived (whether so rented, managed or operated by the taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

B. Where the gross monthly rental of any real properties, regardless of number and value aggregate in excess of \$100.00 per month in any one month of a taxable year, it shall be prima facie evidence that the rental, ownership, management or operation of such rental properties shall be subject to tax; provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$100.00 per month; provided, further, that in the case of farm property, the owner shall be considered engaged in a business activity when his shares in crops or net income exceed \$100.00 per month; and provided, further that the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds \$100.00 per month.

1. The test of whether rental income constitutes a business activity is determined by the gross rent yielded by the property or properties without regard to the number of registered owners of property. The tax is then imposed against the business entity and not the separate owners (e.g., when husband and wife own properties, under no formal agreement, which yields in excess of \$100.00 in any month of the taxable year, one tax return must be filed that includes the tax liability for all of the properties so owned).

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

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

E. Real property, as the term is used in this regulation, shall include commercial property, residential property, farm property, oil and gas wells, easements, licenses, concession agreements, and any and all other types of real estate.

F. In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as allowed by the Internal Revenue Service for Federal Income Tax purposes. Passive losses as defined by Internal Revenue Service Code are not deductible in this determination.

G. Owners of rental property who are non-residents of the City of Geneva, whether individuals or business entities, are subject to tax only on the income from real property located in the City of Geneva and, in determining whether gross monthly rentals exceed the City of Geneva \$100.00 limit shall take into consideration only the

income from such properties located within the City of Geneva.

H. Owners of rental property who are residents of the City of Geneva are subject to tax on the net income from rentals (to the extent above specified), regardless of the location of the real property owned excepting that, if any such property is located in and subject to a municipal income tax by another taxing municipality credit shall be claimed for tax due or paid such other taxing municipality as provided in the ordinance.

I. Owners of rental property who are residents of the City of Geneva may offset net losses against net profits from all rental property located within said taxing community and any other municipality which does not levy a similar tax. Net profits and losses from one taxing community property and/or property in a non-taxing municipality may not be combined with net profits and losses in other municipalities levying a similar tax.

J. Owners of rental property who are not residents of the City of Geneva that the property is located in may offset net losses against net profits only between rental properties located in the City of Geneva.

K. Associations and corporations and any other form of business entity engaged in the business of owning or managing real estate are taxable only on the portion of income derived from property located in the City of Geneva.

L. Any person receiving rental income from any property, irrespective of the rental amount limitation, (see rental schedule) must file a return whether or not there is any tax due.

## **ARTICLE 6:00 EXEMPTIONS**

### **6:01 Income, Members of Armed Forces and Certain Institutions**

A. All active duty pay and allowances of any member of the Armed Forces of the United States, including the Ohio National Guard, for active duty as defined by Federal law is exempt from the tax imposed by the ordinance. This exemption includes not only the military pay and allowances received by the members themselves, but also military pay and allowances, such as dependency allowances, received by another person by reason of the member's service. Any bonus or additional compensation paid to a person by the United States, State of Ohio, or any other state for active duty in the Army, Navy, or Air Force, shall also be exempt from tax. Income received on account of inactive duty is taxable.

B. The income of religious, fraternal, charitable, scientific, literary or educational institutions is exempt from the tax imposed by the ordinance to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities. The income and profits of organizations exempt from Federal Income Tax under Section 501(a) of the Internal Revenue Code shall be exempt from taxation under the ordinance.

C. Income received by the Federal government, its agencies, the State or its agencies or political subdivisions shall be exempt from taxation under the ordinance.

### **6:02 Payments From Governments and Certain Organizations**

A. Poor Relief, unemployment insurance benefits, old age pensions or similar payments, including permanent disability benefits, received from local, state, or federal governments

or charitable, religious or educational organizations are exempt from the tax imposed by the ordinance. The exempted benefits include all types of payments and allowances made or given by such governments or organizations for the relief or correction of poverty, unemployment, delinquency, problems of health or advanced age, lack of education and similar problems. The exempted benefits include, for example, aid to dependent children and the aged; rent, food and clothing allowances or subsidies; job training allowances; Social Security and Medicare benefits; and workmen compensation benefits.

B. Salaries and wages not considered received by the individual member but by the religious order or organization under a vow of poverty are exempt from the tax imposed by the ordinance. Housing allowances for clergy to the extent that the allowance is used to provide for a home are exempt from the tax imposed by the ordinance.

**6:03 Insurance and Annuity Proceeds, Certain Employee Benefits and Gifts.**

A. The following additional items are specifically exempted from the tax imposed by this ordinance:

- (1) Proceeds of insurance paid by reason of the death of the insured;
- (2) Distributions from pension plans reported to the payee on Federal Form 1099-R or substantive equivalent;
- (3) Death benefits made to the beneficiary of an employee; disability benefits (not under a wage continuation plan), the proceeds of health and accident insurance and similar benefits received by a retired employee (or to the beneficiary of an employee) after the employee has reached the employer's minimum retirement age, and that are reported on Federal Form 1099-R or its substantive equivalent;
- (4) Annuities not in the nature of compensation for services rendered;
- (5) Inheritance, bequest of cash or property received under a will or under the Statute of Descent and Distribution;
- (6) Scholarships and student grants-in-aid, but not fellowships described in Article 3:01
- (7) Compensation not exceeding \$1,000.00 annually for serving as a precinct election official;
- (8) Compensation paid to an employee of a transit authority, regional transit authority or regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation;
- (9) Religious offerings, which are goodwill offerings made by individuals for performance of religious ceremonies such as baptisms, weddings, funerals, etc. received by clergy are considered unearned income and are not taxable;
- 10) Gifts not in connection with services rendered or work performed are exempt.

**B. The following items are not exempt from the tax imposed by the ordinance.**

(1) Benefits under a wage continuation plan;

(2) Deferred compensation of any kind, whether deferred under a retirement plan or under any other type of compensation arrangement or contract, including any qualified or nonqualified deferrals made by an employer or the employee or both;

(3) Supplemental unemployment benefits;

(4) Payments for longevity;

(5) Severance pay;

(6) Disability benefits paid prior to the employee attaining the employer's minimum retirement age (considered sick pay and not exempt);

(7) Contributions to S.T.R.S and P.E.R.S. made on behalf of a public employee by a public employer ('picked up on behalf of an employee') are not excludable from gross income and are subject to withholding requirements.

