

*City of Kenton*  
**INCOME TAX  
RULES AND REGULATIONS**

**ISSUED UNDER**

**CHAPTER 850  
OF THE  
KENTON CODIFIED ORDINANCES**

**APPROVED BY CITY COUNCIL  
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**CITY OF KENTON, OHIO**  
**INCOME TAX RULES AND REGULATIONS**

**ARTICLE I**

Section I of the ordinance deals only with the purposes for which the tax collected will be used.

**ARTICLE II**  
**DEFINITIONS**

Definitions as found in Chapter 850 of the codified ordinances of the City of Kenton will be adequate to serve for the Rules and Regulations.

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

**A. Bases:**

1. Resident:

a. In the case of residents of Kenton an annual tax of 1 ½ % is imposed on all salaries, wages, commissions, other compensation earned, and income received on gambling winnings, prizes, and lottery winnings during the effective period of the ordinance. Net gambling income is fully taxable and may not be offset by any other type of business loss. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 3, paragraph A-1 of the ordinance, the source of the earnings and the place 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 3, paragraph A-1 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 State 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 3 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 of piece work rates; and, whether paid by an individual, partnership, - association, corporation (including charitable and other non-profit corporations), governmental administration, agency, authority, board, body, branch, bureau, department, division, sub-division, section or unit, or any other entity.

.2 Commissions earned by 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 or 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.

.03 If commissions are included in the net earnings of the trade, business, profession, enterprise, or activity, carried on by an unincorporated entity of which the individual receiving such commission is owner or part owner and therefore subject to the tax under paragraph A-3 or A-4 of Section 3 of the ordinance, they shall be taxed under Section 3, paragraph A-1.

.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 3, paragraph A-3 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 an 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:

a. In the case of individuals who are not residents of Kenton, there is imposed under Section 3, paragraph A-2 of the ordinance, a tax of 1 ½ % 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 Kenton, 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 3, paragraph A-2 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 Kenton, in cases involving compensation for personal services partly within and partly without Kenton, 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 Kenton, there is imposed an annual tax of 1 ½ % on the net profits earned, accrued or received during the effective period of the ordinance attributable to Kenton, under the formula or separate accounting method provided for in Section 3 of the ordinance, derived from sales made, work done or services performed or rendered and business or other activities conducted in Kenton.

.2 The tax imposed on resident associations or other unincorporated entities owned by two or more persons is upon the individual members or owners thereof and 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 3, paragraph A-3a of the ordinance is imposed on all resident unincorporated entities having net profits attributable to Kenton 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 Resident unincorporated entities owned by two or more persons all of whom are residents of Kenton shall disregard the method of allocation provided for in the ordinance, and pay the tax on their entire net profits thereof. See Article XV for credits.

b. Imposition of Tax on Resident's Distributive Share of Profits of a Resident Unincorporated Business entity, not attributable to Kenton.

.1 A resident individual who is sole owner of a resident unincorporated entity shall disregard the business allocation formula and pay the tax on the entire net profits of his resident unincorporated business entity. See Article XV.

.2 In the case of a resident individual partner or part owner of a resident unincorporated entity, there is imposed an annual tax of 1 ½ % on such individual's distributive share of net profits earned, accrued or received during the effective period of the ordinance not attributable to Kenton, under the method of allocation provided for in Section 3 of the ordinance, and not taxed against the entity. (See Article XV)

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 ½ % on the net profits earned, accrued or received during the effective period of the ordinance attributable to Kenton, under the formula or separate accounting method provided for in the ordinance.

.2 The tax imposed on non-resident unincorporated entities owned by two or more persons is upon the individual members or owners thereof. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III-A.4b).

.3 Non-residents unincorporated entities owned by two or more persons all of whom are residents of Kenton may elect to disregard the method of allocation provided for in the ordinance and pay the tax on the entire net profits. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of the net profits; however, a return shall be required from such owner or member having taxable income other than the distributive share of the net profit from the entity. See Article XV for Credits.

b. Imposition of Tax on Resident's Share of Profits of a Non-resident Unincorporated Business Entity Not Attributable to Kenton. See Article XV for Credits.

.1 A resident individual who is sole owner of a nonresident unincorporated business entity shall disregard the business allocation formula and pay the tax on the entire net profits of his unincorporated entity.

.2 In the case of a resident individual partner or part owner of a non-resident unincorporated entity, there is imposed an annual tax of 1 ½ % 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 under the method of allocation provided for in Section 3 of the ordinance and not taxed against the entity.

