

Ordinance No. 73-07Passed DEFEATED 6/11, 20076/5/07-gmk
(Finance & Property)

Ordinance No. 73-07

An ordinance amending Section 2. and Section 3. of Ordinance No. 145-04, as amended, passed November 15, 2004, in order to increase the rate of municipal income tax to two (2.0%) percent, and declaring the same to be an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, STATE OF OHIO:

Section 1. That subject to the approval of the electors of the City of North Canton, Ohio, as provided in Section 718.01 of the Ohio Revised Code, Section 2. and Section 3. of Ordinance No. 145-04, passed, November 15, 2004, be, and are hereby amended to provide an increase in the tax levied on income from one and one-half percent (1½%) to two percent (2.0%), such sections, to read as follows:

SECTION 2**ARTICLE I-1
DEFINITIONS**

For the purpose of the Ordinance and Rules & Regulations the following terms shall have the definitions hereafter given:

"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.

"ASSOCIATION" - A partnership, limited partnership, limited liability company, chapter S corporation as defined in the federal tax code, 26 U.S.C. 1361, or any other form of unincorporated enterprise.

"BOARD OF REVIEW" - The Board created by and constituted as provided in Section 11 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, co-partnership, limited partnership, corporation, association or any other entity.

"CITY" - The City of North Canton, Ohio.

"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.

"DOMICILE" - The permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

"EMPLOYEE" - One who receives wages, salary, commission or other type of compensation or other income in the service of an employer.

"EMPLOYER" - An individual, co-partnership, limited partnership, association, corporation, governmental body, unit or agency, or any other entity who or that employs one or more persons on a salary, wage, commission, or other compensation or other income basis.

Ordinance No. _____

Passed _____, 20____

"FISCAL YEAR" - An accounting period of twelve (12) months or less ending on any date 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 separate requests for refunds that contain all the information required on North Canton's regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms without altering the City's procedures for processing.

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

"INCOME" - Shall include all monies derived from any source whatsoever, including but not limited to:

(A) All salaries, wages, commissions, other compensation and other income from whatever source received by residents of the City.

(B) All salaries, wages, commissions, other compensation and other income from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in the City.

(C) The portion attributable to the city of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in the City.

"INTANGIBLE INCOME" - Income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.

"NET PROFITS" - For taxable years prior to 2004, the net gain from the operation of a business, profession or enterprise after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system (i.e., either cash or accrual) used by the taxpayer for federal income tax purposes without deduction of taxes imposed by this ordinance, and Federal and State and other taxes based on income, and in case of an association, without deduction of salaries paid to partners and other owners; and as otherwise adjusted to the requirements of this ordinance and Rules & Regulations.

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. (See "Adjusted Federal Taxable Income").

"NON-RESIDENT" - An individual domiciled outside the City.

"NON-RESIDENT UNINCORPORATED BUSINESS OR ENTERPRISE" - An unincorporated business or enterprise not having a place of business within the City.

"ORDINANCE" means Ordinance No. 145-04 enacted by the Council of the City on November 15, 2004, and any amendments or supplements thereto.

"OTHER ENTITY" - Any agency, association, authority, body, commission, organization or person not previously named or defined in this section including, but not limited to, any governmental agency, authority, body, or commission.

"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 of his regular employees regularly in attendance. A taxpayer does not have a regular place of business outside North Canton solely by consigning goods to an independent contractor or other contractor outside the City for sale.

73-07

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. _____

Passed _____, 20____

"PERSON" - Every natural person, co-partnership, limited partnership, corporation, fiduciary or association, whenever used in any clause prescribing and imposing a penalty. The term "person" as applied to association, shall mean the partners or members thereof, and as applied to corporation, the officers thereof.

"QUALIFYING WAGE" - 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 the Municipality. This definition is effective January 1, 2004, for taxable years 2004 and later.

"RESIDENT" - An individual domiciled in the City.

"RESIDENT UNINCORPORATED BUSINESS OR ENTERPRISE" - An unincorporated business or enterprise having a place of business within the City.

