

BY: Mr. Zilka

TEMP. NO. 5967

ORDINANCE NO. 170-93

AN ORDINANCE ADOPTING THE REVISED MUNICIPAL
INCOME TAX ORDINANCE AND REPEALING ORDINANCE
NO. 35-74.

WHEREAS, the Tax Administrator, Mayor and Finance Committee of Council have completed a comprehensive review of the Municipal Income Tax Ordinance and have recommended to this Council for adoption the complete revision of said Ordinance, now therefore;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON LAKE,
STATE OF OHIO:

Section No. 1: That there is hereby adopted and enacted by reference the revised MUNICIPAL INCOME TAX ORDINANCE, as attached hereto and made a part hereof.

Section No. 2: That Ordinance No. 35-74, adopted February 11, 1974, is hereby repealed.

Section No. 3: That this Ordinance shall be in full force and effect from and after the earliest period allowed by law.

1st reading: 11/08/93

2nd reading: 11/22/93

3rd reading: 12/13/93

PASSED: 12/13/93

President of Council

POSTED: 12/17/93

12/13/93

Approved _____

ATTEST: _____
Clerk of Council

Mayor

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City of Avon Lake
Income Tax Ordinance No. 170-93

SECTION 1. 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, other compensation, and on net profits as hereinafter provided in this Income Tax Ordinance, hereinafter referred to as the "Ordinance".

SECTION 2. DEFINITIONS.

As used in this Ordinance, the following definitions shall apply except as and if the context clearly indicates or requires a different meaning. The singular shall include the plural, and the masculine shall include the feminine and neuter.

ADJUSTED FEDERAL TAXABLE INCOME: A "C" corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "Adjusted Federal Taxable Income" as if the pass-through entity was a "C" corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

ADMINISTRATOR: The individual designated by the Ordinance, whether appointed or elected, to administer and enforce the provisions of the Ordinance.

ASSOCIATION: A partnership, limited partnership, Chapter S Corporation as defined in the federal tax code, 26 U.S.C. 1361, or any form of unincorporated enterprise, owned and/or operated by two or more persons as a business for profit.

BOARD OF REVIEW: The Board created by and constituted as provided in SECTION 13 of this Ordinance.

BUSINESS: An enterprise, 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.

CORPORATION: A corporation or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory, or foreign country or dependency, but not including Chapter S corporations.

DOMICILE: A domicile is that place where an individual has his true, fixed and permanent home, and principle establishment, and to which, whenever he is absent, he has the intention of returning. All individuals have a domicile. The presumption exists that anyone living in Avon Lake, lacking another domicile, is domiciled in Avon Lake. The presumption exists that anyone living in Avon Lake for twelve (12) contiguous months is domiciled in Avon Lake.

EMPLOYEE: One who is paid and receives wages, salary, or any other type of compensation from an employer or employers.

EMPLOYER: An individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, that pays and provides one or more persons a wage, salary or other basis or type of compensation.

FISCAL YEAR: An accounting period of twelve (12) months or less ending on any day other than December 31st.

GENERIC FORM: An electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or requests for refunds, which contain all the information required on the municipal regular tax return, estimated payment forms, and request for refund forms, and are in a similar format that will allow processing of the generic forms without altering the municipal procedures for processing forms.

GROSS RECEIPTS: The total gross revenue derived from sales, work done, or service rendered, before any deductions, exceptions, exclusions, or credits are claimed.

INTANGIBLE INCOME: As defined in ORC 718.01 (A) (5).

NET PROFIT: For taxable years prior to 2004, a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary, reasonable and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, without deduction of taxes imposed by this Ordinance, federal, state, and other taxes based on income exclusive of the amount of Ohio franchise tax computed on the net worth basis; and in the case of an association, without deduction of distributions or withdrawals paid to partners, and other owners; and otherwise adjusted to the requirements of this Ordinance.

Net profits shall include any amount or value received, realized, or recognized in a sale or other disposition of tangible personal property or real property used in business, in excess of book value. For taxable years 2004 and later, see “Adjusted Federal Taxable Income.”

NON-RESIDENT: A personal domiciled and/or having a place of business outside this municipality.