#### **6:04 Receipts of Certain Organization and Associations**

Receipts from seasonal or casual entertainment, amusement, sports events and health and welfare activities, when any such are conducted by governmental, charitable, religious or educational organizations or associations (and receipts are payable to the organization or association) are exempt from the tax imposed by the ordinance. This exemption refers only to the receipts of the organization payable to the organization and not to the compensation of employees. (Promoters see Article 8.02, Entertainers)

#### **6:05 Alimony**

Alimony received is exempt from the tax imposed by the ordinance. Support payments made by one spouse for the benefit of the other spouse or children in connection with any divorce or separation, whether or not awarded by the court, shall be deemed alimony for purposes of this exemption.

#### **6:06 Natural Persons Under Age 18**

Personal earnings of any natural person under 18 years of age are exempt from the tax.

#### **6:07 Personal Injuries and Damage to Property**

Compensatory damages from personal injuries or for damages to property by way of insurance or otherwise are exempt from the tax imposed by the ordinance. Punitive damages are not exempt from taxation.

#### **6:08 Interest, Dividends and Other Revenue From Intangible Property**

Income from intangibles by way of dividends, interest and such other intangible income subject to taxation under the intangible personal property laws of the State of Ohio or specifically exempt from municipal taxation under said law are exempt from the tax.

Distributive share income from S Corporations is treated the same as income from a partnership and is not considered intangible income and is not exempt from taxation.

#### **6:09 Involuntary Conversion and Other Exemptions**

Gains from involuntary conversion, cancellation of indebtedness to the extent exempt from Federal Income Tax, interest on Federal obligations, items of income already taxed by the State of Ohio which the taxing community is specifically prohibited from taxing,

and income of a decedent's estate during the period of administration (except income from the operation of a business) are exempt from the tax imposed by the ordinance.

#### **6:10 Taxation Prohibited by the Federal Government**

Salaries, wages, commissions, other compensation, other income and net profits, the taxation of which is prohibited by the United States Constitution or any Act of Congress limiting the power of the States or their political subdivisions to impose net income tax on income derived from interstate commerce, are exempt from the tax imposed by the ordinance.

#### **6:11 Taxation Prohibited by the State of Ohio**

Salaries, wages, commissions and other compensation, other income and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of a municipality to impose net income taxes, are exempt from the tax imposed by the ordinance.

#### **6:12 General**

No person or item of income shall be exempt from the imposition of this income tax unless specifically excluded or exempted by the laws of the State of Ohio or this ordinance. Upon request of the Administrator, any person who claims exemption from tax under the ordinance shall provide detailed information to show the basis of such claim. The information shall be furnished on a form supplied by the Administrator and be returned within thirty days after receipt of the request.

### **ARTICLE 7:00 RETURNS**

#### **7:01 Dates and Requirements For Filing**

A. On or before April 30<sup>th</sup> of the year following the effective date of the ordinance and on or before April 30<sup>th</sup> of each year thereafter, every person subject to the rate and income taxable provisions of the ordinance shall, except as herein provided, make and file with the Administrator, a return on a form prescribed by and obtainable upon request from the Administrator, whether or not a tax is due.

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

C. Every person subject to the provisions of the rate and income taxable section of the ordinance shall, except as herein provided, file a return setting forth the aggregate amount of salaries, wages, commissions and other income, net profits from business or other activities, including the rental from use of real and tangible personal property, and other income taxable under the ordinance, for the period covered by the return and such other pertinent facts and information in detail as the Administrator may require.

D. Where a non resident of the City of Geneva's entire taxable earnings for the tax period are from an employer or employers, and the current rate of tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire

taxable earnings of such employee, and where the employer or employers of such employee filed a report or return in which such employee's entire taxable earnings were reported to the Administrator and the tax so withheld paid to the Administrator, and where such employee has no taxable income other than such earnings; such employee need not file a return with the City of Geneva.

E. An individual taxpayer who is permitted for Federal Income Tax purposes to deduct certain business expenses from gross wages, salaries, or commissions, may file a copy of Federal Income Tax Form 2106 or its equivalent form, or an itemized statement of expenses with the municipal income tax return, claiming only deductions allowable to the same extent allowed as deductions for Federal Income Tax purposes, no matter whether all or part of such wages, salaries, or commissions are subject to withholding.

F. City income tax withheld on moving expenses reimbursed by the employer for transport, storage, travel or lodging expenses and so indicated on Federal Form W-2, Federal Form 3903 or its equivalent form, are taken into consideration when refunds are requested.

G. Except as otherwise provided, a return must be filed by all residents of the City of Geneva, eighteen years of age or older.

H. Any taxpayer having income, wages or other compensation, or other income for which a return must be filed, and also having net profits from a business, may report the wage income, other compensation, other income and business operation income on the same return. However, business losses cannot be offset against wage or other non-business income. Business losses may be carried forward in accordance with the provisions of the ordinance.

I. Except as otherwise provided, the tax is imposed on the unincorporated business, partnership, or association as an entity, whether resident or non-resident, and a return is required disclosing the net profits allocable to the City of Geneva and tax paid thereon. However, any resident the City of Geneva who is owner or partner of an unincorporated business is required to file a return and pay the tax thereon to the City of Geneva after taking credit for taxes paid on the same income to the other taxing community as provided in the ordinance.

J. Trustees of a trust and executors and administrators of estates having taxable income are required to file a return and pay the tax thereon.

K. Un-reimbursed moving expenses reported on Internal Revenue Service Form 3903 or its equivalent are deductible to the extent allowed under Federal guidelines. Form 2106 business expenses are deductible as to the extent allowed under Federal guidelines.

#### **7:02 Information Required and Reconciliation With Federal Returns.**

A. In returns filed hereunder, there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation subject to the tax earned from each employer, other income, taxable net profits and other pertinent information as the Administrator may require.