"TAXABLE INCOME" - Income minus the deductions and credits allowed by this ordinance and Rules & Regulations. (See "Income" definition.)

"TAXABLE YEAR" - The calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this ordinance and Rules & Regulations 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, co-partnership, limited partnership, corporation, association or other entity, required hereunder to file a return or to pay a tax.

In all definitions and throughout this ordinance and rules and regulations, the singular shall include the plural and the masculine shall include the feminine and the neuter.

ARTICLE I-2 COMMENCEMENT AND DURATION OF THE TAX

The tax imposed by this Ordinance is effective as to income and profits earned, received, or accruing on and after January 1, 2008, at the rate of two percent (2.0%) per annum, and payroll deductions must be made against all income, salaries, qualifying wages, commissions, bonuses, other compensations or other income earned, received, or accruing on and after that date.

The Ordinance continues effective insofar as the levy of taxes is concerned until repealed.

ARTICLE I-3 ALLOCATION OF FUNDS

One percent (1%) of the tax imposed by this Ordinance shall be allocated to provide funds for the purpose of general municipal operations, including maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements.

The one percent so imposed shall be disbursed in the following order, to wit:

A. Such part thereof as shall be necessary to defray all costs of collection, administration and enforcement of the entire tax imposed by this Ordinance.

B. The balance of the one percent shall be allocated as follows: three-tenths to the Capital Improvement Fund and seven-tenths for general operating purposes, for uses, in each case, as determined by Council.

C. The remaining one-half per cent (.5%) so imposed shall, to the extent appropriated by Council for the purpose, be allocated for the payment of debt service on bonds outstanding as of January 1, 1984, and issued to provide for the payment of costs of capital improvements to the waterworks system of the City and, to the extent not so appropriated, for general municipal operations and capital improvements in amounts and for uses, in each case, as determined by Council.

Ordinance No. _____

Passed _____, 20____

SECTION 3

**ARTICLE II-1
IMPOSITION OF TAX ON RESIDENTS**

A. In the case of residents of the City an annual tax of two percent (2.0%) is imposed on all salaries, qualifying wages, commissions, other compensation, and other income (including earnings deposited by the employee into deferred compensation or medical coverage plans) earned or received during the effective period of the ordinance. For the purpose of determining the tax on the income of resident taxpayers, the source of the income and the place or places in or at which the services were rendered or the income was earned or received, are immaterial. All such income wherever earned or received is taxable, except that tax shall not be levied on expenses reported in accordance with federal guidelines for Federal Form 2106, subject to audit and approval by the Income Tax Department.

B. The following are items which are subject to the tax:

1. Gross income, including but not limited to income, salaries, qualifying 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 an officer, director or employee of a corporation (including charitable and other non-profit organizations), or association or any other entity or person; an officer or employee (whether elected, appointed, or commissioned) of 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. For clarification, effective January 1, 2005, "income" includes lottery, gambling and sports winnings, and games of chance. No deductions shall be allowed against income from lottery, gambling and sports winnings, and games of chance unless the taxpayer is considered a professional gambler for federal income tax purposes, in which case related deductions as permitted by the Internal Revenue Code shall be allowed against gambling and sports winnings.

2. Commissions earned or received 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.

(a) 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.

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

c) If commissions are included in the net earnings of the trade, business, profession, enterprise or activity, carried on by an unincorporated entity or association of which the individual receiving such commission is owner or part owner and therefore subject to Article II-3 and/or II-4, they shall not be subject to Article II-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 or association owned or partly owned by said individual and such net profits are subject to Article II-3 and/or II-4.

4. Other compensation and income, as reported on W-2's or 1099's, including but not limited to tips, bonuses, lump sum distribution from qualified pension and profit sharing trusts not made pursuant to employee's retirement, profit sharing, "non-competition" covenants, portions of stock options that are not considered capital gains by the City, lottery winnings, including the Ohio State Lottery and Multi-State Lotteries, sports winnings, gambling winnings of any type, or gifts of any type in connection with services rendered.