PERSON: Every natural person, partnership, fiduciary, association, or corporation. 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 a corporation, the officers thereof.

PLACE OF BUSINESS: 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 employees regularly in attendance.

QUALIFYING WAGE: These are wages as defined in Section 3121 (a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. “Qualifying wage” represents employees’ income from which municipal tax shall be deducted by the employer, and any wages not considered a part of “qualifying wage” shall not be taxed by Avon Lake. This definition is effective January 1, 2004, for taxable years 2004 and later.

RESIDENT: A person domiciled and/or having a place of business in this municipality.

TAXABLE INCOME: Includes, but is not limited to, income from gaming, wagering and lotteries, including the Ohio State Lottery; wages, salaries and any other type of compensation paid by an employer or employers before deductions of any kind, and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this Ordinance.

“Other compensation” includes, but is not limited to, bonuses; commissions; incentive payments; director’s fees; property in lieu of cash; tips; dismissal or severance pay; supplemental income benefits for early retirement regardless of their label; contest prizes and awards; tax shelter plans; vacation and sick pay regardless of their label; such as sick leave, disability, vacation pay, etc.; wage continuation plans; supplemental unemployment benefits; depreciation recapture; gifts and gratuities in connection with employment totaling in excess of fifty dollars (\$50.00); fellowships, grants and stipends; employee’s entire cost of group term life insurance protection over fifty thousand dollars (\$50,000.00); benefits resulting from an employer’s assumption of a tax; stock options given as compensation, when exercised; employee contributions to retirement plans, deferred compensation plans or other tax shelter plans; and income appearing on a W-2 form that is not defined in Section 3.E. of the Ordinance as non-taxable.

TAXABLE YEAR: The calendar year, or the fiscal year upon the basis of which taxable income is to be computed under this Ordinance and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

TAXPAYER: A person, whether an individual, partnership, association or any corporation or other entity, required hereunder to file a return and/or pay a tax.

SECTION 3. IMPOSITION OF TAX.

- A. Subject to the provisions of Section 16 of this Ordinance, an annual tax for the purposes specified in Section 1 hereof shall be imposed on and after 01/01/93 at the rate of one and one-half percent (1.50%) per annum upon the following:
1. On all taxable income earned during the effective period of the Ordinance by residents of this municipality, including distributive shares of the net profits of an unincorporated business entity or association against which Avon Lake municipal income tax is not already levied.
 2. On all taxable income earned during the effective period of this Ordinance by non-residents for work done or services performed or rendered in this municipality.
 3. On the portion attributable to this municipality of the net profits earned during the effective period of this Ordinance of all unincorporated businesses, associations, professions, corporations, or other entities, whether or not such entities have an office within this municipality, from sales made, work done, services performed or rendered, and business or other activities conducted in this municipality.
- B. In the taxation of income which is subject to this Income Tax Ordinance, if the books and records of a taxpayer conducting a business or profession or other activity both within and without the boundaries of this municipality disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business, profession or other activity conducted within the boundaries of this municipality, then only such portion shall be considered as having a taxable situs in the municipality for purposes of taxation. In the absence of such records, net profit from a business, profession or other activity conducted both within and without the boundaries of this municipality shall be considered as having a taxable situs in this municipality for purposes of taxation in the same proportion as the average ratio of:
1. The average net book value of the real and tangible personal property owned or used by the taxpayer in the business, profession or other activity in this municipality during the taxable period to the average net book value of all of the real and tangible personal property owned or used by the taxpayer in the business, profession or other activity during the same period, wherever situated. Real property includes property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight for purposes of this computation;
 2. Wages, salaries, and other compensation paid during the taxable period to persons employed in the business, profession or other activity for services performed in the city to wages, salaries, and other compensation paid

during the same period to persons employed in the business, profession or other activity, wherever their services are performed; and

3. Gross receipts of the business, profession or other activity from sales made and services performed during the taxable period in this municipality, to gross receipts of the business, profession or other activity during the same period from sales and services wherever made or performed.

In the event that the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to provide such result.

