

ORDINANCE NO. 2004-52

**AN ORDINANCE AMENDING CHAPTER 890, EARNED INCOME TAX,
OF THE CITY'S CODIFIED ORDINANCES,
AND DECLARING AN EMERGENCY**

BE IT ORDAINED BY the Council of the City of Wapakoneta, County of Auglaize, State of Ohio, to-wit:

SECTION ONE

That Chapter 890, Earned Income Tax, shall be amended to read as follows:

890.01 PURPOSE.

To provide funds for the purposes of general Municipal operations, maintenance, new equipment, extension and enlargement of Municipal services and facilities and capital improvements of this Municipality there shall be, and is hereby, levied a tax on salaries, wages, commissions and other compensation, and on net profits as hereinafter provided.

890.02 DEFINITIONS.

- A. As used in this Chapter the following words shall have the meanings ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning.
1. "Adjusted federal taxable income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:
 - a. Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income;
 - b. Add an amount equal to five percent (5%) of intangible income deducted under division (A)(1)(a) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;
 - c. Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;
 - d.
 - (i) Except as provided in division (A)(1)(d)(ii) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;
 - (ii) Division (A)(1)(d)(i) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.
 - e. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
 - f. In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;
 - g. If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except:

- (i) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and
- (ii) Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

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

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

- 2. "Association" means a partnership, limited partnership, S corporation or any other form of unincorporated enterprise, owned by one or more persons.
- 3. "Board of Review" means the Board created by and constituted as provided for in Section 890.13.
- 4. "Business" means an enterprise, venture, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, including but not limited to the renting or leasing of property, real, personal or mixed.
- 5. "Business Allocation" means the portion of net profits to be allocated to Wapakoneta, Ohio, as having been made in Wapakoneta, Ohio, either under separate accounting method, or under the three factor formula of property, payroll and sales.
- 6. "Calendar Year" means an accounting period of twelve (12) months or less ending on December 31.
- 7. "City" means the City of Wapakoneta, Ohio.
- 8. "Corporation" means a corporation, or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.
- 9. "Domicile" means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence.
- 10. "Employee" means one who works for wages, salary, commission or other types of compensation in the services of an employer. Any person upon whom an employer is required to withhold for either federal income or social security or on whose account payments are made under the Ohio Bureau of Worker's Compensation law shall prima facie be an employee.
- 11. "Employer" means an individual, partnership, association, corporation, (including a corporation not for profit), governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other compensation basis whether or not such employer is engaged in business.
- 12. "Estimated Tax Liability" means the amount that a taxpayer estimates to be the taxpayer's liability for a Municipal Corporation's income tax for a year prior to applying any credits, estimated tax payments, or withheld taxes for the year.
- 13. "Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31. Only fiscal years accepted by the Internal Revenue Service for federal income tax purposes may be used for City of Wapakoneta income tax purposes.

14. "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
15. "Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a refund claim that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income. Any municipality that requires taxpayers to file income tax returns, reports, or other documents shall accept for filing a generic form of such a return, report, or document if the generic form, once completed and filed, contains all of the information required to be submitted with the municipality's prescribed returns, reports, or documents.
16. "Gross receipts" means total income from any source whatsoever.
17. "Income from a pass-through entity" means partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from other pass-through entities.
18. "Intangible income" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation.

Intangible income does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.
19. "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
20. "Internet" means the international computer network of both Federal and nonfederal interoperable packet switched data networks, including the graphical sub network known as the World Wide Web.
21. "Limited liability company" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
22. "Municipality" means the City of Wapakoneta.
23. "Net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts described in division (F) of section 890.03, required to be reported on schedule C, schedule E, or schedule F.
24. "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.
25. "Nonresident" means an individual domiciled outside the Municipality.
26. "Nonresident incorporated business entity" means an incorporated business entity not having an office or place of business within the Municipality.
27. "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Municipality.
28. "Other entity" means any person or unincorporated body not previously named or defined, including inter alia, fiduciaries located within the City.
29. "Other payer" means any person, other than an individual's employer or the employer's agent that pays an individual any amount included in the federal gross income of the individual.

30. "Owner" means a partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.
31. "Owner's proportionate share", with respect to each owner of a pass-through entity, means the ratio of (a) the owner's income from the pass-through entity that is subject to taxation by the municipal corporation, to (b) the total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.
32. "Pass-through entity" means a partnership, Limited Liability Company, S corporation, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.
33. "Person" includes every natural person, partnership, fiduciary, association, corporation or other entity. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof, and in the case of any unincorporated entity or corporation not having any partner, member or officer within this Municipality, any employee or agent of such unincorporated entity or corporation who can be found within the corporate limits of the City.
34. "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.
35. "Principal place of business" means in the case of an employer having headquarters' activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated. In the case of any employer not having its headquarters' activities at a place of business within a taxing municipality, the term means the largest place of business located in a taxing municipality.
36. "Qualified plan" means a retirement plan satisfying the requirements under section 401 of the Internal Revenue Code as amended.
37. "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code.
38. "Resident" means an individual domiciled in the Municipality.
39. "Resident incorporated business entity" means an incorporated business entity having an office or place of business within the Municipality.
40. "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Municipality.
41. "Return preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.
42. "Schedule C" means Internal Revenue Service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.
43. "Schedule E" means Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.
44. "Schedule F" means Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.
45. "S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