Ordinance No. _____

Passed _____, 20____

5. Payments made to an employee by an employer as sick leave, vacation pay, or any other types of payments made under a wage or salary continuation plan, including "sub" pay (such as pay received from unions by individuals in lieu of wages), during periods of absence from work are taxable when paid.

6. Payments made to an employee by an employer as separation or severance payouts (including but not limited to separation pay, termination pay, and early retirement incentives) and reportable as earned income (including, but not limited to, sick pay and vacation pay) are taxable when paid if applicable tax has not previously been paid. On-going retirement benefits, such as pension payments, are exempt from North Canton income tax.

7. Moving expenses, to the extent that they are reimbursed by employers, are not taxable if deducted on federal return.

8. For taxable years 2004 and later, if any of the items listed in B1-7 of this Section are not considered taxable for Internal Revenue Code Section 3121(a) withholding, those items shall not be considered taxable for North Canton.

9. Effective for tax years 2004 and later, the distributive share of income paid to an S corporation shareholder shall be taxable in the following manner:

(a) If no portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the distributive share is taxable only to the extent that it represents wages or net earnings from self-employment.

(b) If any portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the full amount of the distributive share is taxable.

C. Domestic employees are not subject to employer withholding under North Canton Income Tax, but such employees shall be subject to all of the requirements of the ordinance regarding individual filing.

D. When a resident receives compensation for services for sales of real estate or insurance from an employer whose situs is the City, that total compensation is taxable at City's tax rate and is payable to the City. The site of the property sold or residence of the purchaser of insurance has no bearing on the taxing of the compensation.

ARTICLE II-2 IMPOSITION OF TAX ON NON-RESIDENTS

A. In the case of individuals who are non-residents of North Canton, there is imposed an annual tax at the rate of two percent (2.0%) per annum on all qualifying wages, commissions, other compensation and other income (including earnings deposited by the employee into deferred compensation or medical coverage plans) earned or received during the effective period of the Ordinance for work done or services performed or rendered within the City, 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. Tax shall not be levied on expenses reported in accordance with federal guidelines for Federal Form 2106, subject to audit and approval by the Income Tax Department.

B. The items subject to tax under this section are the same as those listed and defined in Article II-1. For methods of computing the extent of such work or services performed within the City, and cases involving compensation for personal services partly within and partly outside the City, see Article IV-1.

C. 12-day occasional entry rule:

1. A non-resident individual who works in the City twelve (12) or fewer days per year shall be considered an occasional entrant, and shall not be subject to North Canton municipal income tax for those 12 days. For purposes of the 12-day calculation, any portion of a day worked in North Canton shall be counted as one day worked in North Canton.

Ordinance No. _____

Passed _____, 20____

2. Beginning with the thirteenth day, the employer of said individual shall begin withholding North Canton income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to North Canton in accordance with Section 5 Article IV-1 of Ordinance No. 145-04. Since the individual can no longer be considered to have been occasional entrant, the employer is further required to remit taxes on income earned in North Canton 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 the City.

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.

D. When a non-resident receives compensation for services for sales of real estate or insurance, and the real estate sold or purchaser of the insurance are resident to North Canton, the total compensation related to the sales is taxable at North Canton's tax rate and is payable to the City of North Canton.

**ARTICLE II-3
IMPOSITION OF TAX
ON RESIDENT UNINCORPORATED BUSINESSES**

A. In the case of a non-resident individual, partnership, association, fiduciary or other entity (other than a corporation), trades, businesses, professions, other activities, enterprises or undertakings conducted, operated, engaged in, prosecuted or carried on by residents of North Canton, there is imposed an annual tax at the rate of two percent (2.0%) per annum on the net profits earned or accruing.

B. The tax imposed on resident associations or unincorporated entities owned by one or more persons is upon the shareholders, owners, and partners, but the associations and entities shall collect and remit the tax on behalf of it's shareholders, owners, and partners. However, 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 II-3-E and F below.

