

**CITY OF LIMA  
DEPARTMENT OF TAXATION  
RULES AND REGULATIONS TO COMPLEMENT  
CHAPTER 880 OF THE CODIFIED ORDINANCES  
OF THE CITY OF LIMA**

**ARTICLE I**

Section 880.01 of the Ordinance deals only with the purposes for which the tax collected will be used.

**ARTICLE II DEFINITIONS**

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

“ASSIGNMENT” means the assignment by a resident of Lima of his claim for refund from another taxing municipality granting reciprocal credit to its non-residents.

“ASSOCIATION” means a partnership, co-operative, limited partnership, or any other form of unincorporated enterprise owned by two or more persons.

“THE BOARD” means the Board of Review provided for by Section 880.13 of the Ordinance.

“BUSINESS” means an enterprise, co-operative activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity. The ordinary administration of a decedent’s estate by the executor or administrator, and the mere custody, supervision and management of trust property under passive trust, whether inter vivos or testamentary, unaccompanied by the actual operation of a business as herein defined shall not be construed as the operation of a business.

“BUSINESS ALLOCATION” as used in these regulations, means the portion of net profits to be allocated to the City of Lima as having been made in the City of Lima, either under separate accounting methods, or under the three factor formula of property, payroll, and sales provided for in Section 880.03 of the Ordinance.

“CITY” means the City of Lima.

“CORPORATION” means a corporation or joint stock association organized under the laws of the United State, the State of Ohio or any other state, territory, or foreign country or dependency.

“DIRECTOR OF TAXATION” means the person so designated and appointed by the Mayor of the City of Lima, or the person executing the duties of the aforesaid Director.

“EMPLOYEE” means one who works for wages, salary, commission, or other types of compensation in the service of an employer. Any person upon whom an employer is required to withhold for either Federal Income Tax or Social Security or on whose account payments are made under the Ohio Workmen’s Compensation Law, shall prima facie be an employee.

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

“FISCAL YEAR” means an accounting period of twelve (12) months or less ending on any day other than December 31st. Only fiscal years accepted by the Internal Revenue Service for Federal Income Tax purposes may be used for the City of Lima tax purposes.

“GROSS RECEIPTS” means total income from any source whatsoever.

“NET PROFITS” means the net gain from the operation of a business, profession, or enterprise after provision for all ordinary and necessary expenses, paid or accrued in accordance with the accounting

system used by the taxpayer for Federal Income Tax purposes.

“NON-RESIDENT” means an individual domiciled outside the City of Lima.

“NON-RESIDENT UNINCORPORATED BUSINESS ENTITY” means one not having an office or place of business within the City of Lima.

“THE ORDINANCE” means Chapter 880 of the Codified Ordinances of the City of Lima enacted by the Council of the City of Lima and any amendments and supplements thereto effective January 1, 1983, and thereafter.

NOTE: Hereinafter this will be referred to as “effective period of Ordinance.”

“PERSON” means every natural person, partnership, fiduciary, association, corporation, or other entity. Whenever used in a clause prescribing or imposing a penalty, the term PERSON as applied to any unincorporated entity shall mean the partners or members thereof and as applied to a corporation, the officers thereof, and in the case of any unincorporated entity or corporation not having any partner, member, or officer within the City of Lima, any employee or agent of such unincorporated entity or corporation who can be found within the corporate limits of the City of Lima.

“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.

“RESIDENT” means an individual domiciled in the City of Lima.

“RESIDENT UNINCORPORATED BUSINESS ENTITY” means an unincorporated business entity having an office or place of business within the City of Lima.

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

“TAXABLE YEAR” means the calendar year, or the fiscal year, used as the basis on which net profits are to be computed under the Ordinance, and in the case of a return for a fractional part of the year, the period for which such return is required to be made. Unless approved by the Director of Taxation, the taxable year of an individual shall be a calendar year.

“TAXING MUNICIPALITY” means any municipal corporation levying a municipal income tax on salaries, wages, commissions, and other compensation earned by individuals, and on the net profits earned from the operation of a business, profession, or other activity.

“TAXPAYER” means an individual, association, corporation, or other entity required by the Ordinance to file a return and/or to pay a tax.

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

### **ARTICLE III IMPOSITION OF TAX**

A. Basis for Imposing Tax. (Individuals, employees, partners, or owners subject to tax in more than one municipality on the same income, see also Article XV hereof for permissible credits).

1. Resident Employee:

a. In the case of residents of the City of Lima, an annual tax of 1.5 per cent is imposed on all salaries, wages, commissions, and other compensation earned during the effective period of the Ordinance. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 880.03 of the Ordinance, the source of the earnings and the place or places in or at which the services were rendered are immaterial. All such earnings wherever earned or paid are taxable.

b. The following are items which are subject to the tax imposed by Section 880.03 of the 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 for services rendered during the tax period as:

.01 An officer, director, or employee of a corporation (including charitable and other non-profit organizations), joint stock association, or joint stock company.

.02 An employee (as distinguished from a partner or member) of a partnership, limited partnership, or any form of unincorporated enterprise owned by two or

more persons.

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

.04 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 Section 880.03 of the Ordinance.

.05 An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates, and whether paid by an individual, partnership, association, corporation (including charitable and other nonprofit corporations), 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 of how computed, by whom, or wheresoever paid.

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

02. Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expenses or advances as such from his gross income for the purpose of determining his net profits taxable under Federal law, and the employee is not required to include such receipts as income on his federal income tax return.

.3 Fees, unless such fees are properly includible as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity owned or partly owned by said individual and such net profits are subject to the tax under Section 880.03 (a) (1) C & (a) (2) C of the Ordinance.

.4 Other compensation, including tips, bonuses, or gifts of any type, and including compensation paid to domestic servants, casual employees, and other types of employees.

.5 Payments made to employees by an employer as vacation wages are taxable. Payments made to any employee by an employer under a wage continuation plan during periods of disability or sickness are taxable.