5. Imposition of Tax on Net Profits of Corporations.

a. In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in Kenton, there is imposed an annual tax of 1 ½ % on the net profits earned, received or accrued during the effective period of the ordinance attributable to Kenton under the formula or separate accounting method provided for in the ordinance.

b. In determining whether a corporation is conducting a business or other activity in Kenton, 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 un-depreciated balance thereof will be allowed as an expense in the year of such demolition, 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 Administrator (if the reserve method is used), a reasonable addition to the reserve may be claimed, but in no event shall the amount exceed the amount allowable for federal income tax purposes.

.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 taxes on and other expenses of said property are not deductible. In any event, the following taxes are not deductible from income: (1) the tax under the ordinance; (2) federal or other taxes based upon income; (3) gift, estate or inheritance taxes; and (4) taxes for local 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 Administrator 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 Administrator.

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 one hundred dollars (\$100.00) 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 case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds one hundred dollars (\$100.00) 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 a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds one hundred dollars (\$100.00) 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 one hundred dollars (\$100.00) 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 Kenton are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned.
- h. Non-residents of Kenton are subject to such taxation only if the real property is situated within the city of Kenton. Non-residents, in determining whether gross monthly rentals exceed one hundred dollars (\$100.00), shall take into consideration only real estate situated within Kenton.
- i. Corporations owning or managing real estate are taxable only on that portion of income derived from property located in the city of Kenton.

8. Patents and Copyrights:

- a. 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.

9. Farm Income:

Compensation received by residents of the City of Kenton from farms located outside the City shall be considered taxable on the portion reported as net income in the filing of a federal 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 Kenton from business, professional or other activities conducted in Kenton by corporations or unincorporated entities (whether resident or non-resident) may be determined from the records of the taxpayer if 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 Kenton.
- b. If the books and records of the taxpayer are used as the basis for apportioning net profits rather than the business allocation formula, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Administrator to determine whether the net profits attributable to Kenton are apportioned with reasonable accuracy.
- c. In determining the income allocable to Kenton 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 Kenton.

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 Kenton 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 Kenton is determined by dividing the average net book value of such property within Kenton (without deduction of any encumbrances) by the average net book value of all such property within and without Kenton. 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 of possession of property and includes:

.001 Any amount payable for the use of 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; and

.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 services rendered in Kenton is of the total gross receipts wherever derived during the period covered by the return.

.1 The following sales shall be considered Kenton sales:

.01 All sales made through retail stores located within Kenton to purchasers within or without Kenton except such of said sales to purchasers outside Kenton that are directly attributable to regular solicitations made outside Kenton personally by taxpayers' employees.

.02 All sales of tangible personal property delivered to purchasers within Kenton if shipped or delivered from an office, store, warehouse, factory, or place of storage located within Kenton.

.03 All sales of tangible personal property delivered to purchasers within Kenton even though transported from a point outside Kenton if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within Kenton and the sale 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 Kenton to purchasers outside Kenton if the taxpayer is not, through its own employees regularly engaged in the solicitation 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 receipt 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 Kenton by mail or phone from an office, or place of business within Kenton shall not be considered a solicitation of sales outside Kenton.

c. STEP 3: Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within Kenton is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without Kenton 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 Kenton 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 Kenton.

.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 Kenton 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 Kenton 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 Kenton. 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 Kenton.

### 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 Administrator, may substitute other factors in the formula or prescribe other methods of allocating net income calculated to effect a fair and proper allocation.

b. Application to the Board 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 Administrator as the case may be. No specific form need to 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, sustained in any taxable year subsequent to (effective date of "first" ordinance permitting loss carry-forwards) allocable to Kenton may be applied against the portion of the profit of succeeding year(s) allocable to Kenton, until exhausted but in no event for more than three (3) 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 Kenton, the portion of a net operating loss sustained shall be allocated to Kenton in the same manner as provided herein for allocating net profits to Kenton. The portion of a net operating loss to be carried forward shall be determined in the year the net operating loss is sustained, on the basis of the allocation factors applicable to that year. 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 Kenton 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 Kenton.
  - 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 consolidated group must continue to file consolidated returns in subsequent years unless:
  - a. Permission in writing is granted by the Administrator 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 was a member of the group, but for the period after it ceases to be a member, separate returns must be filed. If a corporation has been a member of the affiliated group for less than one month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire

taxable year of the group if the period during which it was not a member of the group does not exceed one month. If a subsidiary is a member of the consolidated group for only part of a taxable year, the income considered to be earned in such fractional part of the year shall be that portion of the net income for the entire year which the number of days it was a member of the group bears to the total number of days in the taxable year.