46. "Tax Administrator" means the person appointed to administer the Municipality's Income Tax Ordinance and to direct the operation of the Municipal Income Tax Department or the person executing the duties of the Tax Administrator.
47. "Taxable income" means
- (a) Wages, salaries, and other compensation paid by an employer or employers.
 - (b) The net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this chapter.
 - (c) Employee contributions to cost of fringe benefits as defined by Section 525 of the IRS code, as amended.
 - (d) Sick pay received during taxable year.
 - (e) Vacation pay received during taxable year.
 - (f) Income from wage-continuation plans.
 - (g) Premium cost paid by employer for an employee's group term life insurance with face amount of \$50,000.00 or more.
 - (h) Severance pay.
 - (i) Tips.
 - (j) Contributions made by employees to a tax-deferred annuity plan (i.e. 401k).
 - (k) Disability pay if received as a benefit from employment (to include third party plans).
 - (l) Bonuses.
 - (m) Commissions.
 - (n) Supplemental unemployment pay, which is paid by employer (SUB-pay).
 - (o) All third party sick pay received by a resident or non-resident who receives such payments as a result of employment within the corporate limits of the City.
 - (p) Business income (Federal Sch C)
 - (q) Rental Income (Federal Sch E, 4835) received by a person from real property within the City. Real property shall include commercial property, residential property, farm property, and any and all other types of real property.
 - (r) Farm Income (Federal Sch F)
 - (s) The portion attributable to operations within the City of the net profits earned during the effective period of this chapter of all resident associations, corporate entities, unincorporated businesses, professions or other entities, derived from sales made, work done, rentals, services performed or rendered and business or other activities conducted in the City. The tax imposed on resident associations or other unincorporated entities owned by two or more individuals is upon the entities rather than the individual owners or members thereof. Losses from the operation of such activities, required to file as a separate entity, may not be used to offset wages, salaries, or other types of employee earnings or other compensation.
 - (t) A resident partner or owner share of the net profits earned during the effective period of this chapter by a resident or unincorporated business not attributable to operations within the City and not levied against such entity.
 - (u) The portion attributable to operations within the City of the net profits earned during the effective period of this chapter of all non-resident associations, corporate entities, unincorporated businesses, professions or other entities, derived from sales made, work done, rentals or services performed or rendered and business or other activities conducted in the City. The tax imposed on non-resident associations or other non-resident unincorporated entities owned by two or more persons is upon the entities rather than the individual owners or members thereof. Losses from the operation of such activities, required to file as a separate entity, may not be used to offset wages, salaries or other types of employees earnings or other compensation.
 - (v) A non-resident partner or owner share of the net profits earned during the effective period of this chapter of a non-resident association or other unincorporated business not attributable to operations within the City and not levied against such association or other unincorporated entity.
 - (w) The portion attributable to the City, of the net profits earned during the effective period of this chapter of all corporations derived from sales made, work done, rentals, services performed or rendered and business or other activities conducted in the City, whether or not such corporations have an office or place of business in the City.
 - (x) All other compensation unless specifically exempted by this chapter.
48. "Taxable year" means the corresponding tax-reporting period as prescribed for the taxpayer under the Internal Revenue Code.

49. "Taxing municipality" means a municipality levying a tax on income earned by residents working within such municipality or on income earned by its residents.
 50. "Taxpayer" means a person, whether an individual, partnership, association or any corporation or other entity, required hereunder to file a return or pay a tax. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.
 51. "Third Party Sick Pay" means payments received by an employee from either an individual, partnership, or corporation who or that has received a premium or other payment from the employer to insure that such payments be made to the employee for periods of time such employee was sick or on temporary disability and not physically working for the employer and the payments are to be considered either wages, salary, or other compensation and taxable under this chapter.
- B. The singular shall include the plural, the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.

890.03 IMPOSITION OF TAX.

- A. Basis of Imposition. Subject to provisions of section 890.16, an annual tax for the purposes specified in 890.01 hereof shall be, and is hereby, levied on and after September 1, 1986, at the rate of one per cent (1%) per annum upon the following:
1. On all qualifying wages, commissions, other compensation, and other taxable income earned or received by residents of the Municipality.
 2. On all qualifying wages, commissions, other compensation, and other taxable income earned or received by nonresidents for work done, or services performed or rendered, in the Municipality.
 3. On the portion attributable to the Municipality of the net profits earned by all resident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered, and business or other activities conducted in the Municipality. On the portion of the distributive share of the net profits earned by a resident owner of a resident unincorporated business entity or pass-through entity not attributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.
 4. On the portion attributable to the Municipality on the net profits by all nonresident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality. On the portion of the distributive share of the net profits earned by a resident owner of a nonresident unincorporated business entity or pass-through entity not attributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.
 5. On the portion attributable to the Municipality of the net profits earned by all corporations that are not pass-through entities from work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such corporations have an office or place of business in the Municipality.
 6. On all amounts received as gambling winnings as reported on IRS Form W-2G, Form 5754 and or any other Form required by the Internal Revenue Service that reports winnings from gambling, prizes and lottery winnings.
- B. Businesses Both In and Outside the Municipal Boundaries. This section does not apply to taxpayers that are subject to and required to file reports under Chapter 5745, of the Ohio Revised Code. Except as otherwise provided in division (D) of this section, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such municipal

corporation for purposes of municipal income taxation in the same proportion as the average ratio of the following:

1. Multiply the entire net profits of the business by a business apportionment percentage to be determined by:

- a. The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

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

- b. Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in such municipal corporation to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under section 718.011 of the Ohio Revised Code.

- c. Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

- d. Adding together the percentages determined in accordance with subsections B.1.a., b. and c. hereof, or such of the aforesaid percentages as are applicable to the particular taxpayer and dividing the total so obtained by the number of percentages used in deriving such total.

1. A factor is applicable even though it may be apportioned entirely in or outside the Municipality.

2. Provided, however, that in the event a just and equitable result cannot be obtained under the formula provided for herein, the Tax Administrator, upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

C. As used in division (B) of this section, "sales made in a municipal corporation" mean:

1. All sales of tangible personal property delivered within such municipal corporation regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation.
2. All sales of tangible personal property delivered within such municipal corporation regardless of where title passes even though transported from a point outside such municipal corporation if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.
3. All sales of tangible personal property shipped from a place within such municipal corporation to purchasers outside such municipal corporation regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

D. Except as otherwise provided in division (E) of this section, net profit from rental activity not constituting a business or profession shall be subject to tax only by the municipal corporation in which the property generating the net profit is located.

E. This section does not apply to individuals who are residents of the Municipality and, except as otherwise provided in section 718.01 of the Ohio Revised Code, the Municipality may impose a tax on all income earned by residents of the Municipality to the extent allowed by the United States Constitution.

F. Net Operating Loss (NOL).

1. The portion of a net operating loss sustained in any taxable year, beginning with the year 1986, apportioned to the Municipality may be applied against the portion of the profit of succeeding tax years apportioned to the Municipality, until exhausted, but in no event for more than the five (5) taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.
2. The portion of a net operating loss sustained shall be apportioned to the Municipality in the same manner as provided herein for apportioning net profits to the Municipality.
3. The net operating loss of a taxpayer that loses its legal identity, by any means such as merger or consolidation, shall not be allowed as a carryforward loss deduction to the surviving or new taxpayer.
4. The net operating loss sustained by a business or profession is not deductible from employee W-2 earnings. However, if a taxpayer is engaged in two or more taxable business activities to be included in the same return, the net loss of one unincorporated business activity (except any portion of a loss reportable for municipal income tax purposes to another municipality) may be used to offset the profits of another for purposes of arriving at overall net profits.

G. Consolidated Returns.

1. The filing of consolidated returns shall be accepted from any affiliated group of corporations subject to the City's tax if that affiliated group filed for the same tax-reporting period a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code. Once a consolidated return has been filed for any taxable year, consolidated returns shall continue to be filed in subsequent years.
2. In the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the City constituting a portion only of its total business, the Administrator or his duly authorized agent or employee shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City. If the Administrator or his duly authorized agent or employee finds net profits are not properly allocated to the City by reasons of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the City.

H. Exclusions. The provisions of this Chapter shall not be construed as levying a tax upon the following:

1. Proceeds from welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.
2. Proceeds of insurance, annuities, workers' compensation insurance, permanent disability benefits, compensation for damages for personal injury and like reimbursements, not including damages for loss of profits and wages.
3. Dues, contributions and similar payments received by charitable, religious, educational organizations, or labor unions, trade or professional associations, lodges and similar organizations.
4. Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations and income of a decedent's estate during the period of administration (except such income from the operation of a business).
5. Alimony.
6. Compensation for damage to property by way of insurance or otherwise.

7. Intangible income.
8. Interest and dividends from intangible property.
9. Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard (ORC 718.01).
10. Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio Revised Code 718.01 to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.
11. Any association or organization falling in the category listed in the preceding paragraph receiving income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall not be excluded hereunder.
12. In the event any association or organization receives taxable income as provided in the preceding paragraph from real or personal property ownership or income producing business located both within and without the corporate limits of the Municipality, it shall calculate its income apportioned to the Municipality under the method or methods provided above.
13. If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from Municipal income tax.
14. The rental value of a home furnished to a minister of the gospel as part of his compensation, or the rental allowance paid to a minister of the gospel as part of his compensation, to the extent used by him to rent or provide a home pursuant to section 107 of the Internal Revenue Code.
15. Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars may be subjected to taxation. The payer of such compensation is not required to withhold Municipal tax from that compensation.
16. Compensation paid to an employee of a transit authority, regional transit authority, or a 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 Municipality, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such tax by reason of residence or domicile in the Municipality, or the headquarters of the authority or commission is located within the Municipality.
17. The Municipality shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the Municipality on twelve (12) or fewer days in a calendar year unless one of the following applies:
 - a. The individual is an employee of another person, the principal place of business of the individual's employer is located in another municipality in Ohio that imposes a tax applying to compensation paid to the individual for services paid on those days; and the individual is not liable to that other municipality for tax on the compensation paid for such services.
 - b. The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the Municipality.
18. The income of a public utility, when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code, except a municipal corporation may tax the following, subject to Chapter 5745. of the Ohio Revised Code:

- a. The income of an electric company or combined company;
- b. The income of a telephone company.