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

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

2. Non-Resident Employee:

a. In the case of individuals who are non residents of the City of Lima, there is imposed under Section 880.03 (a) (1) B & (a) (2) B of the Ordinance, a tax of 1.5 per cent on all salaries, wages, commissions, and other compensation earned during the effective period of the Ordinance for work done or services performed or rendered within the City of Lima, 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 Section 880.03 (a) (1) B & (a) (2) B of the Ordinance are the same as those listed and defined in Article III-A. For the methods of computing the extent of such work or services performed within the City of Lima in cases involving compensation for personal services partly within and partly without the City of Lima, see

Article VI-A.6.

3.

a. Imposition of Tax on Net Profits of Resident Unincorporated Business:

.1 In the case of resident unincorporated businesses, professions, enterprises; undertakings or other entities conducted, operated, engaged in, prosecuted, or carried on, irrespective of whether such taxpayer has an office or place of business in the City of Lima, there is imposed an annual tax of 1.5 per cent on the net profits earned, accrued or received during the effective period of the Ordinance attributable to the City of Lima, under the formula or separate accounting method provided for in Section 880.03 of the Ordinance, derived from sales made, work done or services performed or rendered and business or other activities conducted in the City of Lima.

.2 The tax imposed on resident associations or other unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof but the tax imposed on an unincorporated resident entity owned by one person is upon the individual owner. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III A 3b)

.3 The tax imposed by Section 880.03 of the Ordinance is imposed on all resident unincorporated entities having net profits attributable to the City of Lima under the method of allocation provided for in the Ordinance, regardless of where the owner or owners of such resident unincorporated business entity reside.

.4

.01 Resident unincorporated entities owned by two or more persons all of who are residents of Lima, having all income allocable to Lima, or having an income allocable to other municipalities not levying a similar tax, shall disregard the method of allocation provided for in the Ordinance and pay the Lima 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 Lima tax due from the owners or members thereof on their distributive shares of the entity net profits. However, a return shall be required from any owner or member having taxable income other than such distributive share of the net profits of such entity.

.02 Resident unincorporated entities owned by two or more persons may request permission to file the entity return in accordance with Article V-A-9.b. hereof if:

.001 All owners or members are residents of Lima and any of the entity income is allocable to another taxing municipality,

.002 One or more owners or members are non-residents and subject to tax in their municipality of residence on income allocable to Lima, or

.003 One or more owners or members are non-residents and any of the entity income is allocable outside Lima.

b. Imposition of tax on Resident's Distributive Share of Profits of a Resident Unincorporated Business Entity, Not Attributable to the City of Lima.

.1 A resident individual who is sole owner of a resident unincorporated entity shall disregard the business allocation formula and pay the Lima tax on the entire net profits of his resident unincorporated business entity. Provided, however, that if any portion of such net profits is allocable to another taxing municipality, credit for tax due or paid, such other taxing municipality, credit for tax due or paid, such other taxing municipality shall be claimed in accordance with Article XV hereof.

.2 In case of a resident individual partner or part owner of a resident unincorporated entity, there is imposed an annual tax of 1.5 per cent on such individual's distributive share of net profits earned, accrued, or received during the effective period of the Ordinance not attributable to the City of Lima, under the method of allocation provided for in Section 880.03 of the Ordinance, and not taxed against the entity. Provided, however, if any portion thereof is allocable to another taxing municipality, credit for tax due or paid such other taxing municipality shall be claimed in accordance with Article XV hereof.

.3 Losses incurred by a Joint Venture or a Partnership are not deductible unless the

taxpayer or taxpayers claiming the loss are actually involved in the operation of the Joint Venture or Partnership.

4.

- a. Imposition of Tax on Net Profits of Non-Resident Unincorporated Businesses:
  - .1 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 of 1.5 per cent on the net profits earned, accrued, or received during the effective period of the Ordinance attributable to the City of Lima, under the formula or separate accounting method in the Ordinance.
  - b. In determining whether a corporation is conducting a business or other activity in the City of Lima, the provisions of Article III-B of these regulations shall be applicable.
  - c. Corporations which are required by the provisions of Section 5727.38 to 5727.41, inclusive, of the Revised Code of Ohio, 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. 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.

6.

Amplification:

In amplification of the definition contained in Article II-A 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 on 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 (providing such method does not conflict with any provisions of the Ordinance). Net profits shown on returns filed pursuant to the Ordinance must be reconciled with the income reported to the Federal Internal Revenue Service.

b. Gross Receipts:

- .1 Gross Receipts shall include, but not be limited to, income in the form of commissions, fees, rentals from real and tangible personal property, and other compensation for work or services performed or rendered as well as income from sales of stock in trade.
- .2 From gross receipts there shall be deducted allowable expenses to arrive at the net profit subject to tax.

c. Expenses:

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

.04 Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Director of Taxation (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.

.05 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 taxed on and other expenses of said property are not deductible. In any event the following taxes are not deductible from income: (1) the tax under the Ordinance (2) Federal or other taxes based upon income (3) gift, estate, or inheritance taxes, and (4) taxes for local benefits or improvements to property which tend to appreciate the value thereof.

.06 Capital gains and losses from sale, exchange, or other disposition of property shall not be taken into consideration in arriving at net profits earned.

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

.08 The Director of Taxation may, upon submission by the taxpayer of satisfactory evidence showing the amount of expenses attributable to non-taxable income, permit the taxpayer to include in his return expenses attributable to taxable income in an amount agreed to by the taxpayer and the Director of Taxation.

7. Rentals from Real Property:

a. Rentals received by the taxpayer are to be included only if and to the extent that the rental, ownership, management, or operation of the real estate from which such rentals are derived (whether so rented, managed, or operated by 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 \$500.00 per month, it shall be prima facie evidence that the rental, ownership, management, or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to tax; provided that in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuation percentage of gross or net sales, receipts, or profits of leasee, whether or not such rental exceeds \$500.00 per month, provided further that in the case of farm property; the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on percentage of the gross or net receipts derived from the farm whether or not the gross income exceeds \$500.00 per month; and provided further that the person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds \$500.00 per month.