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 wage 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 allocated to Kenton 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 non-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.

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.

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 this 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 within and without the corporate limits, it shall calculate its profits allocable to Kenton under the method or methods provided above.

9. The income of any student under 18 years of age.

10. Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.

11. Compensation paid to an individual for personal services performed within the City of Kenton twelve (12) or fewer days in the calendar year unless one of the following applies:

.01 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.

.02. 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.

12. Employee wages earned by non-resident, active duty military spouses as defined in the Soldiers and Sailors Relief Act (SSCRA).

13. The income of the mentally retarded or developmentally disabled while working in a government funded workshop for less than minimum wage.

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

**A. Individuals:** The tax imposed by Section 850.03, paragraphs (a)-1 and (a)-2 of the ordinance shall be levied, collected and paid with respect to salaries, wages, bonuses, incentive payments, commissions, fees, other compensation earned and income received on gambling winnings, prizes, and lottery winnings during the effective period of the ordinance.

**B. Trades, businesses, professions, enterprises, undertakings and other activities:** The tax imposed by Section 850.03, paragraphs A-3, A-4 and A-5 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 TAX**

**A. Date and Requirement For Filing:**

1. Except as provided herein, on or before April 15<sup>th</sup> of the year following the effective date of the ordinance and each year thereafter, every person subject to the provisions of Section 850.03, paragraphs (a)-1 to (a)-7, inclusive, of the ordinance shall, except as hereinafter provided, make and file with the Administrator, a return on a form prescribed by and obtainable upon request from the Administrator, whether or not a tax be due. Effective for tax years beginning after 2007, the filing date for filing on a calendar year basis shall not be required to be filed on any date before the filing date for the corresponding tax year reporting period as prescribed for such a taxpayer under the Internal Revenue Code. Where any resident's only source of income is income provided for under Article III-E of these regulations, such resident need not file a return. In addition, any resident sixty-five (65) years or older with no income subject to tax under the ordinance (including, but without limitation, no earned income subject to tax hereunder, no income received on gambling winnings, prizes, and lottery winnings, and no business (including rental property) income), shall

not be required to file a return hereunder. Such resident must notify the Administrator in writing upon qualifying for one of the filing exemptions provided for in this section and must further notify the Administrator in writing if such resident later receives income that is taxable under the ordinance. For any resident that qualifies for one of the filing exemptions hereunder, the requirement to file is waived until the next tax year that the resident has income subject to tax under the ordinance.

2. If the return is made for a fiscal year or any period less than a year, said return shall be made by the 15<sup>th</sup> day of the fourth month following from the end of each fiscal year or other period.

3. Every person subject to the provisions of Section 850.03 of the ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, wages, commissions, other personal service compensation, and income received on gambling winnings, prizes, and lottery winnings, 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 Administrator may require.

4. 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.

5. 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.

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

7. Except as provided for herein, the tax is on the members of a partnership or an association whether resident or nonresident and a return is required disclosing the net profits allocable to Kenton and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity is required to make a return and pay the tax in accordance with Article III-A-3b.2 of these regulations.

8. A husband and wife may file a joint return. On a joint tax return, both spouses must be sixty-five (65) years of age or older to be eligible for both individuals to stop filing an annual return under Article V-A-1 of these regulations.

#### **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, gambling winnings, prizes, lottery winnings, and other compensation subject to the tax earned from each employer, taxable net profits and other pertinent information as the Administrator 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 Kenton tax and unallowable expenses shall be eliminated in determining net income subject to Kenton tax. The fact that any taxpayer is not required to file a federal tax return does not relieve him from filing a Kenton tax return.

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 to Kenton, a report of such change shall be filed 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 XI-B-2.

4. If a change in federal income tax liability results in a reduction of taxes owed and paid to Kenton a claim for refund shall be filed with the Administrator as prescribed in Section 850.11 of the ordinance and Article XI-B of these regulations.

#### **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 Administrator may extend the time for filing such return for a period of not to exceed six (6) months, or to one (1) month beyond any extension requested of or granted by the Federal Internal Revenue Service. Whenever he deems such necessary, the Administrator 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 estimated tax is paid by the original due date and 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 taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 850.06 of the ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of 850.07 of the ordinance, credit for the amount so deducted or paid shall be reduced from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.