C. The tax imposed by Section 3 of the Ordinance is imposed on all income of shareholders, owners, and partners from resident unincorporated entities or associations having net profits attributable to the City under the method of allocation provided for in the Ordinance, regardless of where the owner or owners of such resident unincorporated business entities or associations reside. The associations and entities shall collect and remit the tax on behalf of it's shareholders.

D. Resident unincorporated entities or associations owned by one or more persons, all of whom are residents of the City, shall disregard the method of allocation provided for in the Ordinance and pay the tax on their entire net profits thereof on behalf of its shareholders. (See Article II-3B.) In such case, the tax paid by the entity on behalf of its shareholders shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits; however, a return shall be required from any such owner or member having taxable income other than the distributive share of the net profits from the entity.

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

F. In the case of a resident individual partner or part owner of a resident unincorporated entity or association, there is imposed an annual tax of one and one-half (1.5%) 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, and not taxed against the entity.

**ARTICLE II-4
IMPOSITION OF TAX ON NON-RESIDENT UNINCORPORATED BUSINESS**

Ordinance No. _____ Passed _____, 20____

A. In the case of a non-resident individual, partnership, association, fiduciary or other entity (other than a corporation), there is imposed an annual tax at the rate of two percent (2.0%) per annum on the net profits earned or accruing of such trade, business, profession, enterprise, undertaking, or other activity conducted in or derived from activity in North Canton.

B. In the case of partnership, association, or other unincorporated business owned by one or more persons, the tax shall be upon said partnership, association, or business enterprise as an entity and not upon the partners or members thereof. For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article II-4-D and E below.

C. Non-resident unincorporated entities or associations, owned by one or more persons all of whom are residents of the City, 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 profits.

D. A resident individual who is sole owner of a non-resident unincorporated business entity or association shall disregard the business allocation formula and pay the tax on the entire net profits of his unincorporated entity or association.

E. In the case of a resident individual partner or part owner of a non-resident unincorporated entity or association, there is imposed an annual tax of one and one-half percent (1.5%) 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.

**ARTICLE II-5
IMPOSITION OF TAX - NET PROFITS OF CORPORATIONS**

In the case of a corporation doing business in North Canton, whether domestic or foreign, and whether domiciled in North Canton or elsewhere, there is imposed an annual tax at the rate of two percent (2.0%) per annum on that part of the net profits earned or accruing of such corporation, which is earned by such corporation as a result of sales made, work done or services performed or rendered and business or other activities conducted in the City.

**ARTICLE II-6
ALLOCATION OF BUSINESS PROFITS**

A. For taxable years 2004 and later, net profits (i.e., "adjusted federal taxable income") shall be calculated by adjusting the corporation's federal taxable income before net operating losses and special deductions in the following manner:

1. Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
2. Deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code, except to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.
3. Add an amount equal to five percent of intangible income deducted under division (A)(1) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code.
4. Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.
5. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.
6. In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited

RECORD OF ORDINANCES

0101

73-07

Dayton Legal Blank, Inc.

Form No. 30043

Ordinance No. _____

Passed _____, 20____

to the benefit of investors and allowed as a deduction in the computation of federal taxable income.

7. If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except that guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense, and amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

B. Business Allocation Percentage Method:

1. STEP 1: Calculate the percentage allocable to the City of the average original cost of total real and tangible personal property (including lease-hold improvements), wherever situated, owned or used in the business during the period covered by the return.

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

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

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

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

(BB) 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.

2. STEP 2: Calculate the percentage allocable to the City of the gross receipts of the taxpayer derived from sales made, work done and services rendered in the City is of the total gross receipts, wherever derived, during the period covered by the return.

(a) The following sales shall be considered North Canton sales:

(1) All sales made through retail stores located within the City to purchasers within or without the City except such of said sales to purchasers outside the City that are directly attributable to regular solicitations made outside the City personally by the taxpayer or his employees.

(2) All sales of tangible personal property delivered to purchasers within the City if shipped or delivered from an office, store, warehouse, factory or place of storage located within the City.

(3) All sales of tangible personal property delivered to purchasers within the City even though transported from a point outside the City of the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sale is directly or indirectly the result of such solicitation.