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, 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 are allowed by the Internal Revenue Service for Federal Income Tax purposes.

g. Residents of Lima 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 in accordance with Article XV hereof.

h. Non-residents of Lima are subject to tax only on the income from real property located in Lima and, in determining whether gross monthly rentals exceed Five hundred dollars (\$500.00), shall take into consideration only the income from such properties located within Lima.

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

8. Patent and Copyrights:

Income from patents or copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to the State Intangible Tax.

Conversely, such a state intangible tax is not deductible in determining city tax. Such items shall be clearly disclosed on an attachment to be filed with the City tax return.

B. Allocation of Business Profits:

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

1. Separate Accounting Method:

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

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 Director of Taxation to determine whether the net profits attributable to the City of Lima are apportioned with reasonable accuracy.

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

2. Business Allocation Percentage Method:

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

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

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

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

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

.002 Any amount payable as additional rent or in lieu of rent such as

- interest, taxes, insurance, repairs or other amounts required to be paid by the terms of a lease or other arrangement.
- b. STEP 2: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made and service rendered in the City of Lima is of the total gross receipts wherever derived during the period covered by the return.
- .1 The following sales shall be considered City of Lima sales:
    - .01 All sales made through retail stores located within the City of Lima to purchasers within or without the City of Lima except such of said sales to purchasers outside the City of Lima that are directly attributable to regular solicitations made outside the City of Lima personally by taxpayer's employees.
    - .02 All sales of tangible personal property delivered to purchasers within the City of Lima if shipped or delivered from an office, store, warehouse, factory, or place of storage located within the City of Lima.
    - .03 All sales of tangible personal property delivered to purchasers within the City of Lima even though transported from a point outside the City of Lima if the taxpayers is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Lima and the sales is directly or indirectly the result of such solicitation.
    - .04 All sales of tangible personal property shipped from an office, store, warehouse, factory, or place of storage within the City of Lima to purchasers outside the City of Lima if the taxpayer is not, through its own employees regularly engaged in the solicitations or promotion of sales at the place of delivery.
    - .05 Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.
  - .2 In the application of the foregoing subparagraphs, a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale, and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside of the City of Lima by mail or phone from an office, or place of business within the City of Lima, shall not be considered a solicitation of sales outside of the City of Lima.
- c. STEP 3: Ascertain the percentage which the total wages, salaries, commissions, and other compensation of employees within the City of Lima is of the total wages, salaries, commissions, and other compensation of all the taxpayer's employees within and without of the City of Lima during the period covered by the return.
- .1 Salaries and reasonable compensation paid owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purpose of this computation.
  - .2 Wages, salaries, and other compensation shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.
  - .3 In the case of an employee who performs services both within and without the City of Lima, the amount treated as compensation for services performed within the city shall be deemed to be:
    - .01 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 Lima.
    - .02 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 Lima bears to the value of all his services, and
    - .03 In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the City of Lima is of his total working time.
- d. STEP 4: Add the percentages determined in accordance with Steps 1, 2, and 3 or

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

- e. STEP 5: The business allocation percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits allocable to the City of Lima.

3. Substitute Method:

- a. In the event a just and equitable result cannot be obtained under the formula, the Board, upon application of the taxpayer or the Director of Taxation, 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 to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing before the end of the taxable year 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 the Director of Taxation as the case may be. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the Board of Review.

C. Operating Loss Carry Forward:

1. The portion of a net operating loss, based on income taxable under the Ordinance may be applied against the portion of the profit of succeeding year(s) allocable to the City of Lima, until exhausted but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.
2. In the event net profits are allocated, both within and without the City of Lima, the portion of a net operating loss sustained shall be allocated to the City of Lima in the same manner as provided herein for allocating net profits to the City of Lima. The portion of 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. The same method of accounting and allocation must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained.
3. 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.
4. A short fiscal year (a fiscal year of less than twelve (12) months) in cases where there has been a change in accounting period, where a new taxpayer selects a short fiscal year, or where a new taxpayer operates in the City of Lima for less than his full accounting period, shall be considered as a full taxable fiscal year.
5. In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:
  - a. Year in which net operating loss was sustained.
  - b. Method of accounting and allocation used to determine portion of net operating loss allocable to the City of Lima.
  - c. Amount of net operating loss used as a deduction in prior years.
  - d. Amount of net operating loss claimed as a deduction in current year.
6. The net operating loss of a business which loses its identity through merger, consolidation, etc., shall not be allowed as a carry-forward loss deduction to the surviving business entity.
7. In the case of a net operating loss in the filing of consolidated returns, see Article III, paragraph D.

D. Consolidated Returns:

1. Consolidated returns may be filed by a group of corporations who are affiliated through stock

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

2. Once a consolidated return has been filed for any taxable year, the consolidate group must continue to file consolidated returns in subsequent years unless:

- a. Permission in writing is granted by the Director of Taxation to file separate returns.
- b. A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year.
- c. A corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.

3. 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 it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it as 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 consolidate 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 a taxable year.

4. In determining the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property 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 8 times the annual rent. The gross receipts and wages fractions shall be based on the actual figures.

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

6. The net operating loss carryover of a corporation which filed a separate return in a prior year may be carried over to the consolidated return but will be limited in amount to the amount of that same corporation's net income included in the consolidation. The net operating loss carryover from a separate year shall be deducted first before application of the allocation fraction. After application of the allocation fraction, the consolidated net operating loss carryover allocation to the City of Lima shall be allowed.

7. 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.

8. 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 which are eliminated in the consolidation will not be taken into consideration in determining no-taxable income.

E. Exceptions:

The following shall not be considered taxable:

1. Poor relief: Unemployment insurance benefits, supplemental unemployment benefits, old age pensions, or similar payments received from local, state, or Federal governments or charitable or religious organizations. SUB-pay paid by an employer does not fall in this category.
2. Proceeds of insurance, annuities, workman's compensation insurance, social security benefits,

pensions, compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits.