4. As used in B. above, “sales made in this municipality” means:
 - (a) All sales of tangible personal property which are delivered to purchasers within the city regardless of where title passes, if shipped or delivered from a stock of goods within the city;
 - (b) All sales of tangible personal property which are delivered to purchasers within the city regardless of where title passes, even though transported from a point outside the city, if the taxpayer is regularly engaged through its own city, if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the city and the sales result from such solicitation or promotion; and
 - (c) All sales of tangible personal property which are shipped from a place within the city to purchasers outside the city 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.

C. Operating Loss Carry-Forward.

1. The portion of a net operating loss sustained in any taxable year subsequent to February 11, 1974 allocable to this municipality may be applied against the portion of the profit of succeeding year(s) allocable to this municipality, until exhausted but in no event for more than five (5) years. 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 allocated to this municipality in the same manner as provided herein for allocating net profits to this municipality.
3. The Administrator shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined.

4. Net operating losses cannot be used to reduce W-2 earnings for purposes of taxation under this Ordinance.

D. Consolidated Returns.

Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the City of Avon Lake. However, once the affiliated group has elected to file a consolidated return or a separate return with the City of Avon Lake, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the municipality.

1. 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 this municipality constituting a portion only of its total business, the Administrator shall require such additional information as may be deemed necessary to ascertain whether net profits are properly allocated to this municipality. If the Administrator finds net profits are not properly allocated to this municipality by reason 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, such allocation shall be made as deemed appropriate to produce a fair and proper allocation of net profits to this municipality, by the Administrator.

E. Exceptions and Credits.

1. The tax provided for herein shall not be levied on:
 - (a) Military pay or allowances of active members of the armed forces of the United States.
 - (b) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities;
 - (c) Poor relief, unemployment insurance benefits, old age pensions, or similar payments, including disability benefits received from local, state or federal governments or charitable, religious, or educational organizations;
 - (d) The income of a natural person under 16 years of age;

- (e) Interest and dividends from intangible property;
 - (f) Proceeds of life insurance paid by reason of death of the insured; pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived;
 - (g) Receipts from seasonal or casual entertainment, amusements, fundraising, sports events, and health and welfare activities when conducted by bona fide charitable, religious, or educational organizations and associations;
 - (h) Alimony or spousal support received;
 - (i) Moving expense reimbursements to the extent that they are allowable deductions for Federal Income Tax purposes. It should be noted that this merely exempts the reimbursements from city tax. Moving expenses that are not reimbursed are not deductible.
 - (j) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the state from which the city is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except any income derived from the operation of a business carried on by the estate representative or fiduciary during such period of time);
 - (k) Salaries, income, wages, commissions, other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce; and
 - (l) Salaries, income, wages, commissions, other compensation and net profits, the taxation of which is prohibited by the constitution of the State or any act of the Ohio General Assembly limiting the power of the city to impose net income taxes.
 - (m) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The ordained minister must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and must have authority to perform all sacraments of the church.
2. Any Individual may claim credit for tax paid to another municipality as set forth in Section 15.

F. Rental or Leased Property.

1. Rental income received by a taxpayer for property located within the boundaries of this municipality shall be included in the computation of net profits from business activities under the provisions of this Ordinance, only if and to the extent that the rental ownership, management or operations of the real estate from which rentals are derived (whether so rented, managed or operated by a taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or part. 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 property shall be subject to tax, if:
 - (a) the average gross monthly rental for the taxable year of any and all real properties, regardless of number and value, aggregates in excess of one hundred twenty-five dollars (\$125.00) per month; or
 - (b) in the case of commercial property, 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 twenty-five dollars (\$125.00) per month on the average for the taxable year; or
 - (c) in the case of farm property, when the owner shares in crops or when the rental is based on a percentage of gross or net receipts derived from the farm, whether or not the gross income exceeds one hundred twenty-five dollars (\$125.00) per month on the average for the taxable year; or
 - (d) in the case of a licensed rooming house, whether or not such rental exceeds one hundred twenty-five dollars (\$125.00) per month on average for the taxable year.
2. Every person, firm or corporation which owns, manages or operates an establishment in which parts of said establishment are rented or leased to three (3) or more persons shall submit to the Administrator a schedule of names and addresses of such persons, firms or corporations who rent or lease space for commercial, industrial or residential use within the City of Avon Lake during the preceding calendar year. Such schedule shall be filed on or before June 30th and on or before December 31st in each calendar year.