B. Where figures of total income, total deductions, and net profits are included as shown by a Federal return, then any items of income that are not subject to municipal income tax and any unallowable expenses shall be eliminated in determining net income subject to municipal tax. The fact that a taxpayer is not required to file a Federal tax

return does not relieve him from filing a municipal income tax return provided he has income as defined in the rate and income taxable provisions of the ordinance.

C. If a change in Federal income tax liability, as finally determined by the Internal Revenue Service, or by a judicial decision, results in an additional amount of tax payable to the City of Geneva, a report of such change shall be filed by the taxpayer within three months from the final determination of the Federal tax liability.

D. If a change in Federal income tax liability results in a reduction of taxes owed and paid to the taxing community, a claim for refund shall be filed with the Administrator as prescribed in the refunds and overpayments sections of the ordinance.

E. Where the credit is claimed for taxes due or paid another taxing municipality the amount of such credit shall be determined and claimed in accordance with Article 11 hereof.

F. Every taxpayer must retain records necessary to compute his tax liability or to justify an exemption certificate for a period of five years from the date the return is filed or the taxes withheld are paid, whichever is later.

### **7:03 Extensions**

Upon written request of the taxpayer made on or before the date for filing the return, and for good cause shown, the Administrator may extend the time for filing such return for a period not to exceed six months, or to one month beyond any extension requested of or granted by the Internal Revenue Service. Whenever he deems necessary, the Administrator may require a tentative return accompanied by the payment of the estimated taxes. No penalty will be assessed in those cases in which the return is filed and the final tax paid within the period as extended provided all other filing and payment requirements of the ordinance have been met. In any event, such payments made after the due date shall be subject to interest charges as provided in the ordinance. The Administrator will honor a copy of the Federal automatic extension of time.

### **7:04 Consolidated Returns**

A. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership and who file as a consolidated group 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 that are so affiliated, along with all required schedules and amount and manner of determining income subject to municipal income tax.

B. Once a consolidated return has been filed for any taxable year, the consolidated group must continue to file consolidated returns in subsequent years unless Permission in writing is granted by the Administrator to file separate returns prior to the due date of said returns.

Members of a group filing consolidated returns who begin to file separate returns under this provision shall indicate on their separate returns the change in status and identify the previous consolidated return group.

C. If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income for 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 each subsidiary 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 for the period

after it ceases to be a member, separate returns must be filed.

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 the 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.

D. In determining the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during a taxable year, the property fraction (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 fraction, however, shall be computed at eight (8) times the annual rent. The gross receipts and wage fractions shall be based on the actual figures.

E. All subsidiary corporations must agree in writing to the filing of the consolidated return, in accordance with Federal Income Tax guidelines, as they will be liable for the tax as well as will be the parent corporation.

F. The net operating loss carry forward of a corporation which filed a separate return in a prior year may be carried over to a consolidated return year to the extent permitted by the Internal Revenue Code, but not to exceed the limitation of the operating loss carry forward provisions of the ordinance.

For purposes of this rule, to the extent that the loss can only be carried forward to the same corporation's taxable net income, the net income attributable to the taxing community in a year a loss is being utilized shall be computed by using only the same corporation's net income and allocation method.

G. 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.

H. 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, inter-company dividends that are eliminated in consolidation will not be taken into consideration in determining non-taxable income.

#### **7:05 Allocation of Net Profits By Administrator**

In case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, or in the case of an entity that operates a division, branch, factory, office, laboratory or activity within a taxing community constituting a portion only of its total business, the Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City of Geneva.

If the Administrator finds that net profits are not properly allocated to the taxing community by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such divisions,

branches, factory, office, laboratory or activity or by such other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the City of Geneva.

#### **7:06 Amended Returns**

A. 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 the ordinance. Such amended return shall be on a form obtainable on 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.

B. Within three months from the final determination of any Federal tax liability affecting the taxpayer's municipal tax liability, such taxpayer shall make and file an amended municipal income tax return showing income subject to the municipal income tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

### **ARTICLE 8:00 PAYMENT OF TAX**

#### **8:01 Payment With Annual Return**

A. The payment due at the time of filing the return shall be the amount of the tax:

1. Withheld by the employer from employee wages pursuant to the provisions of the ordinance;
2. The amount due on a declaration of estimated income tax after taking into consideration any overpayment of previous years' tax which has not been otherwise applied, less amounts paid previously on said declaration.

B. Except as otherwise provided, should the return indicate an overpayment of the tax to which the City of Geneva is entitled under the provisions of the ordinance, such overpayment may be applied against a subsequent liability or at the election of the taxpayer and so indicated on the return, such overpayment (or portion thereof) shall be refunded. See Article 10 hereof. Provided however, that no additional taxes or refunds of less than One Dollar (\$1.00) shall be collected or refunded.

C. Whenever the ordinance or these regulations require filing a return or payment of tax to the Administrator, or to the City of Geneva, such returns and/or payments for the City of Geneva, shall be made directly to The City of Geneva, Division of Taxation, 44 North Forest Street, Geneva, Ohio 44041.

#### **8:02 Withholding Collection at Source**

A. It is the duty of each employer who employs one or more persons on a salary, wage, commission, or other compensation basis to deduct each time any such compensation is paid to or earned and deferred by an employee subject to the ordinance, the tax at the current rate from such salary, wage, bonus, incentive payment, commission

or other compensation due by said employer to said employee, together with the tax at the current rate from the tips or gratuities reported to said employer by each said employee for Social Security, Medicare or Federal Income Tax purposes and shall make

a return and pay to the Administrator the amount of taxes so deducted.

1. The gross amount of all salaries, wages, bonuses, incentive payments, commissions or other form of compensation paid to or earned and deferred by an employee who is a resident of the City of Geneva regardless of the place where the services are rendered.

2. The tax shall be calculated on the gross amount of all compensation paid to or earned and deferred by an employee who is a non-resident of the City of Geneva for services rendered, work performed, or other activities engaged in to earn such compensation within the City of Geneva.

3. For those employees who do not pay for personal use, including commuting fees, of a vehicle owned or leased by an employer, employers are required to withhold on the value of an employee's non-cash compensation.

B. All employers within or doing business within the City of Geneva are required to make the collections and deductions, regardless of the fact that the services on account of which any particular deduction is required as to residents of the City of Geneva were performed at a place of business of any such employer situated outside the City of Geneva.