3. Compensation for damage to property by way of insurance or otherwise.
4. Interest and dividends from intangible property if such income is subject to taxation under the Intangible Personal Property Tax Laws of the State of Ohio, or is specifically exempted from taxation under said laws.
5. Military pay and allowances received as a member of the armed forces of the United States.
6. Any charitable, educational, fraternal, or other type of non-profit association or organization enumerated in Section 718.01 of the Revised Code of Ohio which is exempt from payment of real estate taxes is exempt from payment of the tax imposed by this Ordinance.
7. Any association or organization falling in the category listed in the preceding paragraph not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the taxes levied under the Ordinance on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.
8. Where such non-profit association or organization conducts income producing business both within and without the corporate limits, it shall calculate its profits allocable to the City of Lima under the method or methods provided above.

#### **ARTICLE IV EFFECTIVE PERIOD OF TAX**

- A. The Tax imposed by Section 880.03 of the Ordinance shall be levied, collected and paid with respect to salaries, wages, bonuses, incentive payments, commissions, fees, and other compensation earned during the effective period of the Ordinance.
- B. The tax imposed by Section 880.03 of the Ordinance, with respect to net profits of trades, businesses, professions, enterprises, undertakings, and other activities, is on the net profits earned during the effective period of the Ordinance.

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

- A. Date and Requirement for Filing:
  1. On or before April 30th of the year following the effective date of the Ordinance and each year thereafter, every person subject to the provisions of Section 880.03 of the Ordinance shall, except as hereinafter provided, make and file with the Director of Taxation, a return on a form prescribed by, and obtainable upon request from, the Director of Taxation, whether or not a tax be due.
  2. If the return is made for a fiscal year or any period less than a year, said return shall be made within four (4) months from the end of each fiscal year or other period.
  3. Every person subject to the provisions of Section 880.03 of the Ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, wages, commissions, and other personal service compensation, net profits from business or other activities, including the rental from use of real and personal property, and other income taxable under the Ordinance, received for the period covered by the return and such other pertinent facts and information in detail as the Director of Taxation may require.
  4. Where an employee's entire earnings for the tax period are paid by an employer or employers, and the 1.5 per cent tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire earnings of such employee-taxpayer, and where the employer of such employee has filed a report or return in which such employee's entire and only earnings are reported to the Director of Taxation, and where such employee has no taxable income other than such earnings and the tax so withheld has been paid to the Director of Taxation, such employee need not file a return.
  5. An employee who is permitted to deduct business expenses from gross wages, salaries, or commissions, must file a return in order to claim such deductions even though all or part of such wages, salaries, or commissions are subject to withholding.
  6. Any taxpayer who received taxable income not subject to withholding under the Ordinance must file a return.
  7. Any taxpayer having income, wages, or other compensation for which a return must be filed and also having net profits from a business covering the same or a different period, is required to file only one return.

8. Trustees of active trust are required to file returns and pay the tax on the taxable income thereof.

9.

a. Except as provided for herein, the tax is on the partnership or association as an entity, whether resident or non-resident, and a return is required disclosing the net profits allocable to Lima and the tax paid thereon. However, any resident partner or member of an unincorporated entity is required to make a return and pay the tax on income allocable outside Lima in accordance with Article III-A.3.b and 4.b.;

b. Notwithstanding the provisions of Section 880.03 of the Ordinance, a resident or non-resident unincorporated entity may, in lieu of paying the tax on the entire net profits of the entity, request permission to file the entity return as an Information Return Only when:

.1 Any portion of the entity profits is allocable to another taxing municipality; or

.2 One or more of the owners or members is a resident and subject to a municipal income tax in his municipality of residence on his distributive share of the net profits of the entity, or

.3 One or more of the owners or members is a non-resident and any portion of the entity income is allocable outside the City of Lima.

c. If such permission is granted, the entity return shall include all required schedules and amount and manner of determining income subject to Lima Income Tax, and a complete list of all members or owners and their distributive shares of the entity net profits. In addition, each individual owner or member is required to file a declaration and a return and to pay the tax on his distributive share of the entity net profits, excepting that:

.1 A resident owner or member shall be entitled to the credit provided for in Section 880.15 of the Ordinance on that portion of his distributive share of the entity net profits allocable to, and taxable by, another taxing municipality.

.2 A non-resident owner or member shall exclude such portion of his distributive share of the entity net profits as is allocable outside Lima.

d. The granting of permission to file an information return shall not relieve the entity, as such, of the payment of any tax due and unpaid from any individual owner or member, or from the responsibility of withholding the tax from employees and remitting such tax pursuant to Section 880.06 of the Ordinance.

10. A Husband and wife may file a joint return.

B. Information Required and Reconciliation with Federal Returns.

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

2. Where figures of total income, total deductions, and net profits are included, as shown by a Federal return, any items of income as are not subject to the City of Lima tax and unallowable expenses shall be eliminated in determining net income subject to the City of Lima tax. The fact that any taxpayer is not required to file a Federal tax return does not relieve him from filing a Lima tax return.

a. Losses incurred by a Joint Venture or a Partnership are not deductible unless the taxpayer or taxpayers claiming the loss are actually involved in the operation of the Joint Venture or Partnership.

3. If a change in Federal income tax liability made by the Federal Internal Revenue Service, or by a judicial decision, results in an additional amount of tax payable by the taxpayer within three (3) months after receipt of the final notice from the Federal Internal Revenue Service or final Court decision, see Article V- E.2.

4. If a change in Federal income tax liability results in a reduction of taxes owed and paid to the City of Lima, a claim for refund shall be filed with the Director of Taxation as prescribed in Section 880.11 of the Ordinance and Article XI-B of these regulations.

5. Where credit is claimed for taxes due or paid another taxing municipality as provided for by Section 880.15 of the Ordinance, the amount of such credit shall be determined and claimed in accordance with Article XV hereof. Such claim shall be on a form prescribed by the Director of

Taxation.