G. 12-Day Occasional Entrant Rule.

1. A non-resident individual who works in Avon Lake twelve (12) or fewer days per year shall be considered an occasional entrant, and shall not be

subject to the municipal income tax for those 12 days. For purposes of the 12-day calculation, any portion of a day worked in Avon Lake shall be counted as one day worked in Avon Lake.

2. Beginning with the thirteenth day, the employer of said individual shall begin withholding the Avon Lake income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the municipality in accordance with the requirements of this ordinance. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in Avon Lake by the individual for the first twelve days.
3. If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to Avon Lake.
4. The 12-day occasional entry rule does not apply to entertainers or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events.

SECTION 4. EFFECTIVE PERIOD.

Said income tax shall be levied, collected and paid with respect to the taxable income and with respect to the net profits of businesses, professions or other activities, earned on and after October 1, 1968.

SECTION 5. RETURN AND PAYMENT OF TAX.

- A. Every natural person who is a resident of this municipality and who is 16 years of age or older, once gainfully employed, except as hereinafter provided, shall, even though no tax may be due, make and file a return on or before April 15th of the year following the initial year of gainful employment, and on or before April 15th 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 within four (4) months from the end of such fiscal year or period. The Administrator is hereby authorized to provide by regulation that the withholding return of an employer or employers, reporting the amount of tax deducted by said employer or employers from the salaries, wages or other compensation of an employee, and paid by him or them to the Administrator, shall be accepted, unless otherwise specified as the return required of any employee whose sole income, subject to tax under this Ordinance, is such salary, wages or other compensation.
- B. The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from the Administrator or on other forms deemed acceptable by the Administrator, setting forth:

1. The aggregate amounts of salaries, wages and other compensation earned and gross income from business, profession or other activity, less allowable ordinary, reasonable, and necessary expenses, subject to audit and approval of the Administrator, incurred in the acquisition of such gross income, earned during the preceding year and subject to municipal income tax;
2. The amount of the income tax imposed by this Ordinance on such earnings and profits; and
3. Such other pertinent statements, information returns or other information as the Administrator may require.

C. Extensions.

The Administrator may extend the time for the filing of the annual return upon the request of the taxpayer, for a period not to exceed six (6) months, or, one (1) month beyond any extension requested of and/or granted by the Internal Revenue Service for the filing of the Federal Income Tax Return. All extensions for the filing of the annual return shall be requested by the taxpayer, in writing, accompanied by a copy of the federal extension, by April 15th, in order to be considered. The Administrator may deny the extension if the taxpayer's income tax account with Avon Lake is delinquent in any way.

- D. 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, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 6 of this Ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 7 of this Ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 15 hereof shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.
- E. A taxpayer who has overpaid the amount of tax to which this municipality is entitled under the provisions of this 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.

F. Amended Returns.

1. Whenever necessary, an amended return shall be filed in order to report additional income and pay any additional tax due, or, claim a refund of tax

overpaid, subject to the requirements and/or limitations contained in Sections 11 and 15. Any amended returns shall be on a form obtainable on request from the Administrator or on other forms deemed acceptable by the Administrator. A taxpayer shall not change the method of accounting or apportionment of net profits after the due date for filing the original return, in an amended return.

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

SECTION 6. COLLECTION AT SOURCE.

- A. Each employer within or doing business within this municipality shall withhold at the time of the payment of such salary, wage, or other compensation, the tax, at its then applicable percentage, of the gross salaries, wages or other compensation due by said employer to the employee and shall, on or before the last day of the month following the close of each calendar quarter, make a return and pay to the Administrator the amount of taxes so withheld for each employee, whether or not such taxes have in fact been withheld.
- B. An employer in collecting said tax shall be deemed to hold the same, until payment is made by such employer to this municipality, as a Trustee for the benefit of this municipality and any such tax collected by said employer from employee income, shall, until the same is paid to this municipality, be deemed to be held in a trust fund while in the possession of such employer.
- C. On or before January 31st of each year, beginning with the year 1969, each employer shall file a withholding return setting forth the names, addresses and social security numbers of all employees from whose compensation the income tax was withheld during the preceding calendar year and the amount of income tax withheld from his employees and such other information as may be required by the Administrator. All payments of taxable income not subject to withholding shall be reported on a form required by the Administrator.
- D. The Administrator, for good cause may require immediate returns and payments from employers to be submitted to his office.
- E. Each employer who withholds income tax in an amount of two hundred fifty dollars (\$250.00) or more in the first or second month of a calendar year, shall, on or before the last day of the following month, pay to the Administrator the amount of taxes so withheld.