As used in division (H)(18) of this section, "combined company", "electric company", and "telephone company" have the same meanings as in section 5727.01 of the Ohio Revised Code.

19. An S corporation shareholder's distributive share of net profits or losses of the S corporation.
20. Generally the above noted items in this section are the only forms of income not subject to the tax. Any other income, benefits, or other forms of compensation shall be taxable.

I. Employee business expense, Federal Form 2106, may be deducted from W-2 wages to determine taxable base. Schedule A and Form 2106 must be attached to return.

J. The Administrator or his duly authorized agent or employee may request from every owner of rental units within the city a roster of the names and addresses of persons residing in rental units. The listing is to include any changes during the year with dates and forwarding addresses if available.

The Administrator or his duly authorized agent or employee may request from Federal employers and employers who issue only 1099's a roster of the names, addresses and social security numbers of persons in their employ during the tax year.

890.04 EFFECTIVE PERIOD.

Said tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation earned and shall be levied with respect to the net profits of the businesses, professional or other activities earned from and after January 1, 1977.

890.05 RETURN AND PAYMENT OF TAX.

- A. Each person who engages in business or other activity or whose qualifying wage, commissions, other compensation, and other taxable income is subject to the tax imposed by this Tax Code, must, whether or not a tax be due thereon, make and file an annual return on or before April 15 of the year following the effective date of this Tax Code, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the end of such fiscal year or period.

The Administrator is hereby authorized to provide by regulation, relief from the annual filing requirement to certain retired individuals who no longer are expected to have income taxable to the City.

- B. A husband and wife may file either separate returns or a joint return for municipal purposes, even though one of the spouses has neither taxable income nor deductions included on the Municipal return regardless of whether their federal and state returns were filed separately or jointly. If a joint city return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.
- C. The City of Wapakoneta shall accept for filing a generic form of such a return, report or document if the generic form, once completed and filed, contains all of the information required to be submitted with the municipal corporation's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with rules or ordinances of the municipal corporation governing the filing of returns, reports or documents.

- D. The return shall set forth:
1. The aggregate amounts of qualifying wages, commissions, other compensation received, allocated, apportioned or set aside, other income defined by statute as taxable, and gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to said tax; and
 2. The amount of the tax imposed by this Tax Code on such earnings and profits; and
 3. Such other pertinent statements, information returns, copies of federal or state tax returns and/or schedules, or other information as the Tax Administrator may require, including a statement that the figures used in the return are the figures used for federal income tax adjusted to set forth only such income as is taxable under the provisions of this Chapter.
- E.
1. Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a Municipal Income Tax Return by filing a copy of the taxpayer's federal extension request with the Municipal Tax Division. Any taxpayer not required to file a federal income tax return may request an extension for filing a Municipal Income Tax Return in writing. The request for extension must be filed on or before the original due date for the annual return. If the request is granted, the extended due date of the municipal income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended.
 2. The Tax Administrator may deny a taxpayer's request for extension if the taxpayer:
 - a. fails to timely file the request; or
 - b. fails to file a copy of the federal extension request, (if applicable); or
 - c. owes the Municipality any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of income tax; or
 - d. has failed to file any required income tax return, report, or other related document for a prior tax period.
 3. The Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by April 15 or within four (4) months from the end of the fiscal year. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended. The taxpayer must file the written request with the Administrator by the original due date of the tax return.
 4. No taxpayer is required to file an annual income tax return or report prior to the filing date for the corresponding tax-reporting period as prescribed for such a taxpayer under the Internal Revenue Code.
 5. There shall be a penalty of Twenty-Five Dollars (\$25.00) imposed for the failure to file a return when due, regardless of whether a tax is due or not.
- F. PAYMENTS WITH RETURNS.
1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Tax Administrator the amount of taxes shown as due. However, credit shall be allowed for:
 - a. Any portion of the tax so due which shall have been deducted at the source pursuant to the provisions of section 890.06; and
 - b. Any portion of said tax which shall have been paid by the taxpayer pursuant to the provisions of section 890.07; and
 - c. Credit to the extent allowed by section 890.15 for tax paid to another municipality.