C. Extensions.

1. Upon written request of the taxpayer made on or before the date for filing the return, and for good cause shown, the Director of Taxation may extend the time for filing such return for a period of not to exceed six (6) months, or to three months beyond any extension requested of or granted by the Federal Internal Revenue Service. Whenever he deems such necessary, the Director of Taxation may require a tentative return accompanied by payment of the estimated tax. No penalty or interest will be assessed in those cases in which the return is filed and the final tax paid within the period as extended, provided all other filing and payment requirements of the Ordinance have been met.

2. Information returns, schedules, and statements needed to support tax returns are to be filed within the time limits set forth for filing the tax returns.

D. Payment with Return.

1. The payment due at the time of filing the return shall be the amount of the tax imposed by the Ordinance after deducting:

- a. The amount of Lima income tax deducted (withheld) at the source by an employer or employers pursuant to Section 880.06 of the Ordinance.
- b. Such portion of the tax as has been paid on the Declaration of Estimated Lima Income Tax in accordance with Section 880.07 of the Ordinance, including any overpayment of the previous year's Lima Income Tax which has not been refunded.
- c. Credit for any tax paid or due another taxing municipality in accordance with Section 880.15 of the Ordinance.

2. Should the return indicate an overpayment of the tax to which the City of Lima is entitled under the provisions of the Ordinance, such overpayment may be applied against any subsequent liability or, at the election of the taxpayer and so indicated on the return, such overpayment or portion thereof shall be refunded. Provided, further, that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

E. Amended Returns:

1. Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 880.11 & 880.12. Such amended return shall be on a form obtainable on request from the Director of Taxation. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

2. Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's City of Lima tax liability, such taxpayer shall make and file an amended City of Lima return showing income subject to the City of Lima 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.

A. Duty of Withholding:

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within the City of Lima, who employs one or more persons whether as an employee, officer, director, or otherwise, to deduct, each time any compensation is paid, the tax of 1.5 per cent from:

- a. The gross amount of all salaries, wages, bonuses, incentive payments, fees, commissions, or other forms of compensation paid to residents of the City of Lima, regardless of the place where the services are rendered; and,
- b. All compensation paid non-residents for services rendered, work performed, or other activities engaged in within the City of Lima.

2. All employers within or doing business within the City of Lima are required to make the collections and deductions specified in this article, regardless of the fact that the services, on account of which any particular deduction is required, as to residents of the City of Lima, were performed outside the City of Lima.

3. Employers who do not maintain a permanent office or place of business in the City of Lima, but who are subject to tax on net profits attributable to the City of Lima, under the method of allocation provided for in the Ordinance, are considered to be employers within the City of Lima and subject to the requirement of withholding.

4. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of

filing a return and paying the tax on the compensation paid. If the employer has withheld the tax and failed to pay the tax withheld to the Director of Taxation, the employee is not liable for the tax so withheld.

5. Commissions and fees paid to professional men, brokers, and others who are independent contractors, and not employees of the payer are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and return and pay the tax pursuant to the provisions of the Ordinance and Articles V and VII of the regulations.

6. Where a non-resident received compensation for personal services rendered or performed partly within and partly without the City of Lima, the withholding employer shall deduct, withhold, and remit the tax on that portion of the compensation which is earned within the City of Lima in accordance with the following rules of apportionment:

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

b. The deducting and withholding of personal service compensation of other non-resident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee which the total number of his working hours within the City of Lima is of the total number of working hours.

c. The fact that non-resident employees are subject to call at any time does not permit the allocation of pay for time worked within the City of Lima on a seven-day-per week basis. The percentage of time worked in the City of Lima will be computed on the basis of a forty-hour week unless the employer notifies the Director of Taxation that a greater or lesser number of hours per week is worked.

d. The occasional entry into the City of Lima of a non-resident employee who performs the duties for which he is employed primarily outside the City, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the City of Lima.

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

8. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided such expenses are incurred in earning compensation including commissions, and are not deducted as a business expense by the employee under Article III of these regulations.

9. An employer, whose records show that an employee is a non-resident of the City of Lima and has not knowledge to the contrary shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services performed by the employee outside the City of Lima, provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Director of Taxation notifies such employer in writing that such employee is a resident of the City of Lima. All employees are required to notify the employer of any change of residence and the date thereof.

10.

a. A Lima employer is required under the Ordinance to withhold the tax of 1.5 per cent from the compensation paid Lima residents regardless of where the services compensated for were performed. Any Lima employer who employs a Lima resident in another taxing municipality and is subject to the withholding provisions of both Ordinances, shall withhold and remit tax as follows:

.1 If the rate of tax levied by the other taxing municipality is the same as is imposed by the Lima Ordinance, the Lima employer shall withhold the tax of 1.5 per cent on the entire wage earned by such Lima resident, and shall remit to such other taxing municipality the tax on the wages earned by such Lima resident in such other taxing municipality, remitting to the City of Lima only the balance, if any, of the tax

withheld.

.2 If the rate of tax levied by the other taxing municipality is less than the rate imposed by the Lima Ordinance, such employer shall withhold tax of 1.5 per cent on the entire wage earned by such Lima resident, and shall remit to the other taxing municipality only the tax imposed by the Ordinance of such other taxing municipality on the income earned therein by such Lima resident, and shall remit to the City of Lima the balance of the tax withheld.

.3 If the rate of tax levied by the other taxing municipality is at a higher rate than the rate imposed by the Lima Ordinance, such Lima employer shall withhold and remit to such other taxing municipality the full rate of tax imposed by that other municipality on compensation earned therein by such Lima resident, remitting to the City of Lima only the tax withheld on wages earned other than in such higher taxing municipality.

11. Subject to approval by the Board of Review, the Director of Taxation shall have authority to permit the filing of individual returns and payment thereon of employers of less than four (4) employees and to enter into agreement with other taxing municipalities permitting an employer to withhold the entire tax on the wages of a taxpayer working in more than one taxing municipality either for the taxing municipality in which the employer has his principal place of business or the taxing municipality in which the employee resides.