2. A taxpayer who has overpaid the amount of tax to which the city of Kenton is entitled under the provisions of the ordinance 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 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 11 and 12 of these regulations. Such amended return shall be on a form obtainable on request from the Administrator. 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 Kenton tax liability, such taxpayer shall make and file an amended Kenton return showing income subject to the Kenton 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.

**F. Joint Returns:** A husband and wife, in any taxable year, may file separate or joint returns. However, neither taxpayer may offset losses from business or professional activities against salaries, gross wages, director's fees, commissions or other compensation.

**ARTICLE VI  
COLLECTION OF TAX AT THE SOURCE**

**A. Duty of Withholding:**

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within Kenton, 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 ½ % from:

- a. The gross amount of all salaries, wages, bonuses, incentive payments, fees, commissions or other forms of compensation paid to residents of Kenton 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 Kenton.

2. All employers within or doing business within Kenton 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 Kenton, were performed outside Kenton.

3. Employers who do not maintain a permanent office or place of business in Kenton, but who are subject to tax on net profits attributable to Kenton, under the method of allocation provided for in

the ordinance, are considered to be employers within Kenton 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 Administrator, 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 payor, are not subject to withholding or collection of the tax at the source. Such taxpayer 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 receives compensation for personal services rendered or performed partly within and partly without Kenton, the withholding employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within Kenton 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 Kenton bears to the total volume of business transacted by him within and outside Kenton.

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 Kenton 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 Kenton on a seven-day per week basis. The percentage of time worked in Kenton will be computed on the basis of a forty-hour week unless the employer notifies the Administrator that a greater or lesser number of hours per week is worked.

d. The occasional entry into Kenton 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 Kenton. An "occasional entry" shall be defined as less than eight hours of any 40 hour work week.

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 Kenton and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside Kenton by such employee, provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Administrator notifies said employer in writing that such employee is a resident of Kenton. All employees are required to notify the employer of any change of residence and the date thereof.

10. Subject to approval by the Board of Review, the Administrator shall have authority to enter into agreements 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.

11. 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.

12. If salaries, wages, commissions, and other compensation are negligible, an employer may be freed of the obligation to withhold said tax. However, if federal withholding tax is deducted at the time of payment for services, the Kenton City Income Tax must also be withheld.

**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 to be filed with respect to his own earnings or net profits) shall make a return (Form W-1) and pay to the Administrator 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, (1) when such withholdings for such employer are under five hundred dollars (\$500.00) per month, on or before the last day of the month following the close of each calendar quarter, or (2) when such withholdings for such employer are over five hundred dollars (\$500.00) per month, on or before the last day of the month of each month. Provided, however, that where he deems such precaution necessary, the Administrator may require an employer to remit withholding taxes at more frequent intervals. The return (Form W-1) required to be filed under this article shall be made on a form furnished by or obtainable on request from the Administrator.

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 Administrator, 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 quarterly W-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 cases the W-1 for the quarter in which the adjustment is made shall indicate the total amount actually withheld, the amount of the adjustment deducted there from, and the corrected amount reported on the W-1;

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

b. Former employees:

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

c. Non-Residents Employed Outside the City:

.1 Where an employer has withheld the tax from all wages of a non-resident of Kenton and such nonresident has been employed outside of Kenton for all or a part of the time, such employee shall file a claim with the Administrator covering such erroneous withholding and the Administrator shall, upon verification thereof by the employer, refund to the employee the amount of such excess withholding;

d. Insufficient Withholding:

.1 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 Administrator of

such deficiency and the reason therefore.

3. Every employer is deemed to be a trustee for the city of Kenton 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 Kenton for payment of such tax whether actually collected from such employee or not.

5. On or before the 28<sup>th</sup> day of February following any calendar year in which withholding deductions have been made by any employer, said employer shall file with the Administrator, on the form supplied by the Administrator, a reconciliation report summarizing the withholding reports of the four quarters of the year. Individual listing of employees is not required unless deemed necessary by the Administrator.

**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 (1/20) or more in which case it shall be increased to one cent (10).

**D. Personal Liability:** An employee of a corporation or business trust having control or supervision of or charged with the responsibility of filing the report and making payment, or an officer or trustee of a corporation or business trust who is responsible for the execution of the corporation's or business trust's fiscal responsibilities, shall be personally liable for failure to file the report or pay the tax due as required by this section. The dissolution, termination, or bankruptcy of a corporation or business trust does not discharge a responsible officer's, employee's, or trustee's liability for a failure of the corporation or business trust to file returns or pay tax due.