2. Subject to the limitations contained in sections 890.06, 890.07 and 890.15 of this Tax Code, any taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this Tax Code may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than Three Dollars (\$3.00) shall be collected or refunded.
3. Non-resident employees whose tax was fully withheld by their employer but only work a percentage of time within the corporation limits may file for a refund of tax withheld for the percentage of time that work was performed for their employer outside the corporation. The city can retain a minimum of five percent (5%) of tax withheld by employers for non-resident employees for administration costs. A refund claim form, which may be obtained from the Administrator, must be completed and signed by both the employer/department superintendent and the employee. This refund claim form must be submitted with a copy of the employee's W-2. No refunds of less than Three Dollars (\$3.00) shall be refunded.
4. An adjustment made to a tax return by the Department of Taxation, after the return has been filed in good faith by the taxpayer, will not be made by the Department if the result of the adjustment is equal to or less than Three Dollars (\$3.00) as underpayment or overpayment.
5. There shall be a penalty of Twenty-five Dollars (\$25.00) imposed for the failure to file a return when due, regardless of whether a tax is due or not.

G. 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 890.07 and 890.11. The Tax Administrator shall provide by regulation the format in which such amended return shall be filed. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return. No additional taxes or refunds of less than Three Dollars (\$3.00) shall be collected or refunded.
2. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's Municipal tax liability, such taxpayer shall make and file an amended Municipal return showing income subject to the Municipal tax based upon such final determination of federal tax liability and pay any additional tax shown due thereon or make claim for refund of any overpayment. No additional taxes or refunds of less than Three Dollars (\$3.00) shall be collected or refunded.

- H. Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be a violation of this Tax Code. Provided, however, that the taxpayer shall have ten (10) days after notification by the Tax Administrator, or his authorized representative, to file the items required by this paragraph.

890.06 COLLECTION AT SOURCE.

- A. Withholding by Employer. Each employer within, or doing business within, the Municipality who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct, when such salary, wage, commission or other compensation is paid, allocated, apportioned or set aside, the tax at the rate of one percent (1%) on the qualifying wages due by such employer to each such employee and shall, on or before the last day of the month following such withholding, make a return and pay to the Tax Administrator the amount of taxes so deducted. The return shall be on a form or forms prescribed by or acceptable to the Tax Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such taxes have in fact been withheld.

Nothing in this section prohibits an employer from withholding tax on a basis greater than qualifying wages.

- B. The employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld. The employer shall be liable for late filing penalties and interest. The dissolution of a corporation does not discharge an employer's liability for failure to pay the tax due.
- C. An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.
- D.
 1. An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by a municipal corporation or by the employer's exemption from the requirement to withhold the tax.
 2. The failure of an employer to remit to the municipal corporation the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.
- E. So long as the taxes withheld by an employer for the Municipality during the measurement period are less than four hundred dollars (\$400.00) per month, payments may be made quarterly on or before the last day of the month following the end of each quarter, subject to the approval of the Tax Administrator. The Tax Administrator may revoke the approval of quarterly filing and payments whenever the Tax Administrator has reason to believe that the conditions for granting such authorization have changed, were judged incorrectly, were not met, or when it is in the best interest of the Municipality to do so. Notice of withdrawal shall be made in writing and the employer must begin to file in accordance with this section.
- F. Employer Considered as Trustee. Each employer in collecting such tax shall be deemed to hold the same, until payment is made by such employer to the Municipality, as a trustee for the benefit of the Municipality, and any such tax collected by such employer from his employees shall, until the same is paid to the Municipality, be deemed a trust fund in the hands of such employer. Each employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such tax, in fact, has been withheld.
- G. Any person who is required to withhold tax from qualifying wages shall pay all such tax to the Municipality in accordance with the provisions of this section. In the event taxes withheld from the qualifying wages of employees are not paid to the Municipality in accordance with the provisions of this section, all officers, members, managers, employees, and trustees having control or supervision of or charged with the responsibility of filing the return and making payment are jointly and severally personally liable for the tax not returned or paid to the Municipality as well as any related interest and penalties, and are also liable under the provisions of section 890.12 hereof. The dissolution, termination, or bankruptcy of a corporation, limited liability company, or business trust does not discharge an officer's, member's, manager's, employee's, or trustee's liability for a failure of the corporation, limited liability company, or business trust to file returns or pay said taxes.
- H. Withholding Return; List of Employees. Each employer shall file a withholding tax reconciliation showing the sum total of all compensation paid all employees, the portion of which, (if any) was not subject to withholding along with an explanation for same, and the portion of which was subject to withholding, together with the amount of such withholdings remitted. Such return shall include information concerning each employee from whom the Municipal tax was withheld, showing the name, address, zip code and social security number of each such employee, the total amount of compensation paid during the year and the amount of Municipal tax withheld. If the total tax withheld from any employee-included tax withheld and remitted to another municipality, the amount of same shall be separately shown on the return of information to the Municipality concerning each employee. In lieu of submitting form W-2's, an alternative method of report MUST be approved by the Administrator or his duly authorized agent or employee. The withholding tax reconciliation shall be filed by each employer on or before February 28 following the end of such calendar year.