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

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

1. The deductions from salaries, wages, and other compensation required to be made by employers are to begin with the compensation earned on and after the effective date of the Ordinance. The employer (in addition to any return required to be filed with respect to his own earnings or net profits) shall, on or before the last day of the month next following each quarterly period, make a return (Form LW-1) and pay to the Director of Taxation the full amount of the tax so deducted or withheld with respect to compensation paid all of his employees subject to the tax under the Ordinance. In the event the total monthly employee deductions are \$300.00 or more, the employer shall make a return and pay such amount to the Director of Taxation on or before the fifteenth day of the month following the month in which such deductions were made. Provided, in the event tax has been withheld from Lima residents and remitted to other taxing municipalities, the tax so remitted shall be indicated on Form LW-1. The return (Form LW-1) required to be filed under this article shall be made on a form furnished by or obtainable on request from the Director of Taxation.

2. 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 Director of Taxation, depending upon the circumstances and the time when the over-withholding is determined as follows:

a. Current Employees:

.1 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 on the LW-1 as withheld shall be the corrected amount.

.2 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, the LW-1 for the quarter in which the adjustment is made shall indicate the total amount actually withheld, the amount of the adjustment deducted therefrom, and the corrected amount reported on the LW-1.

.3 If the over-withholding is discovered in the following year, the employer should notify the Director of Taxation of such over-withholding and the circumstance thereof. Upon proper verification, the Director of Taxation shall refund to the employee, upon application by the employee, the amount of such excess withholding.

b. Former employees:

.1 In case too much has been withheld from an employee who is no longer

employed by the employer, the employer shall notify the Director of Taxation of the amount and circumstances of such over-withholding and the Director of Taxation shall then refund to the employee, upon application by the employee, the amount of such excess withholding; or

.2 If the error is discovered by the employee, such employee shall file a claim with the Director of Taxation, and, upon verification thereof by the employer, the Director of Taxation shall refund to the employee the amount of such excess withholding.

c. Non-Resident Employed Outside the City:

Where an employer has withheld the tax from all wages of a non-resident of the City of Lima and such non-resident has been employed outside of the City of Lima for all or a part of the time, such employee shall file a claim with the Director of Taxation covering such erroneous withholding and the Director of Taxation shall, upon verification thereof by the employer, 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. However, if the employee-employer relationship has terminated, the employer shall notify the Director of Taxation of such deficiency and the reason therefor.

3. Every employer is deemed to be a trustee for the City of Lima 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.

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

5. On or before the 31st day of January, following any calendar year in which such deductions have been made by any employer, such employer shall file with the Director of Taxation, an information return for each employee from whom the City of Lima Income Tax has been withheld, showing the name, address, and Social Security number of the employee, the total amount of compensation paid during the year and the amount of the City of Lima Income Tax withheld from such employee.

6. For the convenience of employers, the information return may be made in one of three ways at the election of each employer, as follows:

a. Those employers using Form LW-2 furnished commercially may submit a copy of such commercial Form LW-2 providing the copy furnished the City of Lima clearly shows the information required in paragraph 5 immediately preceding.

b. Those employers not using Form LW-2 furnished commercially may obtain forms upon request from the Director of Taxation.

c. Where the furnishing of this information as above indicated will create a distinct hardship, the employer upon written request to the Director of Taxation, may be permitted to furnish a list of all employee's full name, last known address, Social Security number, gross amount of compensation paid during the year and the amount of City of Lima Income Tax withheld. Such list may be compiled on any mechanical equipment presently used by the employer, but provision must be made for spacing equal to at least three lines between each name. The employer's name must be indicated on each sheet, each sheet must be numbered and the total number of sheets comprising the complete report indicated on the first page.

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

7. In addition to such information returns, and at the time the same are filed, such employer shall file with the Director of Taxation, Form LW-3 to enable the Director of Taxation to reconcile the sum total of compensation paid and taxes withheld as disclosed by information return LW-2, or list of employees, and prior returns and remittances made pursuant to the Ordinance.

C. Fractional Parts of Cent:

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

## **ARTICLE VII DECLARATIONS**

- A. Requirement of Filing:
1. A declaration of estimated tax shall be filed by every taxpayer who anticipates receiving taxable income from which Lima income tax will not be withheld by an employer or employers. Every Lima resident employed in another taxing municipality and subject to withholding therein is nevertheless required to file a declaration of estimated tax. (See also Article VII-C. hereof). Where required, such declaration shall be filed within four (4) months after the beginning of the taxable year.
  2. 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 Lima Ordinance. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on income shall be filed in good faith.
- B. Date of Filing:
1. A person or other entity conducting a business not previously subject to the tax, or whose employer does not withhold the tax shall file a declaration within four (4) months after the date he becomes subject to the tax.
  2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration within four (4) months after the start of each fiscal year or period.
- C. Form for filing:
1. Such declaration shall be filed on a form furnished by or obtainable from the Director of Taxation. The form may require a statement that the figures used in making the declaration are the figures used for estimating the Federal income tax adjusted to exclude any income or deductions not taxable or permissible under the Lima Ordinance. Credit shall be taken for Lima Income Tax withheld or to be withheld from any portion of such income pursuant to Section 880.06 of the Ordinance. Credit against the estimated declared tax may be claimed in accordance with the provisions of Section 880.15 of the Ordinance as follows:
    - a. Taxes paid or payable to another taxing municipality by Lima residents, whether payable directly or through withholding.
    - b. Should the declaration indicate an overpayment after application of allowable credits, such overpayment shall not be refunded until the final return has been filed in accordance with Section 880.05 of the Ordinance.
  2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any quarterly payment date as set forth in Article VII-D.1. Such amendment may be made on the regular declaration form or on the back of any quarterly notice form (LQ-1).
- D. Dates of Payments - Calendar Year Taxpayers:
1. Declaration of estimated tax to be paid the City of Lima shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax and at least a similar amount shall be paid on or before July 31, October 31, and January 31 of each year.
  2. An amended declaration must be filed on or before January 31 of any year, if it appears that the original declaration made for such year under-estimated the taxpayer's income by 20% or more. At such time a payment which, together with prior payments is sufficient to pay taxpayer's entire estimated liability, shall be made. If upon filing of the return required by Article 5 hereof, it appears that the taxpayer did not pay 80% of his tax liability, as shown on said return, on or before January 31, the difference between 80% of said taxpayer's tax liability and the amount of estimated tax he actually paid on or before January 31, shall be subject to the interest and penalty provisions of Article 10 hereof; however, any taxpayer whose declared taxes is equal to or greater than the tax paid in the previous year shall not be assessed any interest or penalty for any increased taxes found to be due in the current year.
  3. Such declaration shall indicate that the estimated tax is being withheld under the provisions of Article 6 hereof or is being paid to another municipality under a similar ordinance.
- E. Dates of Payment - Fiscal Year Taxpayers:
1. Those taxpayers having a fiscal year or period differing from the calendar year shall file a

declaration within four (4) months after the start of the each fiscal year or period, accompanied by payment of at least one-fourth (1/4) of the estimated annual tax shown due thereon, and shall make quarterly payments each three (3) months thereafter.