## ARTICLE VII DECLARATIONS

### A. Requirement of Filing:

1. A declaration of estimated tax shall be filed by every taxpayer who may reasonably be expected to have taxable income, the tax on which is not or will not be withheld by an employer or employers. Where required such declaration shall be filed annually on or before the corresponding tax reporting date for the prior year as prescribed for such taxpayer under the Internal Revenue Code of 1986, 26 U.S.C. 1, as amended, during the life of the ordinance. Those taxpayers reporting on a fiscal year basis shall file a declaration within the fifteenth day of the fourth month after the beginning of each fiscal year or period or within four months of the date the taxpayer becomes subject to the tax for the first time.

2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith.

### B. Date of Filing:

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

2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration within the fifteenth day of the fourth month after the start of each fiscal year or period.

### C. Form for Filing:

1. Such declaration shall be filed upon a form or forms furnished by, or obtainable from the Administrator; provided, however, credit shall be taken for Kenton tax to be withheld from any portion of such income.

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 (Q-1).

**D. Dates of Payments:**

1. The estimated tax maybe paid in full with the declaration or in equal installments on or before the corresponding tax reporting date for the prior year as prescribed for such taxpayer under the Internal Revenue Code of 1986, 26 U.S.C. 1, as amended, and the last day of the seventh, tenth, and thirteenth month after the beginning of the taxable year.
2. The declaration must be accompanied by at least one-fourth (1/4) of the estimated tax shown due thereon.
3. In the event an amended declaration has been filed the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

**E. Final Returns Required:**

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

**ARTICLE VIII  
DUTIES OF ADMINISTRATOR**

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

1. It shall be the duty of the Administrator to receive the tax imposed by the ordinance in the manner prescribed herein from the taxpayers; to keep an accurate record thereof, and to report daily all monies so received. Whenever a the Administrator issues a decision regarding a municipal income tax obligation that is subject to appeal as provided in the ordinance or these rules and regulations, the Administrator shall notify the taxpayer in writing of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.
2. It shall be the duty of the Administrator to enforce payment of all taxes owing Kenton, 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 Administrator is charged with the administration and enforcement of the provisions of the ordinance and is, subject to the approval of the Board of Review, 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 Administrator has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the ordinance.
2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the ordinance or these rules and regulations, should submit to the Administrator 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 Administrator, 111 W. Franklin Street, Kenton, Ohio and will be open to public inspection during regular office hours of the Administrator.
4. The Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that, due to certain hardship conditions, 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 Sections 850.11 and 850.12 of the ordinance shall apply.

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

1. Whenever the Administrator 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 prescribed in Section 850.10 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. Abatement:** Subject to the consent of the Board of Review or pursuant to regulation approved by said Board, the Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 850.10 of the ordinance.

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

**A. Investigation by Administrator:**

1. The Administrator, 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 Administrator 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 fourteen (14) days following a written request by the Administrator, or his duly authorized agent, the means, facilities and opportunity for making examinations and investigations authorized by the ordinance.

**B. Subpoena of Records and Persons:**

1. The Administrator, or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The Administrator may compel the production of books, papers and records and the attendance of all persons before him whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.

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

3. The Administrator may order the appearance before him, or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Administrator is specifically authorized to order the appearance of the local manager or representative of any taxpayer.

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 Administrator, or his duly authorized agent, by delivering it to the person named personally, or by leaving the notice at his usual place of business or, residence, or by mailing it to the person by registered mail, return receipt requested, addressed to his usual place of business or residence.

**C. Penalty for Non-Compliance:**

Refusal by any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Administrator or his duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 850.12 of the ordinance.

**D. Confidential Nature of Examinations:**

Any information gained as a result of any returns, investigations, verifications or hearings before the Administrator or the Board, required by the ordinance or authorized by these rules and regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of 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 Kenton 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:** All taxes imposed and all monies withheld or required to be withheld after they become due shall bear interest at the rate of two percent (2%) per month or fraction thereof, or thirty-five dollars (\$35.00) per month, whichever is greater.

**B. Penalties:** In addition to interest as provided in paragraph (A) hereof, penalties based on the unpaid tax are hereby imposed as follows:

1. For failure to pay taxes due, including taxes withheld, five percent (5%) per month or fraction thereof, or thirty-five dollars (\$35.00) per month, whichever is greater.
2. The minimum penalty for failure to file any annual return or annual report by the date due shall be thirty-five dollars (\$35.00), even if no tax is due.

A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator; 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, provided that an amended return is filed and the additional tax is paid within three months after a final determination of the Federal tax liability.