- I. In addition to the wage reporting requirements of this section, any person required by the Internal Revenue Service to report on Form 1099-Misc. payments to individuals not treated, as employees for services performed shall also report such payments to the Municipality when the services were performed in the Municipality. The information may be submitted on a listing, and shall include the name, address and social security number (or federal identification number), and the amount of the payments made. Federal form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before February 28 following the end of such calendar year.
- J. A City of Wapakoneta employer required to withhold the tax from a City of Wapakoneta resident for work done or services performed in another municipality, and who does so withhold and remit to such other municipality, shall be relieved from the requirement of withholding the City of Wapakoneta tax from such City of Wapakoneta resident, except where the rate of tax for such other municipality is less than the rate of tax imposed by this Ordinance. In such case the employer shall withhold and remit the difference to the City of Wapakoneta.
- K. Domestic Servants. No person shall be required to withhold the tax on the qualifying wages, commissions, other compensation, and other taxable income paid domestic servants employed exclusively in or about such person's residence. However, such domestic servants shall be responsible for filing and paying their own returns and taxes.

890.07 DECLARATIONS

- A. Requirement for Filing.
 - 1. Every person who anticipates any taxable income which is not subject to section 890.06 or who engages in any business, profession, enterprise or activity subject to the tax imposed by section 890.03, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any. Provided, however, if a person's income is wholly from qualifying wages from which the tax will be withheld and remitted to this Municipality in accordance with section 890.06, such person need not file a declaration or if the tax due is \$100.00 or less, the person need not file a declaration.
 - 2. In the case where a taxpayer has failed to file a declaration, the Tax Administrator, or his duly authorized agent, may estimate the income on behalf of the taxpayer and shall send to the taxpayer a statement of said estimate.
- B. Dates for Filing.
 - 1. Such declaration shall be filed on or before April ~~30~~ 15 of each year during the life of this Chapter, or on or before the fifteenth (15th) day of the fourth (4th) month following the date the taxpayer becomes subject to tax for the first time.
 - 2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration on or before the fifteenth (15th) day of the fourth (4th) month following the start of each fiscal year or period.
- C. Forms: Credit for Tax Withheld or Paid Another Community.
 - 1. Such declaration shall be filed upon a form furnished by or obtainable from the Tax Administrator or an acceptable generic form, and credit shall be taken for the Municipal tax to be withheld from any portion of such income. In accordance with the provisions of section 890.11, credit may be taken for tax to be withheld and remitted to another taxing municipality.
 - 2. The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.

3. For taxpayers who are individuals, such declaration of estimated tax to be paid the Municipality shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year.

4. For taxpayers that are not individuals, such declaration of estimated tax to be paid the Municipality shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax and at least a similar amount shall be paid on or before the fifteenth (15th) day of the sixth, ninth and twelfth months after the beginning of the taxable year.

5. The mere submission of a declaration estimating a tax liability shall not constitute filing unless accompanied by the required payment.

6. A penalty, interest, or other similar assessment or charge shall not be imposed against a taxpayer for the late payment or nonpayment of estimated tax liability in either of the following circumstances:

(a) The taxpayer is an individual who resides in the municipal corporation but was not domiciled there on the first day of January of the current calendar year.

(b) The taxpayer has remitted, pursuant to division (d) of this section, an amount at least equal to one hundred percent of the taxpayer's tax liability for the preceding year as shown on the return filed by the taxpayer for the preceding year, provided that the return for the preceding year reflected a twelve month period and the taxpayer filed a return for the preceding year.

D. Amended Declaration.

1. A declaration may be amended at any time.

2. In the event that an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

E. Annual Return Required.

On or before the fifteenth day of the fourth month of the calendar or fiscal year, an annual return shall be filed and any balance which may be due the Municipality shall be paid therewith in accordance with the provisions of section 890.05. If the taxpayer has paid more than the amount of tax to which the Municipality is entitled, a refund of the amount so overpaid may be made, or the same may be applied toward the declaration of tax due for the ensuing year. No amounts of less than Three Dollars (\$3.00) will be refunded.

890.08 APPOINTMENT AND DUTIES OF TAX ADMINISTRATOR.

A. 1. It shall be the duty of the Tax Administrator to collect and receive the tax imposed by this Chapter in the manner prescribed therein, to keep an accurate record thereof, and to report all monies so received. All clerks handling tax monies shall be subject directly to the Administrator and shall give daily accounts to the Administrator.

2. It shall be the duty of the Tax Administrator to enforce payment of all income taxes owing the Municipality, to keep accurate records for a minimum of seven (7) years, showing the amount due from each taxpayer required to file a declaration or make any return, including a return of taxes withheld, and to show the dates and amounts of payments thereof.

B. The Tax Administrator is hereby charged with the enforcement of the provisions of this Chapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this Chapter, including provisions for the re-examination and correction of returns.