Employers who do not maintain a permanent office or place of business in the taxing community, but who are subject to tax on net profits under the ordinance, are considered to be employers within the City of Geneva and subject to the requirement of withholding.

C. The mere fact that tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation earned.

D. 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 shall indicate the total amount of earnings, payments, commissions and bonuses to residents of the City of Geneva (or to non-residents who do business in the City of Geneva) on copies of Federal Form 1099 or successor form, or shall attach a list which shall indicate social security numbers, names, addresses and amounts paid to each employee.

E. In the case of employees who are non-residents of the City of Geneva, the amount to be deducted is the current rate of tax on the compensation paid or earned and deferred with respect to personal services rendered in the City of Geneva.

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

**1. Employees Compensated on an Hourly, Daily, Weekly, or Monthly Basis.**

(a) General Rule

The deduction and withholding shall attach to the personal service compensation for the exact amount of compensation paid or earned and deferred for services performed in the City of Geneva, when such exact amount of compensation can be established. When no such exact determination of amounts earned or derived in the City of Geneva is possible, the income of employees who are compensated on an hourly, daily, weekly or monthly basis must be apportioned to the City of Geneva as follows:

Multiplying the gross income, wherever earned from the employment which includes employment carried on in the City of Geneva, by a fraction, the numerator of which is the number of days spent working in the City of Geneva and the denominator of which is the total working days (including holidays, vacation days, sick days and paid or unpaid leave).

The total number of working days should not exceed 260 days, unless for travel outside the United States. In those cases in which the employee is required to travel outside of the United States, the total weekend days in which the employee was required to work while outside of the United States must be added to both the numerator and the denominator.

The result is the amount of the non-resident's income allocable to the City of Geneva.

**(b) Apportionment Where Employee Performs Services In More Than One Taxing Community Each Day.**

In the case of an employee compensated hourly, daily, weekly, or monthly, who regularly performs services in more than one taxing community each day, income is apportioned to the particular taxing community by multiplying the gross income, wherever earned, from the employment which includes employment carried on in the particular taxing community, by a fraction, the numerator of which is the number of hours spent working in the particular taxing community and the denominator of which is the total number of working hours.

**2. Salespersons**

If the non-resident is a salesman, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him, the deduction and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the City of Geneva bears to the volume of business transacted by him within and outside the City of Geneva.

**3. Real Estate Agents**

For non-resident licensed real estate agents who are non-employees or independent contractors (i.e. non-employee agents, or independent agents) the municipal income tax is imposed on any income (commission or otherwise) earned as a result of the sale of real property located within The City of Geneva. The tax is imposed on the agent's income resulting from the sale of property that is physically located within the City of Geneva, regardless of where the office or offices of the agent is or are located.

For non-resident or resident licenses real estate agents who are employees of a real estate brokerage or real estate company, the municipal income tax is imposed on any salary, commission or other compensation earned, as a result of the employer's maintenance of an office in the City of Geneva.

For Resident real estate agents who are non-employees or independent contractors (i.e. non-employee agents, or independent agents) the municipal income tax is imposed on any income (commission or otherwise) earned as a result of the sale of real property located within the City of Geneva or earned as a result of the sale of real property located outside the municipality of residence (subject to the tax credits given by the municipality) regardless of where the office or offices of the agent is or are located.

#### **4. Over the Road Drivers**

Over the road intrastate drivers and other similarly situated employees reporting to a terminal, warehouse, or office in a taxing community must have a minimum of 25% of wages withheld and allocated to the City of Geneva where the terminal, warehouse, or office is located.

#### **5. Self-Employed Non-Residents Carrying on a Trade or Business Within a Taxing Community and Elsewhere.**

See Article 4:00, et seq., hereof.

#### **6. Professional Athletes.**

In the case of employees who are non-resident professional athletes, the deduction and withholding of personal service compensation shall attach to the entire amount of compensation earned for games that occur in the City of Geneva. In the case of a non-resident athlete not paid specifically for the game played in the City of Geneva, the following apportionment formula must be used:

The compensation earned and subject to tax is the total income earned during the taxable year, including incentive payments, signing bonuses, reporting bonuses, incentive bonuses, roster bonuses and other extras, multiplied by a fraction, the numerator of which is the number of exhibition, regular season, and post-season games the athlete played (or was available to play for his team, as for example, with substitutes), or was excused from playing because of injury or illness, in the City of Geneva during the taxable year, and the denominator of which is the total number of exhibition, regular season, and post-season games which the athlete was obligated to play under contract or otherwise during the taxable year, including games in which the athlete was excused from playing because of injury or illness. For purposes of these Rules and Regulations, exhibition games include only those games played before a paying audience, and played against another professional team from the same professional league.

In the case of non-resident salaried athletic team employees who are not professional athletes, deduction and withholding shall attach to personal service income in the manner set forth in Paragraph 1(a), supra.

#### **7. Entertainers**

1.(a) Any person who shall employ or contract for the services of any entertainer, entertainment act, sports event, promotional booth, special event, band, orchestra, rock group, theatrical performance, lecturers, speakers, etc. (this is not an exhaustive list of types of entertainers required to withhold, report or pay over a municipal income tax) shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report and pay over to the Administrator the tax at the applicable rate on the gross amount so paid on the completion of the engagement, said reports to be on forms provided by the Administrator.

(b) Any person who, acting as a promoter, booking agent or employer, engages the services of or arranges the appearance of any entertainer, entertainment act, sports event, band, orchestra, rock group, theatrical performance, etc., in the taxing community, and who makes any payment arising from said appearance shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report and pay over to the Administrator the tax at the applicable rate, on the gross amount so paid on the completion of the engagement, said reports to be on forms provided by the Administrator.

(c) Any person who rents facilities to any entertainer, entertainment act, sports event, promotional booth, special event, band, orchestra, rock group, theatrical performance, etc. for use in performing services in the City of Geneva, and who makes any payment arising from said use of facilities shall be deemed to be an employer and shall, for purposes of the collection of the income tax, be required to withhold, report and pay over to the Administrator the applicable tax at the applicable rate hereof based on the gross amount so paid on completion of the engagement, said reports to be on forms provided by the Administrator.