- F. An employer who makes payments of withheld income tax on a monthly basis for either of the first two months of a calendar year shall continue to pay withheld income tax so deducted for the remaining months of the calendar year on a monthly basis.
- G. No person shall be required to withhold the tax on wages or other compensation paid domestic workers employed by such person exclusively in or about such person's residence, even though the residence is located in this municipality, but such employee shall be subject to all of the requirements of this Ordinance.
- H. Employers for limited engagements, who make payment for services at said engagement, as set forth below, shall, for the purpose of collection of the income tax, be required to withhold, report, and pay to the Administrator the municipal income tax at the current rate on the gross amount so paid on completion of the engagement, on forms approved by the Administrator. Employers for limited engagements include:
1. Any person who employs or contracts for the services of any entertainer, entertainment act, sports event, promotional booth, special event, band, orchestra, rock group, or theatrical performance; or
 2. Any person who, acting as a promoter, booking agent, or employer, engages the services of, or arranges the appearance of any entertainer, entertainment act, sports event participant, band, orchestra, rock group, or theatrical performance.
- I. Every contract on behalf of the City for public projects or improvements of the City shall contain the following provisions:
1. The contractor further agrees that all city income taxes due or payable under the City of Avon Lake Income Tax Ordinance shall be withheld by the contractor pursuant to Section 6 of said Ordinance and further agrees to require any of its subcontractors to withhold income taxes as set forth in the City of Avon Lake Income Tax Ordinance and pay such withheld income taxes to the Tax Administrator upon the filing of the mandatory withholding returns as provided in said Ordinance.
 2. In the event that the contractor and/or subcontractors fail to comply with the provisions set forth in the above subsection, then the City may withhold any and all payments under the public project agreement until such time as full compliance has been made, which may include an agreement to set off the amounts owed against any amount due under the public project agreement.
- J. Contractor Registration.

1. An individual, partnership, association, corporation or other entity engaged in the business of construction work in the city of Avon Lake shall obtain a tax account number, issued by the Income Tax Department, prior to beginning construction work. The Income Tax Department shall also issue a Certificate of Registration, which the contractor shall file with the Building Department and Engineering Department. Failure to possess a valid certificate shall be cause for suspension of work by the Building Department, the Engineering Department and/or the Income Tax Department prior to any construction work commencing and/or during the performance of the construction work. Proof of possession of a valid Certificate shall be necessary to commence or resume suspended construction work. The Certificate of Registration may be revoked by the Income Tax Department for failure by the contractor to remain current in the filing of required income tax documents, for failure to remain current in the required payment of income taxes, and for failure to comply with any provision of Section 6 of this Ordinance.
2. Any contractor as described in the preceding subsection shall be jointly liable for the payment of all income taxes to be withheld and payable to the City of Avon Lake by any subcontractor who performs any work under contract with the said contractor within the municipal corporate limits. Any such contractor shall provide the Tax Administrator with a listing of all subcontractors including names, addresses and amounts paid thereto.

SECTION 7. DECLARATIONS.

- A. Every person who anticipates any taxable income which is not subject to collection at the source as provided in Section 6 hereof, or who engages in any business, profession, enterprise or activity subject to the income tax imposed by Section 3 hereof, 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 taxable income is wholly from wages from which the tax will be withheld and remitted to this municipality in accordance with Section 6 hereof, such person need not file a declaration.
- B. Filing of Declaration.
 1. Such declaration shall be filed on or before April 30th of each year, or within four (4) months of the date the taxpayer becomes subject to municipal income tax for the first time.
 2. Those taxpayers reporting on a fiscal year basis shall file a declaration within four (4) months from the beginning date of each fiscal year or period.