- C. In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Administrator may determine the amount of tax appearing to be due the Municipality from the taxpayer and may send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.
- D. Whenever the Administrator issues a decision regarding a municipal income tax obligation that is subject to appeal as provided in this section or in an Ordinance or Regulation of the Municipal Corporation, the Administrator shall notify the taxpayer at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.
- E. 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 this chapter.
- F. 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 890.11, 890.12 and 890.99 shall apply.
- G. Subject to the consent of a majority of the Board of Review/Adjudication, the Tax Administrator shall have the power to compromise any liability imposed by this Tax Code.
- H. Upon the demonstration and documentation of good cause, the Tax Administrator shall have the power to compromise penalty and interest liabilities imposed by this Chapter, consistent with this Chapter and the Rules and Regulations.
- I. The Administrator shall prescribe the form and method of accounts and reports for the department, as well as the forms for taxpayers' returns and declarations, and shall be charged with the internal examination and audit of all such accounts.

890.09 INVESTIGATIVE POWERS OF TAX ADMINISTRATOR; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

- A. The Tax Administrator, or any of his authorized agents or employees, is hereby authorized to examine the books, papers, records and federal and state income tax returns of any employer, taxpayer, or any person subject to, or whom the Tax Administrator believes is subject to, the provisions of this Chapter for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax or withholdings due under this Chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request of the Tax Administrator, or his duly authorized agent or employee, the means, facilities and opportunities for making such examinations and investigations as are hereby authorized.
- B. The Tax Administrator is hereby authorized to order any person, presumed to have knowledge of the facts, to appear at the office of the Tax Administrator and to examine such person, under oath, concerning any income which was or should have been reported for taxation, or withheld, or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal and state income tax returns, and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.
- C. The refusal to produce books, papers, records or federal or state income tax returns, or the refusal to submit to such examination by any employer or person subject, or presumed to be subject, to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Tax Administrator authorized hereby, shall be deemed a violation of this Chapter punishable as provided in section 890.99.

- D. Every taxpayer shall retain all records necessary to compute his tax liability for a period of seven (7) years from the date his return is filed or the taxes, required to be withheld are paid.
- E. Any information gained as a result of a return, investigation, verification or hearing before the Administrator, required by this chapter or authorized by rules and regulations promulgated pursuant to this chapter, shall be confidential, and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. The Tax Administrator of the municipal corporation may furnish copies of returns filed under this Chapter to the Internal Revenue Service and to the State Tax Commissioner.

890.10 INTEREST AND PENALTIES.

- A. All taxes imposed and monies withheld or required to be withheld by employers under the provisions of this chapter, and remaining unpaid after they become due shall bear interest at the rate of 1 ½% per month or fraction thereof.
- B. In addition to interest as provided in Paragraph A hereof, penalties are hereby imposed as follows based on the tax remaining unpaid after it becomes due:
 - 1. For failure to pay taxes due, other than taxes withheld; five per cent (5%) per month.
 - 2. For failure to remit taxes withheld or required to be withheld from employees; five percent (5%) per month.
 - 3. Where the taxpayer has failed to file a return by the due date or by the date resulting from extension, twenty-five dollars (\$25.00).
 - 4. No penalty or interest shall be charged against a taxpayer for the late payment or nonpayment of estimated tax liability if the taxpayer is an individual who resides in the municipal corporation but was not domiciled there on the first day of January of the current calendar year.
- C. Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Tax Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Administrator; and provided further that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after the final determination of the federal tax liability.
- D. Upon recommendation of the Tax Administrator, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Tax Administrator to recommend abatement of penalty and interest concerning an item of income or expense, the Board may nevertheless abate penalty or interest, or both.
- E. In addition to any other interest or penalties provided herein, there shall be a penalty of Twenty Five Dollars (\$25.00) imposed for the failure to file an annual return when due.

890.11 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

- A. All taxes imposed by this Chapter shall be collectible, together with any interest and penalties thereon, by suit as other debts of like amount are recoverable. All additional assessments shall be made and all civil actions to recover municipal income taxes and penalties and interest thereon shall be brought within three (3) years after the tax was due or the return was filed, whichever is later.
- B. 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 within three (3) months after final determination of the federal tax liability, whichever is later; and is three dollars (\$3.00) or more in amount.

- C. Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment, with the following exception: No interest shall be allowed on any overpayment that is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the complete return is filed, whichever is later. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by Ohio R.C. 5703.47.
- D. Non-resident employees whose tax was fully withheld by their employer but only work a percentage of time within the corporation limits may file for a refund of tax withheld for the percentage of time that work was performed for their employer outside the corporation. The municipality can retain a minimum of five percent (5%) of tax withheld by employers for non-resident employees for administration costs. A refund claim form, which may be obtained from the Administrator, must be completed and signed by both the employer/department superintendent and the employee. This refund claim form must be submitted with a copy of the employee's W-2.
- D. Amounts of less than Three Dollars (\$3.00) shall not be collected or refunded.
- E. Before paying any refunds, the Tax Administrator shall deduct any delinquent amounts due the various departments of the Municipality and shall credit the same to the proper accounts.