(d) The income of non-resident entertainers is the entire amount received for performances, engagements or events that occurred in the City of Geneva. In the case of a non-resident entertainer who is not paid specifically for a performance, the following apportionment formula must be used:

The income earned and subject to the tax is the total annual compensation multiplied by a fraction, the numerator of which is the number of performances the entertainer performed (or was available to perform, as, for example with understudies) in the City of Geneva, and the denominator of which is the total number of performances which the entertainer was obligated to perform under contract or otherwise during the taxable year

## **8. Excluded Personal Services**

The deduction and withholding obligation shall attach in the case of any personal service compensation for labor or personal services performed in the City of Geneva irrespective of the residence of the employee (or, in the case of an entertainer, irrespective of the residence of the promoter, booking agent or lessor), the place in which the contract for the labor or service was made, or the place or time of payment; except that such compensation shall be deemed not to be income derived within the City of Geneva if:

(a) The compensation for such labor or services does not exceed a gross amount of \$50.00 in any calendar year; or

(b) There is only occasional entry into a taxing community by a non-resident employee who performs the regular duties for which he is employed almost entirely, or entirely outside of such municipality, but also enters such municipality for the purpose of receiving instruction, reporting, accounting, etc. incidental to his duties. This exclusion does not apply to professional athletes or teams, or to entertainers as defined above.

## 9. Employee Reports

In apportioning the earnings of an employee, an employer may accept the written reports of his employee as to any of the items set forth in 1(a), 1(b), 2, 3, and 10 hereof. However, the employer shall be responsible for any material error in allocation as to employment within the City of Geneva.

## 10. Facts and Circumstances Allocation

If it is impossible to apportion the earnings as provided above, because of (a) the peculiar nature of the services of the employee or (b) the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly. With respect to each such employee (or group of employees similarly or identically circumstanced) the employer shall furnish the Administrator a detailed statement of facts.

F. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions (but not then on the commissions).

G. An employer required to withhold the tax on compensation earned by an employee shall, in determining the amount on which the tax is to be withheld, ignore any expense 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 commission, and are not deducted as a business expense by the employee (other than as an offset to an advance or reimbursement) under Article 3:00 of these regulations.

H. Except as otherwise provided, an employer in the City of Geneva is required to withhold the current tax rate from the compensation earned by taxing community residents regardless of where the services compensated for were performed, except as hereinafter set forth. Any taxing community employer who employs a resident of the City of Geneva in another taxing municipality in which the employer is subject to the withholding provisions of both ordinances, shall withhold and remit tax as follows:

(a) If the rate of tax levied by the other taxing municipality (employment) is the same as is imposed by the City of Geneva ordinance, the employer shall withhold at the current rate of tax on the entire wage earned and shall remit to such other taxing municipality the full amount of the tax withheld on the wages earned by such employee. The place of employment takes precedence over the place of residence.

(b) If the rate of tax levied by the other taxing municipality is less than the rate imposed by the City of Geneva ordinance, such resident taxing community employer shall withhold at the higher rate of tax on the entire wage earned by such resident and shall remit to the other taxing municipality only the tax imposed by this ordinance on the income earned therein and shall remit the balance of the tax withheld to the City of Geneva.

(c) If the rate of tax levied by the other taxing municipality is higher than the rate imposed by the City of Geneva, the employer shall withhold at the current rate of tax and remit to such other municipality its full amount of the tax on compensation earned therein by such non-resident, and remit to the resident taxing community only the tax withheld on wages earned other than in such higher taxing municipality.

In instances where the above provisions are applicable, the employer must advise the respective municipalities in which the employer is subject to the withholding provisions of the amount of salaries, wages, or other compensation earned within such municipalities, such information to be incorporated in a form approved by the Administrator.

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

J. No person shall be required to withhold tax on the following payments:

1. Wages or other compensation earned for domestic services performed by an employee or an independent contractor, in or about such person's residence which is the fixed place or abode of an individual or family or a local chapter of a college fraternity or sorority.

a. Domestic services within the exception include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, babysitters, janitors, laundresses, caretakers, handymen, gardeners, grooms, and chauffeurs of automobiles for family use.

b. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private residence and the wages or other compensation earned for services performed therein is not within the exception.

c. Wages or other compensation for domestic services are not within the exception if performed in or about rooming, lodging or boarding houses, clubs, hotels, hospitals, charities, or commercial offices or establishments.

2. Wages or other compensation earned for services performed by an employee in any calendar quarter in which the cash reimbursement is less than \$20.00.

3. Wages or other compensation earned for services performed as an employee of a foreign government or international organization as defined by the International Organizations Immunities Act, 22 U.S.C. 288-288f.

4. Wages or other compensation for services in delivery or distribution of newspapers, shopping news (including handbills and other similar types of advertising material) or magazines by an employee under the age of 18. Any employee whose wages or other compensation are exempt from withholding under this section shall be subject to all of the requirements of the ordinance and regulations.

#### **8:03 Collection at Source - Return and Payment of Tax Withheld and Status of Employers**

A. Every employer is deemed to be a Trustee of the Taxing community in collecting and holding the tax required under the ordinance to be withheld, and the funds so collected by such withholding are deemed to be trust funds. The dissolution, bankruptcy, merger or spin-off or reorganization of any such employer does not discharge an employer's liability for a prior failure of such business to file a return or pay taxes due.

An officer, agent or employee of an organization may be prosecuted for an offense committed by such organization, and shall be jointly and severally liable to the City of Geneva together with the organization for taxes of the organization's employees if he Acts with the kind of culpability required for the commission of the offense, and any of the following apply:

(1) In the name of the organization or on its behalf, he engages in conduct constituting the offense, or causes another to engage in such conduct, or tolerates such conduct when it is of a type for which he has direct responsibility;

(2) He has primary responsibility to discharge a duty imposed on the organization by law, and such duty is not discharged. The liability of the officer, agent or employee described herein shall not be discharged by the dissolution, bankruptcy, merger or spin-off or reorganization of the organization or employer.

Except as otherwise provided, every such employer required to deduct and withhold the tax at the source is liable directly to the City of Geneva for the payment of such tax, whether actually collected by such employer or not.