C. Form of Declaration.

1. Such declaration shall be filed upon a form furnished by, or obtainable from the Administrator, provided, however, credit may be taken for any Avon Lake income tax to be withheld from any portion of such income. In accordance with the provisions of Section 15 hereof, credit may be taken for income tax to be paid to or 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.

D. Such declaration of estimated income tax to be paid to this municipality shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax and at least a similar amount shall be paid on or before the 15th day of the sixth, ninth and twelfth month after the beginning of the taxable year. Provided, however, that in case an amended declaration is filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates. Should the amount of declaration of estimated tax be \$40.00 or more, payments shall be made in quarterly installments or may be paid in full with the original declaration at the option of the taxpayer.

E. On or before the last day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due this municipality shall be paid therewith in accordance with the provisions of Section 5 hereof.

SECTION 8. DUTIES OF THE ADMINISTRATOR.

A. Duty to Receive Tax Imposed.

It shall be the duty of the Tax Administrator to receive the tax imposed by this Ordinance in the manner prescribed herein from the taxpayers; to keep an accurate record thereof; and to report all monies so received.

B. Duty to Enforce Collection.

It shall be the duty of the Tax Administrator to enforce payment of all income taxes owing this municipality, 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 to make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

C. Authority to Make and Enforce Regulations.

The Tax Administrator is hereby charged with the enforcement of the provisions of this Ordinance, 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 income taxes and the administration and enforcement of the provisions of this Ordinance, including provisions for the re-examination and correction of returns.

D. Authority to Arrange Installment Payments.

The Tax Administrator is authorized to arrange for the payment of unpaid income taxes, interest and penalties on a schedule of installment payments for a period not to exceed six months, when the taxpayer has proved to the satisfaction of the Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due, and when such deferred payments are the best means of accomplishing the purpose of this Ordinance. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the Ordinance.

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 11 and 12 of this Ordinance shall apply.

E. Authority to Determine Amount of Tax Due.

1. 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 Administrator may determine the amount of tax appearing to be due this municipality from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.
2. 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 10 of this Ordinance.

SECTION 9. INVESTIGATIVE POWERS OF THE ADMINISTRATOR-
CONFIDENTIAL NATURE OF INFORMATION OBTAINED.

A. Authority to Make Investigations.

The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Administrator has reasonable grounds to believe is subject to the provisions of this Ordinance, for the purpose of verifying the accuracy of any return made, or, if

no return was made, to ascertain the tax due under this Ordinance. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Administrator, or his duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

B. Authority to Compel Production of Records.

The Administrator is hereby authorized to order any person he has reasonable grounds to believe has knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been reported for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he has reasonable grounds to believe such persons have knowledge of such income or information pertinent to such inquiry.

The refusal to produce books, papers, records and federal income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the income tax or by any officer, agent or employee of a person subject to the tax or provisions of this Section or with any order or subpoena of the Administrator authorized hereby shall be deemed a violation of this Ordinance, punishable as provided in Section 12 hereof.

C. Confidential Nature of Information Obtained: Penalty.

1. Any information gained as a result of any returns, investigations, verifications or hearings before the Administrator, all as may be required by this Ordinance and/or authorized by any rules and regulations, shall be confidential and no disclosure thereof shall be made except for official tax 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. Each disclosure shall constitute a separate offense.
2. In addition to the above penalty, any employee of this municipality who violates the provisions of this Section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal by the appointing authority.

D. Every taxpayer shall retain all records necessary to compute his tax liability for a period of five (5) years from the date his return is filed, or the withholding taxes are paid.

SECTION 10. INTEREST AND PENALTIES.

- A. All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this Ordinance and remaining unpaid after they become due shall bear interest at the rate of one and one-half percent (1.5%) per month or fraction thereof.
- B. 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, other than taxes withheld; 1% per month or fraction thereof, or 5% of the total tax due, whichever is greater, shall be imposed.
 - 2. For failure to remit taxes withheld from employees, 10% per month or fraction thereof shall be imposed.
 - 3. For failure to properly declare and pay estimated taxes as required by Section 7 of this Ordinance, a penalty of 18% of the balance of tax due upon filing the return, which cannot be waived or excused for any reason, shall be assessed. No penalty shall be assessed if the aggregate installment payments of estimated taxes are at least eighty percent (80%) of the actual tax due.
 - 4. For failure to file a timely income tax return, \$25.00 for the first instance and \$50.00 for each subsequent instance, shall be assessed.
 - 5. For failure to file an information return or questionnaire within thirty (30) days, \$25.00 shall be assessed.
- C. Exceptions.