890.12 VIOLATIONS AND PENALTIES.

- A. Any person who shall:
 - 1. Fail, neglect or refuse to make any return or declaration required by this Chapter; or
 - 2. Knowingly make an incomplete, false or fraudulent return; or
 - 3. Willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this Chapter; or
 - 4. Fail, neglect or refuse to withhold the tax from his employees and remit such withholding tax to the Tax Administrator; or
 - 5. Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or his employer's books, records, papers, or federal income tax returns; or
 - 6. Fail to appear before the Tax Administrator and to produce his or his employer's books, records, papers or federal income tax returns upon order or subpoena of the Tax Administrator; or
 - 7. Refuse to disclose to the Tax Administrator any information with respect to such person's or such person's employer's income or net profits; or
 - 8. Willfully give to an employer by an employee false information as to his true name, correct social security number and residence address, or the failure of such employee to promptly notify an employer of any change in residence address and date thereof; or
 - 9. Failure on the part of any employer to maintain proper records of employees' residence addresses, total wages paid and Municipal tax withheld, or to knowingly give the Tax Administrator false information; or
 - 10. Fail to comply with the provisions of this Chapter or any order or subpoena of the Tax Administrator; or
 - 11. Willfully fail or willfully refuse to make any payment on the estimated tax for any year or part of any tax year as required by section 890.07; or

12. Fail to cause the tax withheld from the qualifying wages of the employees pursuant to this Chapter to be paid to the Municipality in accordance with the provisions of section 890.06; or
 13. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Chapter.
- B. Prosecutions for an offense made punishable under this Section or any other provision of this chapter shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.
 - C. 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, or declaration, from filing such form or from paying the tax.
 - D. A fee as determined by the Tax Administrator will be charged for each check returned to the Income Tax Department by a financial institution as unpaid, for any reason whatsoever.

890.13 BOARD OF REVIEW.

- A. A Board of Review, consisting of a chairperson and two other individuals, to be appointed by the Council of the City of Wapakoneta, is hereby created and shall be maintained to hear appeals. No member shall be appointed to the Board of Review who holds other public offices or appointment. The members of the Board shall serve without pay.

A majority of the members of the Board shall constitute a quorum. The term of each member of the Board shall be indefinite. If any member is unable to complete their term, then the office that appointed the member shall name another elector to fill the vacancy. Any hearing by the Board shall be conducted privately.

- B. Whenever the Tax Administrator issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the Municipality, the Tax Administrator shall notify the taxpayer of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.
- C. Any person who is aggrieved by a decision by the Tax Administrator and who has filed with the Municipality the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Review by filing a request with the Board. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Tax Administrator has issued the decision.
- D. The imposition of penalty and interest as prescribed in the codified ordinance of the Municipality is not a sole basis for an appeal.
- E. The Board of Review shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative.
- F. The Board may affirm, reverse, or modify the Tax Administrator's decision or any part of that decision. The Board shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send notice of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the Tax Administrator may appeal the Board's decision as provided in section 5717.011 of the Ohio Revised Code.

- G. Each Board of Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under section 149.43 of the Ohio Revised Code. Hearings requested by a taxpayer before a Board of Review created pursuant to this section are not meetings of a public body subject to section 121.22 of the Ohio Revised Code.

890.14 INFORMATION BY LANDLORDS.

- A. Within thirty (30) days after a new tenant occupies rental property of any kind within the Municipality, all owners of rental property who rent to tenants of apartments, rooms and other rental accommodations shall file with the Tax Administrator a report showing the name, address and telephone number, if available, of each such tenant who occupies an apartment, room or other rental property within the Municipality.
- B. Within thirty (30) days after a tenant vacates an apartment, room or other rental property located within the Municipality, the owner of such vacated rental property shall file with the Tax Administrator a report showing the date of vacation from the rental property and a forwarding address.

890.15 SAVING CLAUSE.

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

890.16 COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of said taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Sections 890.11, 890.12 and 890.99.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 890.05 and 890.06 of this chapter as though the same were continuing.

SECTION 890.17 ALLOCATION OF FUNDS

The funds collected under the provisions of this chapter shall be deposited on receipt in the General Fund, Income Tax Account, and shall be disbursed as appropriated by City Council.

SECTION 890.99 PENALTY

(a) Whoever violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(b) In addition to the penalty provided in subsection (a) hereof, any employee of the Municipality who violates Section 890.09, relative to the disclosure of confidential information, is guilty of an offense punishable by immediate dismissal.

SECTION TWO

THAT present chapter 890 of the Codified Ordinances of the City of Wapakoneta is hereby replaced and is hereby repealed effective midnight December 31, 2004, provided, however, that such repeal shall not affect any rights or obligations of the City or any person subject to chapter 890 relating to taxable income prior to such repeal.

SECTION THREE

THAT this Ordinance is hereby declared to be an emergency measure, it being for the protection, safety, and welfare of the citizens of Wapakoneta, Ohio; and also for the further reason that this ordinance shall be effective as of 12:01 A.M. January 1, 2005.

ATTEST:

Passed this _____ day of

Clerk of Council

_____, 2004

President of Council

APPROVED:

APPROVED AS TO FORM:

Mayor

Law Director