Any tax deducted and withheld is to be considered paid to the City of Geneva whether or not the employer actually remits the tax to the City of Geneva, for purposes of determining employee payments or credits.

B. The deduction from salaries, wages and other compensation required to be made by employers is to begin with compensation earned on and after the effective dates of the income tax ordinance.

The first return and payment required to be made on account of such deductions shall be made, filed and paid to the Administrator by the effective dates of the income tax ordinance. Reporting and remittances are required by the City of Geneva ordinance when the amount of tax withheld is.

(a) An employer who deducts the tax in the amount as specified in the ordinance in the first or second month of a calendar quarter shall pay to the Administrator the amount of taxes so deducted.

(b) Such employer who makes payments on a monthly basis for the first two months of a calendar quarter shall pay such tax deducted for the third month of a calendar quarter on or before the last day of the month following month to the Administrator.

C. If more than the amount of tax required to be deducted by the ordinance is withheld from an employee's pay, such excess may be refunded by the employer or the Administrator, depending upon the circumstances and the time when the overwithholding is determined as follows:

#### 1. Current Employees

(a) If the over-withholding is discovered in the same quarterly period the employer shall make the necessary adjustment directly with the employee and the amount to be reported as withheld shall be the corrected amount.

(b) If the over-withholding is discovered in a subsequent quarter of the same calendar year, the employer may make proper adjustment with the employee. In such case, for the quarter in which the adjustment is made shall reflect the total amount actually withheld for the quarter and the amount of the adjustment deducted there from.

(c) If the over-withholding is discovered in the following year, the employer shall notify the Administrator of such over-withholding and the circumstances thereof. Upon proper verification, the Administrator shall refund to the employee the amount of such excess withholding.

## 2. Former Employees:

(a) In case too much has been withheld from an employee who is no longer employed by the employer, the employer shall notify the Administrator of the amount and circumstances of such over-withholding, and the Administrator, after verification, shall then refund to the employee the amount of such excess withholding.

(b) If an error is discovered by the employee, such employee shall file a claim with the Administrator and, upon verification thereof by the employer, the Administrator shall refund to the employee the amount of such excess withholding.

D. Insufficient withholding. If less than the amount of tax required to be deducted is withheld from an employee, such deficiency shall be withheld from subsequent wages paid in the same calendar year. However, if the employee-employer relationship has terminated, or if the deficiency was from a prior year, the employer shall notify the Administrator of such deficiency, the reason therefore, and in a separate return pay the withholding deficiency.

E. On or before the last day of February following any calendar year in which such deductions have been made by any employer, such employer shall file with the Administrator, in the form prescribed by the Administrator, an information return for each employee from whom municipal income tax has been withheld, specifying the municipality for which the tax has been withheld and all information required for Federal Income Tax reporting purposes on Federal Form W-2 or its equivalent. Information returns must also be submitted for each person receiving payments on a commission or fee basis as non-employees.

F. For the convenience of employers, such information returns shall be made in one of three ways at the elections of each employer, as follows:

(1) Those employers using Form W-2 furnished commercially may submit a copy of such commercial W-2 provided the copy furnished to the City of Geneva clearly shows the information required.

(2) Computer generated ACSII format magnetic media in the form of diskettes.

(3) Where the furnishing of this information as above indicated 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 employee's full name, last known address, social security number, gross amount of taxable compensation paid during the year and the amount of the municipal income tax withheld.

G. In addition to such information returns, and at the time the same are filed, such

employer shall file with the Administrator Form W-3 to enable the Administrator to reconcile the sum total of compensation earned and taxes withheld as disclosed by the total of the Federal W-2 Forms. The W-3 shall also reconcile to prior remittances and returns filed by the employer for such tax year with respect to taxes withheld.

H. In deducting and withholding the tax at the source and in payment of any tax due under the ordinance, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

#### **8:04 Declaration of Estimated Tax (Tax on Income Not Collected at Source)**

##### **A. Requirement of Filing**

1. A declaration of estimated tax shall be filed by every taxpayer who anticipates receiving taxable income not subject to withholding.
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, or he may use the same figures used for estimating the Federal Income Tax adjusted to exclude any income or deductions not taxable or permissible under the municipal income tax ordinance. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith.

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

1. Those taxpayers reporting on a calendar year basis shall file a declaration of estimated tax on or before April 30<sup>th</sup> of each year or within four months of the date the taxpayer becomes subject to the tax for the first time.
2. Those taxpayers reporting on a fiscal year basis shall file a declaration of estimated tax within four months of the date the taxpayer becomes subject to the tax for the first time.

##### **C. Forms of Filing**

1. (a) Such declaration of estimated tax shall be filed on a form furnished by or obtainable from the Administrator of the City of Geneva.  
(b) Should the declaration of estimated tax indicate an overpayment, such overpayment shall not be refunded until the final return has been filed.
2. The original estimated tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration of estimated tax on or before any quarterly payment dates. Such amendment may be made on the quarterly billing forms.

##### **D. Date of Payments**

1. The estimated tax may be paid in full with the first declaration of estimated tax in each tax year or in equal installments on or before the last day of the fourth, sixth, ninth and thirteenth months of the taxable year.
2. The declaration of estimated tax must be accompanied by at least one-fourth of the estimated tax shown due thereon.
3. In the event an amended declaration of estimated tax has been filed, the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

#### E. Final Returns Required

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

### **ARTICLE 9:00 INTEREST AND PENALTIES**

#### **9:01 Interest**

Except as provided herein, all taxes imposed and all money withheld, or required to be withheld by employers under the provisions of this ordinance and remaining unpaid after they have become due shall bear interest at the rate of one and one-half percent (1.5%) per month or fraction thereof.