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; 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 final determination of the federal tax liability. No penalties or interest shall be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period, or if 90% of the actual liability has been received.

- D. Abatement of Penalty and Interest.

At the Administrator's discretion, the Administrator may abate up to \$1,000 of penalty or interest, or both. 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/or interest, the Board may nevertheless abate penalty or interest, or both, for good cause shown.

SECTION 11. COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

- A. All taxes imposed by this Ordinance shall be collectible, together with any interest and penalties thereon, by a civil action at law. 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. The officer or employee having control or supervision or who is charged with the responsibility of filing the return, including the power of making the payment, shall be personally liable to the extent of the tax, interest and penalty, jointly and severally with the taxpayer, for failure to file the employer's return and/or to pay the employer's tax, interest and penalty as required under this Ordinance. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer's or employee's liability for failure to remit funds held in trust, to file a tax return or to pay taxes.
- C. Taxes erroneously paid shall not be refunded unless a claim for a refund is made. Claims for refund of municipal income taxes must be brought within the time limitation provided in division A of this section.
- D. Amounts of less than one dollar (\$1.00) shall not be collected or refunded.
- E. Overpayments of less than forty dollars (\$40.00) shall not be refunded but shall be applied against liability in the subsequent year where it is evident that a liability will exist in the subsequent year.

SECTION 12. VIOLATIONS – PENALTIES.

- A. No person shall:
 - 1. a. Fail, neglect or refuse to make any return or declaration required by this Ordinance; or
 - b. Make any incomplete, false or fraudulent return; or

- c. 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
 - d. Fail to appear before the Administrator and produce his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or
 - e. Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
 - f. Fail to comply with the provisions of this Ordinance, and any amendments thereto, or any order or subpoena of the Administrator authorized hereby; or
 - g. Give to an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
 - h. Fail to use ordinary diligence in maintaining proper records of employee's residence addresses, total wages paid and municipal income tax withheld, or knowingly give the Administrator false information.
2. Any person who violates any provision of division A.1. of this Section shall be fined not more than five hundred dollars (\$500.00) for each such offense.
- B. No person shall:
- 1. a. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this Ordinance; or
 - b. Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
 - c. Evade or attempt to evade in any manner the payment of the whole or any part of the tax, penalties or interest imposed by this Ordinance.
2. Any person who violates any provision of division B.1. of this Section shall be guilty of a third degree misdemeanor 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.

- C. Prosecutions for an offense made punishable under this Section or any other provision of this Income Tax Ordinance 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.
- D. The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return, return or declaration, from filing such form, or from paying the tax.

SECTION 13. BOARD OF REVIEW

A. Board of Review Established.

1. A Board of Review composed of three members is hereby created consisting of the Finance Director and two Avon Lake residents not otherwise employed or appointed by the City, who shall be appointed by Council for an initial term of two years and thereafter by Council appointment for successive two year terms. The qualifications set forth in the adopted Rules and Regulations pursuant to Section 8.C. of the Ordinance, and as deemed appropriate for the proper administration of the duties imposed on the members of the Board of Review as specified in this Section of the Ordinance, shall be applicable to the appointed members of the Board of Review.
2. All rules and regulations including amendments or changes thereto, which are or may be adopted by the Administrator under the authority conferred by this Ordinance, are subject to approval by the Board of Review before the same become effective. After such approval, such rules, regulations, amendments and changes shall be recommended to Council for approval and after approval, shall be filed with the Clerk of Council and shall be open to public inspection.

The Board shall meet at least once a calendar year in order to review such rules and regulations adopted under the authority conferred by this Ordinance and/or for any other matter deemed appropriate for consideration.

B. Authority to Hear Appeals.

The Board shall hear and pass on appeals from any final ruling or decision of the Administrator arising by reason of the levying of any tax, taxes and/or penalty and interest pursuant to this Ordinance.