2. An amended declaration must be filed on or before the last day of the first month following the end of taxpayer's fiscal year, if it appears that the original declaration made for such year underestimated the taxpayer's income by 2-% or more. At such time a payment which, together with prior payments is sufficient to pay taxpayer's entire estimated liability, shall be made. If upon filing of the return required by Article 5 hereof it appears that the taxpayer did not pay 80% of his tax liability, as shown on said return, on or before the last day of the first month following the end of taxpayer's fiscal year, the difference between 80% of said taxpayer's tax liability and the amount of estimated tax he actually paid on or before the last day of the first month following the end of taxpayer's fiscal year, shall be subject to the interest and penalty provisions of Article 10 hereof; however, any taxpayer whose declared taxes is equal to or greater than the tax paid in the previous year shall not be assessed any interest or penalty for any increased taxes found to be due in the current year.

F. Due Date - Final Return:

On or before April 30 of the year following that for which such declaration or amended declaration was filed or in the case of a fiscal year taxpayer, the last day of the fourth month following the end of taxpayer's fiscal year, an annual return shall be filed and any balance which may be due the City of Lima shall be paid therewith in accordance with the provisions of Article 5 hereof.

G. Final Returns Required:

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

### **ARTICLE VIII DUTIES OF THE DIRECTOR OF TAXATION**

A. Collection of Tax and Retention of Records:

1. It shall be the duty of the Director of Taxation to receive the tax imposed by the Ordinance in the manner prescribed herein from the taxpayers, to keep an accurate record thereof, and to report all monies so received.

2. It shall be the duty of the Director of Taxation to enforce payment of all taxes owing Lima, to keep accurate records for a minimum of five (5) years, showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

B. Enforcement Provisions:

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

2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the Ordinance or those rules and regulations, should submit to the Director of Taxation in writing all the facts involved and the ruling sought.

3. These regulations, together with all amendments and supplements hereto, and all changes herein, will be on file at the office of the Director of Taxation, 50 Town Square, Lima, Ohio, and will be open to public inspection.

4. The Director of Taxation 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 Director of Taxation that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the Ordinance.

5. Failure to make any deferred payment, when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Section 880.11

- and 880.12 of the Ordinance shall apply.
- C. Estimation of Tax by the Director of Taxation.
    - 1. Whenever the Director of Taxation has been unable to secure information from the taxpayer as to his taxable income for any year, he may determine the amount of tax appearing to be due and assess the taxpayer upon the basis of such determination, together with the interest and penalties as prescribed in Section 880.10 of the Ordinance.
    - 2. Such determination of tax may be adjusted upon submission by the taxpayer of actual records from which his tax may be computed.
  - D. Subject to the consent of the Board of Review or pursuant to regulation approved by said Board, the Director of Taxation shall have the power to compromise any interest or penalty, or both, imposed by Section 880.10 of the Ordinance.

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

- A. Investigation by the Director of Taxation:
  - 1. The Director of Taxation, or his duly authorized agent, is authorized to examine the books, papers, records, and Federal income tax returns of any employer, taxpayer, or person subject to the Ordinance, or whom the Director of Taxation believes is subject to the provisions of the Ordinance, for the purpose of verifying the accuracy of any return made, or if no return was made, to ascertain the tax due under the Ordinance.
  - 2. An employer or taxpayer shall furnish, within ten (10) days following a written request by the Director of Taxation, or his duly authorized agent, the means, facilities, and opportunity for making examinations and investigations authorized by the Ordinance.
- B. Subpoena of Records and Person:
  - 1. The Director of Taxation, or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been returned for taxation, or any transaction tending to affect such income. The Director of Taxation may compel the production of books, papers, and records and the attendance of all persons before him whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.
  - 2. The Director of Taxation's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Director of Taxation.
  - 3. The Director of Taxation may order the appearance before him, or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Director of Taxation is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
  - 4. Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show the time and place of the hearing and what books, papers, or records the witness is to make available at such hearing.
  - 5. The notice shall be served by the Director of Taxation, or his duly authorized agent, by delivering it to the person named personally, or by leaving the notice at his usual place of business or residence, or by mailing it to the person by registered mail, return receipt requested, addressed to his usual place of business or residence.
- C. Penalty for Non-Compliance:

Refusal by an employer, supposed employer, taxpayer, or supposed taxpayer or the refusal of any such person to appear before the Director of Taxation or his duly authorized agent, to submit to such examination and to produce the records requested, constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 880.12 of the Ordinance.
- D. Confidential Nature of Examination:

Any information gained as a result of any returns, investigations, verifications, or hearings before the Director of Taxation 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. An person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than six (6) months, or both. In addition to the above penalty, any employee of the City of Lima who violates the provisions of this section relative to the disclosure of confidential information, shall be guilty of an offense punishable by immediate dismissal.

E. Retention of Records:

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 X INTEREST AND PENALTIES**

A. Interest.

Except as provided in paragraph C of this article, all taxes imposed and all monies withheld, or required to be withheld, by employers under the provisions of the Ordinance and remaining unpaid after they have become due, shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of 12 per cent per year.