**C. Abatement:** Upon recommendation of the Administrator, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Administrator to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest, or both, for good cause shown. 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 Administrator. If no protest or explanation is filed within the prescribed time, the proposed imposition of interest and penalties shall become and be the final assessment. Upon filing of a written protest or explanation, the Administrator shall determine the assessment which may or may not be the same as the proposed assessment.

**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 850.06 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 Administrator 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 Administrator 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 Administrator.

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 ten dollars (\$10.00) such amount shall not be collected or refunded. Any overpayment of less than ten dollars (\$10.00) shall be automatically credited to the following tax year.

**ARTICLE XII**  
**VIOLATIONS, PENALTIES**

**A. Any person who shall:**

1. Fail, neglect or refuse to make any return or declaration required by this ordinance; or
2. Make any incomplete, false or fraudulent return; or
3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this ordinance; or
4. Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or

5. Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
6. Fail to appear before the Administrator and to produce his books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or
7. Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
8. Fail to comply with the provisions of this ordinance or any order or subpoena of the Administrator authorized hereby; or
9. Give to any employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
10. Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and Kenton tax withheld, or to knowingly give the Administrator false information; or
11. 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:**

Prosecutions under the ordinance must be commenced within three (3) years from the time of the offense except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution must be commenced shall be ten (10) years from the date the return was due or the date the false or fraudulent return was filed.

**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 form shall not excuse him from making any information return, declaration. return, from filing such form, or from paying the tax.

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

**A. Composition:**

A Board of Review, consisting of the Director of Law, as chairman, and two other individuals to be appointed by the Mayor 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 Article IX-D 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 on appeal.

**B. Duties:**

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

**C. Appeals:**

1. An appeal from a ruling of the Administrator by a taxpayer or employer is effected by filing a written notice of appeal with the Board within thirty (30) days after the announcement of the Administrator's ruling or decision from which the appeal is taken. A copy of such notice of appeal must be filed with the Administrator and shall state why the decision should be deemed incorrect or unlawful. The Board 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.
2. The Board, by a majority vote, may affirm, modify or reverse, in whole or in part any such ruling or decision of the Administrator. The Board shall issue a final decision on the appeal within ninety (90) days after the board's final hearing on the appeal, and send a copy 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 Administrator may appeal the Board's decision as provided in Section 5717.011 of the Ohio Revised Code.
3. Hearings before the Board shall be private unless the taxpayer requests a public hearing. Hearings requested by a taxpayer before the Board are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code.

**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 IN ANOTHER MUNICIPALITY**

(EDITOR'S NOTE: Section 950.15 of the ordinance allowing reciprocity and credits for tax paid to other municipalities was repealed by Ordinance 09-017, passed December 28, 2009. There are no provisions of this Article and this Article is left to provide a place for cross-references and any future legislation.)

**ARTICLE XVI**

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

**ARTICLE XVII  
COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE**

**A. Authority to Collect after Termination of Ordinance:** Although the tax imposition provisions of the ordinance expire as of the date ordinance terminates, the ordinance remains in full force and effect for purposes of collection and payment of taxes due and payable beyond that date, subject, however, to the provisions of Section 850.11 of the ordinance with respect to the limitation of time within which an additional assessment may be made.

**B. Payment of Taxes:**

1. Taxes due and unpaid on account of compensation paid or received and on account of profits earned in the last effective year of the ordinance or any part thereof which remain unpaid on the date the ordinance terminates, are payable in full on or before the dates specified in Sections 850.05 and 850.06 of the ordinance and Articles V and VI of these regulations, and all final returns and withholding reports must be filed on or before that date, unless extended by the Administrator.
2. For purposes of collection of delinquent or unpaid taxes, actions or proceedings for such collection and/or the collection of interest and penalties thereon, or enforcing any provisions of

the ordinance (including prosecutions under the criminal sections of the ordinance and including appeals before the Board of Review), the ordinance remains in full force and effect until such time as all taxes accruing during the term of the ordinance shall have been fully paid, and all actions, suits, prosecutions, appeals and other judicial or administrative proceedings relative to the collection or payment of such taxes, have been finally terminated.

## **ARTICLE XVIII AMENDMENTS AND SUPPLEMENTS**

**A. Amendments and Supplements:** From time to time amendments and supplements to these regulations may be issued by the Administrator and shall become effective upon the approval by a majority vote of the Board of Review. For informational purposes, a copy of any amendment or supplement to these regulations shall be provided by the Administrator to the Council at the next regularly scheduled meeting of Council.