C. Board to Establish Procedural Rules and Regulations.

The Board shall elect from its members a chairman and a secretary. The Board shall act by majority vote and a majority of the members of the Board shall constitute a quorum. The Board shall adopt written procedural rules and shall keep a record of its actions. Any hearing by the Board shall be conducted privately, unless a public hearing is requested in writing by the taxpayer. The provisions of Section 9 hereof with reference to the confidential character of information as may be heard before the Board on appeal. However, in the event a public hearing is requested in writing by the taxpayer, the provisions of Section 9 hereof with reference to the confidential character of information required to be maintained by the Ordinance, shall be deemed to have been waived by the taxpayer.

D. Right to Appeal.

Any person may appeal any final ruling or decision of the Administrator, which shall be made in written form under the authority conferred by this Ordinance. The notice of appeal, containing such information as set forth in instructions issued by the Board of Review, shall be in writing and shall be served on the Board of Review within thirty (30) days from the date of such final ruling or decision by the Administrator, provided the taxpayer making the appeal has filed with the municipality the required return or other documents concerning the obligation at issue. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have authority to affirm, reverse or modify any such ruling or decision, or any part thereof. Such hearing shall be scheduled on a date within thirty (30) days from the date the notice of appeal is served on the Board. The Board of Review's ruling shall be made within fifteen (15) days from the date of hearing and shall be in written form. Any party to the appeal dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction within thirty (30) days from the date of such ruling or decision. In any appeal to the Board, the procedural rules adopted for such action shall be strictly adhered to.

The date of ruling or decision by both the Administrator and the Board of Review shall be the date when the written ruling or decision is deposited in the U.S. mail for ordinary delivery addressed to the last known address of all parties involved in the ruling or to the appeal. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Review may be appealed to a court of competent jurisdiction or the State Board of Tax Appeals.

SECTION 14. ALLOCATION OF FUNDS.

The funds collected under the provisions of this Ordinance shall be applied for the following purposes, to wit:

- A. Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this Ordinance and the cost of administering and enforcing the provisions thereof as authorized by Chapter 236 of the City of Avon Lake Codified Ordinances.
- B. After providing for the allocation of funds set forth in paragraph A of this Section;
 - 1. Seventy-five percent (75%) to the General Fund.
 - 2. Twenty percent (20%) to the Capital Improvement Fund.
 - 3. Five percent (5%) to the Sewer System Construction Fund.

SECTION 15. CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

- A. Every individual taxpayer who resides in this municipality who receives net profits, salaries, income, wages, commissions, other personal compensation, or a distributive share of net profits from a resident or nonresident unincorporated business entity or association of which he is a partner or owner, for work done or services performed or rendered outside of this municipality is subject to the levied income tax of the City of Avon Lake. If it be made to appear that he has paid a municipal income tax on the same income taxable under this Ordinance to another municipality, he shall be allowed a credit against the tax imposed by this Ordinance of the amount so paid by him or on his behalf to such other municipality. Such credit shall not be applied to a rate in excess of one and one-half percent of the taxable income earned in or attributable to the municipality of employment or business activity.
- B. Failure to file a timely return evidencing such income shall result in a disallowance of any and all tax credits.
- C. A claim for refund or credit under this Section shall be made in such manner as the Administrator may by regulation provide.

SECTION 16. SAVING CLAUSE.

If any sentence, clause, section or part of this Ordinance, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such sentence, clause, section or part of this Ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or impair any of the remaining

provisions, sentences, clauses, sections or other parts of this Ordinance. It is hereby declared to be the intention of the Council of this municipality that this Ordinance would have been adopted as if such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included herein.

SECTION 17. COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE.

- A. This Ordinance 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 Ordinance 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 Ordinance shall have been fully terminated, subject to the limitations contained in Section 11 and 12 hereof.
- B. Annual returns due for all or any part of the last effective year of this Ordinance shall be due on the date provided in Sections 5 and 6 of this Ordinance as though the same were continuing.

SECTION 18. RITA RULES AND REGULATIONS.

The Rules and Regulations of the Regional Income Tax Agency are adopted for use by the City of Avon Lake. Should any provisions of the Rules and Regulations conflict with any provisions of this ordinance, the provisions of this ordinance shall take precedence.