#### **9:02 Penalties**

A. In addition to interest as provided herein, penalties based on the unpaid tax are hereby imposed as follows:

1. For failure to pay tax due, other than taxes withheld, one and one-half percent (1.5%) per month or fraction thereof.
2. Underpaying estimated taxes. There is a charge for underpaying the tax. When estimate tax payments are required the penalty will attach when the amount actually paid and the amount that should have been paid of the estimated tax paid was 80% or less of the amount shown on the final return. Failure to pay 80% of tax due by January 31st of the following year will result in a penalty and interest charge on the entire remaining tax balance. In addition, no penalty or interest will be charged if 100% of the previous year's taxes owed are paid by January 31st of the following year.
3. For failure to remit taxes withheld from employees, ten percent per month or fraction thereof;
4. For failure to file an annual return by the due date of such return, a penalty of \$25.00 is imposed even if no tax shows due on said return.

#### **9:03 Exceptions**

A. 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 days of notification.

B. 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 months after final determination of the Federal tax liability.

C. A taxpayer or employer shall have thirty days after receipt of notice of any proposed imposition of interest and penalties within which to file a written protest or explanation with the Administrator.

If no protest or explanation is filed within the prescribed time, the proposed imposition of interest and penalties shall become and be the final assessment. Upon filing of a written protest or explanation, the

Administrator shall determine the assessment, which may or may not be the same as the proposed assessment.

#### **9:04 Abatement of Interest and Penalty**

A. Upon recommendation of the Income Tax Administrator, the Board of Review may abate the penalty or interest or both. Upon refusal of the Administrator to recommend abatement of the penalty and/or interest, the Board may nevertheless abate the penalty or interest or both.

#### **9:05 Violations**

A. No person shall:

1. Fail, neglect, or refuse to make any return or declaration required by this ordinance; or
2. Make any incomplete, false or fraudulent return; or
3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this ordinance; or
4. Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
5. Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and Federal Income Tax returns relating to the income or net profits of the taxpayer; or
6. Fail to appear before the Administrator and to produce his books, records, papers or Federal Income Tax returns relating to the income or net profits of the 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 the taxpayer; or
8. Fail to comply with the provisions of this ordinance or any order or subpoena of the Administrator authorized hereby; or
9. Give to an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof;
10. Fail to use ordinary diligence in maintaining proper records of employees' residences and addresses, total wages earned and municipal tax withheld, or to knowingly give the Administrator false information; or
11. Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties, or interest imposed by the ordinance.

Violations of this section are a first-degree misdemeanor punishable by up to one thousand dollars (\$1000.00) and/or imprisonment of not more than six months or both for each offense.

### **9:06 Limitations on Prosecution**

A. Civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within three years after the tax was due or the return was filed, whichever is later. No return will be considered filed until it is complete in all material respects.

B. Prosecutions under the ordinance shall be commenced within three years after the commission of the offense provided that in the case of fraud, failure to file a return, or the omission of 25% or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

### **9:07 Failure to Receive Forms No Excuse**

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

## **ARTICLE 10:00 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS**

### **10:01 Unpaid Taxes Recoverable As Other Debts**

A. All taxes imposed by the ordinance and not paid when due become, together with interest and penalties thereon, a debt due the municipality from the taxpayer and are recoverable as are other debts by civil suit. Employers who are required 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 municipality in a civil action to enforce the payment of the debt created by such failure.

B. No additional assessment shall be made by the Administrator after three years from the time the return was due or dated, whichever is later. Provided, however, there shall be no period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or the filing of 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 an omission of a substantial portion of income subject to this tax.

C. In those cases in which the Commissioner of the Internal Revenue Service and the taxpayer have executed a waiver of the Federal Statute of Limitations, the period within which an assessment may be made by the Administrator is extended to one year from the time of final determination of Federal Income Tax liability.

### **10:02 Refunds of Taxes Erroneously Paid**

A. Taxes erroneously paid shall not be refunded or credited unless a claim for refund is made within three years from the time of payment thereof, or within three months after final determination of a Federal Income Tax audit.

A Federal adjustment must have a direct effect on items subject to city tax to extend the statute.

Based on the three-year statute of limitations, taxpayers required to file an annual return must use April 30<sup>th</sup> as the due date of the return. Taxpayers not required to file a return

other than a request for refund must use January 31st as the due date of the return.

B. No refund or credit shall be made to any taxpayer until he has filed a complete and final return, complied with all provisions of the ordinance, and has furnished all information required by the Administrator.

C. Overpayments will be either refunded or credited to the taxpayer's current year liability at his option unless there is a prior outstanding obligation. Where no election has been made by the taxpayer, overpayments of the tax for any year shall be applied as follows:

1. To taxes, penalty and interest owed for any periods in the order in which such become due.

2. 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.

#### **10:03 Limitation**

Where the total amount due or refund claim for a tax year is less than One Dollar (\$1.00) such amount shall not be collected or refunded.

#### **10:04 Erroneous Refund Recovery**

The Administrator may sue for recovery of an erroneous refund provided such suit is brought within three years after making such refund, except that the suit may be brought within six years if any part of the refund was induced by fraud or misrepresentation of material fact.

### **ARTICLE 11:00 TAXPAYER RELIEF**

#### **11:01 Residents of The City of Geneva**

When a resident of the City of Geneva is subject to a municipal income tax in another municipality on the same income taxable under the ordinance, such resident shall be allowed a credit against the income tax imposed by this chapter of an amount not to exceed one percent against the tax rate set in the city ordinance.

In the event a resident is entitled to credit for taxes paid another municipality, such resident is required to file a return in such manner as the Administrator may prescribe.

In the event such resident fails, neglects or refuses to file such return or form as is prescribed by the Administrator, he shall not be entitled to such credit and shall be considered in violation of the ordinance for failure to file a return and make payment of taxes due there under.

The Administrator may require all residents of the City of Geneva subject to this chapter to file an annual return or an annual exemption certificate.

### **ARTICLE 12:00 DUTIES AND AUTHORITY OF THE TAX ADMINISTRATOR**

#### **12:01 Duty To Receive Tax Imposed**

It shall be the duty of the Administrator to receive the tax imposed by the ordinance in the manner prescribed herein from the taxpayers, to keep an accurate record thereof, and report all money so received.

#### **12:02 Duty to Enforce Collection**

It shall be the duty of the Administrator to enforce payment of all taxes owing to the City of Geneva, to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld, and show the date and amounts of payments thereof.