B. Penalties.

In addition to interest as provided in paragraph A hereof, penalties based on the unpaid tax are hereby imposed as follows:

1. In the case of a taxpayer upon whom such taxes are imposed the penalty shall be ten percent of the unpaid tax, if paid during the first month after the same becomes due, and two percent additional per month or fraction thereof after the first moth. The maximum penalty under this subsection shall not exceed twenty percent. However, no penalty shall be assessed on an additional tax assessment made by the Director of Taxation when a return has been filed in good faith and the tax paid thereon within the time prescribed herein. No penalty or interest shall be assessed on any additional tax assessment resulting from a Federal audit, provided that an amended return is filed and the additional tax paid within three months after the final determination of Federal tax liability.

2. In the case of any employer required to withhold taxes from employees under this chapter, the penalty shall be ten percent of the unpaid withholding, if paid during the first month after the same becomes due, and three percent additional per month or fraction thereof after the first month. The maximum penalty under this subsection shall not exceed twenty-five percent.

C. Exceptions:

1. No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within the prescribed time.

2. In the absence of fraud neither penalty nor interest shall be assessed on any additional taxes resulting from a Federal audit for Federal income tax purposes, provided an amended return is filed and the additional tax paid within three (3) months after final determination of the Federal tax liability.

3. A taxpayer or employer shall have thirty (30) days after receipt of notice of any proposed imposition of interest and penalties within which to file a written protest or explanation with the Director of Taxation. If no protest or explanation is filed within the prescribed time, the proposed imposition of interest and penalties shall become, and be, the final assessment. Upon filing of a written protest or explanation, the Director of Taxation shall determine the assessment which may or may not be the same as the proposed assessment.

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

**ARTICLE XI COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS**

A. Unpaid Sums - A Civil Debt:

1. All taxes imposed by the Ordinance and not paid when due, become, together with interest and

penalties thereon, a debt due the City from the taxpayer and are recoverable as are other debts by civil suit. Employers who are required, under Section 880.06 of the Ordinance, to withhold and remit the taxes required to be withheld at the source, and who fail to withhold and/or remit, become liable to the City in a civil action to enforce the payment of the debt created by such failure.

2. No additional assessment shall be made by the Director of Taxation after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be no period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report 25% or more of gross income shall be considered a substantial omission.

3. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an assessment may be made by the Director of Taxation is extended to one (1) year from the time of final determination of Federal tax liability.

B. Refunds and Overpayments:

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

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

3. Overpayments will be either refunded or credited to the taxpayer's current year's liability at his option. Where no election has been made by the taxpayer, overpayments of any year's taxes shall be applied as follows:

- a. To taxes owed for any previous years in the order in which such taxes became due.
- b. To his current estimated tax liability.

C. Limitation:

Where the total amount due or refund claimed for a tax year is less than one dollar (\$1.00), such amount shall not be collected or refunded.

## **ARTICLE XII VIOLATIONS, PENALTIES**

A. Any person who shall:

1. Willfully 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. Willfully fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this Ordinance; or
4. Willfully fail, neglect, or refuse to withhold the tax from his employees or remit such withholding to the Director of Taxation.
5. Refuse to permit the Director of Taxation 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 a taxpayer; or
6. Fail to appear before the Director of Taxation and to produce his books, records, papers, or Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Director of Taxation; or
7. Refuse to disclose to the Director of Taxation any information with respect to the income or net profits of a taxpayer; or
8. Fail to comply with the provisions of this Ordinance or any order or subpoena of the Director of Taxation authorized hereby; or
9. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Ordinance, shall be guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned not more than six (6) months or both, for each offense.

B. Prosecutions:

All prosecutions under this Section must be commenced within the periods stipulated in Ohio

Revised Code 718.06.

- C. Failure to Receive Forms - Not a Defense.  
The failure of any employer or person to receive or procure a return, declaration, or other required forms, shall not excuse him from making any information return, declaration or return, from filing such forms, or from paying the tax.

### **ARTICLE XIII BOARD OF REVIEW OR APPELLATE AUTHORITY**

- A. Composition:  
A Board of Review, consisting of the Director of Law, as Chairman, the Mayor and the Auditor of the City of Lima, is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 880.09 hereof with reference to the confidential character of information required to be disclosed by the Ordinance shall apply to such matters as may be heard before the Board of Review on appeal.
- B. Duties:  
All rules and regulations and amendments or changes thereto, which are adopted by the Director of Taxation 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 Director of Taxation and, at the request of the taxpayer or the Director of Taxation and, at the request of the taxpayer or the Director of Taxation, is empowered to substitute alternate methods of allocation.
- C. Appeals:  
1. An appeal from a ruling of the Director of Taxation by a taxpayer or employer is effected by filing a notice of appeal with the Board of Review, C/O Mayor, City Building, Lima, Ohio, within sixty (60) days after the announcement of the Director of Taxation's ruling or decision from which the appeal is taken. A copy of such notice of appeal must be filed with the Director of Taxation.  
2. The Board, by a majority vote, may affirm, modify, or reverse in whole or in part, any such ruling or decision of the Director of Taxation.  
3. Hearings before the Board shall be private unless the taxpayer requests a public hearing.

### **ARTICLE XIV USE OF FUNDS**

NO REGULATION ON THIS SECTION AS IT IS A POLICY MATTER FOR COUNCIL.

### **ARTICLE XV CREDIT ALLOWED FOR TAX PAID TO ANOTHER MUNICIPALITY**

- A. Where a resident of the City of Lima is subject to a municipal income tax in another municipality he shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.
- B. Resident individual of the City of Lima who are required to file and pay a tax to another municipality on salaries, wages, commissions or other compensation for work done or services performed in such other municipality, or on net profits from businesses, professions or other activities conducted in such other municipality may claim a credit for the amount of tax paid by them or on their behalf to such other municipality but only to the extent of the tax imposed by the Ordinance on such compensations or net profit.

### **ARTICLE XVI SAVING CLAUSE**

NO REGULATION AS THIS SECTION PERTAINS TO THE LEGALITY OF THE ORDINANCE AND NOT TO ITS ADMINISTRATION.