(4) All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within the City to purchasers outside the City if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place of delivery.

(5) Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.

Ordinance No. _____ Passed _____, 20____

(b) In the application of the foregoing sub-paragraphs, 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 the City by mail, phone, or other electronic means from an office or place of business within the City shall be considered a solicitation of sales within the City.

3. STEP 3: Calculate the percentage allocable to the City of the total wages, salaries, commissions, other compensation and other income of employees, within and without the City, during the period covered by the return. Wages, salaries, and other compensation shall be included to the extent that they represent qualifying wages.

(a) 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.

(b) Wages, salaries, other compensation and other income shall be computed on the cash or accrual basis in accordance within the method of accounting used for Federal income tax purposes.

(c) In the case of an employee who performs services both within and without the City the amount treated as compensation for services performed within the City shall deemed to be:

(1) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the City;

(2) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services within the City bears to the value of all his services; and

(3) In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the City is of his total working time.

4. STEP 4: Add the percentage 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 computing said total. The result so obtained is the business allocation percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely outside the City. A factor is excluded only when it does not exist anywhere.

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

C. Substitute method:

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

2. Application to the Director of Finance 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. The application shall state the specific grounds on which the substitution of factors or use of different method is requested and the relief sought to be obtained. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the Director of Finance.

Ordinance No. _____

Passed _____, 20____

3. If the substitute method approved is the use of books and records of the taxpayer, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Director of Finance to determine whether the net profits attributable to the City are apportioned with reasonable accuracy.

**ARTICLE II-7
TREATMENT OF EXPENSES**

All ordinary and necessary expenses of doing business 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, enterprise, or association.

A. If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated 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.

B. Where depreciable property is voluntarily destroyed, only the cost of such demolition and the undepreciated balance thereof will be allowed as an expense in the year of such demolition to the extent allowable for Federal income tax purposes.

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

D. 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.

E. The "Federal Investment Credit" is not deductible. However, if the investment credit requires the basis of the property to be lowered, depreciation may be computed on the original basis.

**ARTICLE II-8
TREATMENT OF OTHER INCOME OR LOSS**

A. Capital gains and losses (capital or other) from sale, exchange or other disposition of property used in the trade or business shall not be taken into consideration in arriving at net profits earned. However, any amount or value received, realized or recognized on a sale or other disposition of tangible personal property or real property used in business, in excess of original book value, shall be treated as taxable income under the Ordinance to the extent of depreciation previously taken as a deduction. The method of calculating the depreciation deduction shall not be considered when recovering the depreciation as a result of the sale, exchange or other disposition of property. The balance in excess of the amount of depreciation recovered shall be treated as a capital gain.

1. Definition of Property Used in the Trade or Business. For purposes of this Article, the term "property used in the trade or business" means property used in the trade or business of a character which is subject to the allowance for depreciation and real property used in the trade or business, held for more than 6 months, which is not:

- (a) Property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year;
- (b) Property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or
- (c) A copyright, a literary, musical, or artistic composition, or similar property held by the taxpayer.

Ordinance No. _____

Passed _____, 20____

B. In general, non-taxable income (and expense incurred in connection therewith) is 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 laws.

C. Income derived from the operation of oil and/or gas wells shall be taxable, and expenses incurred in connection therewith shall be considered in determining net profits.

D. Five percent (5%) of non-taxable income shall be considered to be attributable expenses.

E. 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 taxation under the intangible personal property laws of the State. Income in the form of royalties is taxable if the taxpayer's activities produced the publication or other product, the sale of which produces the royalties.

F. In determining income subject to taxation, losses from the operation of a business or profession cannot be used to reduce wages from employment or other employment compensation.

ARTICLE II-9 RENTAL PROPERTY

Rentals received by the taxpayer are to be included as income 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 taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part. Following are the circumstances under which, in any instance, the rental of any real property shall or shall not be deemed to be a "Business Activity":

A. Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of \$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 property shall be subject to tax.

1. Provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$100.00 per month.

2. 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 farms, whether or not the gross income exceeds \$100.00 per month.

3. Provided further that the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds \$100.00 per month.

B. 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.

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

D. 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.

E. In determining the taxable net income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Department of Internal Revenue for Federal Income Tax purposes.

Ordinance No. _____

Passed _____, 20____

F.. Residents of North Canton are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned, provided however, that losses for units located outside the City can be used only to offset income from units located outside the City and cannot be used to offset income from units located inside the City or any other business profits irrespective of source.

G. Non-residents of North Canton are subject to such taxation only if the real property is situated within the City. Non-residents, in determining whether gross monthly rentals exceed one hundred dollars (\$100.00), shall take into consideration only real estate situated within North Canton.

H. Duties of owners of rental or leased property.

1. For the purposes of this subsection, "tenant" means:

(a) If there is a written lease or rental agreement, the person or persons who signs the written lease or rental agreement with the owner.

(b) If there is an oral lease or rental agreement, the person or persons with whom the owner enters into the oral lease or rental agreement.

2. All property owners of rental or lease property who rent to tenants of residential, commercial or industrial premises shall file with the Director of Finance a report showing the names and addresses of each such tenant who occupies residential, commercial or industrial premises within the corporation limits of North Canton.

3. Within thirty days after a new tenant occupies residential, commercial or industrial rental property of any kind within North Canton, all property owners of rental or leased residential, commercial or industrial property who rent to tenants, shall file with the Director of Finance, a report showing the names and addresses of each such tenant who occupies residential, commercial or industrial premises within the corporation limits of North Canton.

4. Within thirty days after a tenant vacates a rental or leased residential, commercial or industrial property located within North Canton, the property owner of such vacated rental or lease property shall file with the Director of Finance a report showing the date of vacating from the rental or leased residential, commercial or industrial property and identifying such vacating tenant.

5. For failure to comply with Article II-9 H there shall be imposed a penalty of \$50 for the first offense, \$100 for the second offense, and \$200 for third and subsequent offenses.

6. Article II-9 H is in accordance with Ordinance No. 134-78, effective March 1, 1979.

**ARTICLE II-10
EXEMPTIONS FROM TAX**

The provisions of this ordinance shall not be construed as levying a tax upon the following:

A. Pay or allowance of active members of the armed forces of the United State and of members of their reserve components, including the Ohio National Guard.

B. Payments from pensions, unemployment compensation or similar payments, including social security and disability benefits received from private industry or local, state or federal governments, or from charitable, religious or educational organizations.

C. Proceeds of insurance paid by reason of death of the insured; annuities, or gratuities not in the nature of compensation for services rendered from whatever source derived.

D. The gross income and gross receipts 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.

Ordinance No. 73-07

~~xxxxxxx~~ DEFEATED June 11, 2007

E. Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide Stark County charitable, religious and educational organizations and associations.

F. Dues, contributions and similar payments received by charitable, religious, educational or literary organizations or labor unions, lodges and similar organizations.

G. Alimony received.

H. Earnings and income of all individuals under 18 years of age whether residents or non-residents. The individual is subject to tax, in the year in which they become 18, from their birth-date until the end of the year.

I. Expenses deductible on federal form 2106, subject to audit and approval by the Income Tax Department.

J. Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio and income of a decedent's estate during the period of administration (except such income from the operation of a business).

K. Compensatory damages for personal injuries or for damages to property by way of insurance or otherwise.

L. Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually.

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 minister must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and permitted to perform all sacraments of the church or the religious body.

N. Intangible income as defined in Sec. 2, Article I-1.

O. Income, salaries, wages, commissions and 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.

P. Income, salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.

Section 4: That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety, and peace of the City of North Canton and further necessary that its immediate effectiveness is necessary to place this issue on the ballot at the general election to be held on November 6, 2007; wherefore, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor.

North Canton, OH
Passed:

DEFEATED: June 11, 2007
MAYOR

SIGNED: _____, 2007

ATTEST:

CLERK OF COUNCIL