#### **12:03 Authority to Make and Enforce Regulations**

A. The Administrator is charged with the administration and enforcement of the provisions of the ordinance and is, subject to the approval of the Board of Review, hereby empowered to adopt and promulgate and to enforce these Rules and Regulations in relation to any matter or thing pertaining to the administration and enforcement of the ordinance.

The Administrator has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the ordinance.

B. Any taxpayer or employer desiring a special ruling on any matter pertaining to the ordinance or these Rules and Regulations should submit to the Administrator in writing all the facts involved and the ruling sought.

C. These regulations, together with all amendments and supplements hereto and all charges herein, will be on file at the office of the Administrator and will be open to public inspection. The Administrator's office is located in the Administration Building at 44 North Forest Street, Geneva, Ohio 44041.

#### **12:04 Authority to Arrange Installment Payments**

A. Except as otherwise provided in these regulations, the Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the ordinance.

B. Failure to make deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand, and the provisions of the chapters pertaining to penalties and interest and collections of unpaid taxes of the ordinance shall apply.

#### **12:05 Authority to Determine Amount of Tax Due**

A. Whenever the Administrator has been unable to secure information from the taxpayer as to his taxable income from any year, or the taxpayer has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due and assess the taxpayer upon the basis of such determination, together with the interest and penalties as prescribed in the ordinance.

B. Such determination of tax may be adjusted upon submission by the taxpayer of actual records from which his tax may be computed.

#### **12:06 Authority to Make Investigations**

A. The Administrator, or any authorized employee, is authorized to examine the books, papers, records and Federal Income Tax returns of any employer, taxpayer or person subject to, or whom the 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 made, to ascertain the tax due under the ordinance.

B. An employer or taxpayer shall furnish within ten (10) days following a written request by the Administrator, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized by the ordinance.

#### **12:07 Authority to Compel Production of Records**

A. The Administrator, or any person acting in his capacity, is authorized to examine any person under oath concerning 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, records and Federal Income Tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.

B. The Administrator's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Administrator.

C. The Administrator may order the appearance before him, or before 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.

D. 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.

E. The notice shall be served by the Administrator, or his duly authorized agent, by delivering it to the person named personally, or by leaving the notice at his usual place of business or residence, or by mailing it to the person by first class mail addressed to his usual place of business or residence.

#### **12:08 Refusal to Produce Records**

Refusal by 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 or to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by the violations provisions of the ordinance.

#### **12:09 Confidential Nature of Information Obtained**

A. Any information gained as the result of any returns, investigations, verifications or hearings before the Administrator or the Board, required by the ordinance or authorized by these Rules and Regulations shall be confidential and no disclosure thereof shall be made except for official purposes, or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of One thousand Dollars (\$1,000.00) or imprisonment for not more than six

months, or both.

B. In addition to the above penalty, any employee of the City of Geneva who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

#### **12:10 Taxpayer Required to Retain Records**

All employers and taxpayers are required to keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits, or both. Such records shall be preserved for a period of not less than five (5) years from the date the final return is filed and paid or the withholding taxes are paid.

### **ARTICLE 13:00 BOARD OF REVIEW**

#### **13:01 Board of Review Established**

A Board of Review, consisting of a Chairman and two other individuals to be appointed by the President of Council and confirmed by the occurrence of two-thirds of the members elected to Council, is hereby created. The first appointments shall be for one year, two years and three years, and each appointment made after the expiration of such terms shall be three years. A majority of the members of the Board shall constitute a quorum. The Board will adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provision of section 880.09 with reference to the confidential character of information required to be disclosed by the ordinance shall apply to such matters as may be heard before the Board of Appeals.

#### **13:02 Duty to Approve Regulations and Hear Appeals**

All Rules and Regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by the ordinance, must be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator, and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.

#### **13:03 Right of Appeal**

A. An appeal from a ruling of the Administrator by a taxpayer or employer is effected by filing a notice of appeal with the Board at 44 North Forest Street, Geneva Ohio 44041 within thirty (30) days after the announcement of the Administrator's ruling or decision from which the appeal is taken. A copy of such appeal must be filed with the Administrator.

B. The Board, by majority vote, may affirm, modify or reverse, in whole or part any such ruling or decision of the Administrator.

C. Hearings before the Board shall be private unless the taxpayer requests, in writing, a public hearing.

### **ARTICLE 14:00 OTHER PROVISIONS**

**14:01 Declaration of Legislative Intent.** Refer to Ordinance

**14:02 Collection of Tax after Termination.** Refer to Ordinance.

**14:03 Instructions for Filing a Notice of Appeal with by the Board of Review**

1. An appeal from the ruling of the Administrator by a taxpayer or employer is effected by filing a notice of appeal with the Board at the Division of Taxation, 44 North Forest Street, Geneva, Ohio 44041 within thirty (30) days after the announcement of the Administrator's ruling or decision from which the appeal is taken. A copy of such appeal must be filed with the Administrator.  
The Board has no power to hear an appeal not timely filed.
2. No particular form of notice of appeal is required, provided that the notice contains the following information:
  - (a) A copy of the Administrator's final ruling or determination;
  - (b) A statement that the taxpayer appeals from the final assessment of the Tax Administrator;
  - (c) The tax year or years and the amount of tax involved in the final assessment;
  - (d) The date of receipt by the taxpayer of the final assessment appealed from;
  - (e) The reason or reasons why the taxpayer believes the final assessment is objectionable, incorrect or illegal;
  - (f) The name and address of the representative, if any, of the taxpayer that is authorized to present the appeal before the Board of Review. (Note: The Board of Review cannot recognize any attorney or other representative unless he is so authorized by the taxpayer in the notice of appeal by power of attorney, or by personally appearing with the taxpayer.);
  - (g) The name and address of the taxpayer.
3. The notice of appeal must be signed by the taxpayer and filed in duplicate. The copy must be a true and accurate copy.
4. The notice of appeal should be filed in a sealed envelope plainly marked 'Appeal to the Board of Review' and mailed or delivered to the Tax Administrator who shall, within fifteen days, deliver such appeal to the Chairman of the Board of Review, or if the Chairman is not available, to the Secretary.
5. All papers filed with the Board of Review should be typewritten.
6. For information concerning the hearing and disposition of the appeal, obtain a copy of the Rules of Procedure adopted by the Board of Review.