

ARTICLE III
IMPOSITION OF TAX

A. REGISTRATION

Each resident and every association, business, corporation, pass through entity, or other profession, whether resident in the City of Brook Park or nonresident business entities, shall register with the Department of Taxation within thirty (30) days of occupancy or of the commencement of business. Registration shall be on a form prescribed by and available from the Director of the Department of Taxation.

The registration form shall contain the taxpayer's name and/or the business name, the local address, mailing address, social security or federal identification number, the date moved into or commencing business in the City of Brook Park and such other information as the Director may require.

Contractors and others subject to the provision of Chapter 1713.02 (m) shall obtain a Contractor Tax Registration Certificate prior to licensing and/or commencing work, after completing the above registration form. After beginning work, they will be subject to the tax imposed by subsection 1705.01(b) and must obtain a tax identification number.

Any employer who leases employees from or to another business entity in the City of Brook Park must disclose such fact to the Director of the Department of Taxation. The disclosure shall contain the business name of both the lessor and the lessee business entity, their respective federal identification numbers, business addresses and such other information as the Director may require.

The Director of the Department of Taxation shall assign appropriate tax identification numbers and notify the taxpayer of their obligations as he shall deem appropriate.

B. Bases

1. Residents and Resident Employee:

- a. In the case of residents of the City of Brook Park an annual tax of 2.0% is imposed on all salaries, wages, commissions, other income, and other compensation earned and received, earned and accrued, or earned and deferred and on other income, not otherwise defined as intangible income or excluded by ORC 718.01 during the effective period of the ordinance. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Chapter 1705, paragraph (a) of the ordinance, the source of the earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings wherever earned or paid are taxable subject to the definition of wages and the exclusions in Article III (G).
- b. The following are items which are subject to the tax imposed by Chapter 1705 paragraph (a) of the ordinance:

.1 Salaries, wages, bonuses, prizes, awards, including lottery winnings by residents won after January 1, 2004, and incentive payments earned by an individual whether directly or through an agent and whether in cash or in property and whether received or deferred, for services rendered during the tax period as:

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

.02 An employee (as distinguished from a partner or member) of a partnership, limited partnership, Subchapter S Corporation, Limited Liability Partnerships and Limited Liability Corporations or any form of unincorporated enterprise owned by one or more persons.

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

.04 An officer or employee (whether elected, appointed, or commissioned) of the United States Government or of a corporation created and owned or controlled by the United States Government, or any of its agencies, or of the State of Ohio or any of its political Subdivisions or agencies thereof; or any foreign country or dependency except as Provided in Chapter 1705 of the ordinance.

.05 An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates; and whether paid by an individual, partnership, association, corporation, including charitable and other non-profit corporation and associations, governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity.

.2 Commissions earned by a taxpayer whether directly or through an agent and whether in cash or in property for services rendered during the effective period of the ordinance, regardless of how computed or by whom or wheresoever paid.

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

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

.03 If commissions are included in the net earnings of the trade, business, profession, enterprise, or activity, carried on by an unincorporated entity of which the individual receiving such commission is owner or part owner and therefore subject to the tax under paragraph (c) or (d) of Chapter 1705 of the ordinance, they shall not be taxed under Chapter 1705 paragraph (a).

.3 Fees, unless such fees are properly included as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity owned or partly owned by said individual and such net profits are subject to the tax under Chapter 1705.01(c) of the ordinance.(example: fees which are taxable are those fees received by a director or officer of a corporation)

.4 Other compensation including;

.01 Tips received by waiters and others.

.02 Bonuses.

.03 Gifts or gratuities in connection with employment.

.04 Compensation paid to domestic servants, casual employees and other types of employees

.05 Benefits resulting from employers assuming a tax imposed on employees.

.06 Fellowships, grants or stipends paid to a graduate in the full amount except that amount allocated in writing for tuition, books and laboratory fees shall be excluded.

.07 Dismissal pay which is demandable as a matter of right by virtue of the contract of employment.

.08 Incentive payments, prizes and awards associated with employment, whether paid in cash, property, stock options or by other means.

.09 Retirement and Other Plans. Employee contributions to retirement plans are neither excludable nor deductible by the employee. Withholding applies to the employee's full compensation unreduced by an employee's contribution to a retirement plan. The same rules apply with respect to other amounts withheld from employees and contributed to other types of plans. (i.e. Deferred Compensation)

If an employer pays into a tax shelter plan on behalf of an employee in lieu of paying said amount as wages, said payments are considered additional compensation to the employee and are subject to withholding received, earned

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and accrued, or earned and deferred during the effective period of the ordinance for work done or services performed or rendered within the City of Brook Park 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 for which payment is made is immaterial

Contributions to a pension, annuity or tax shelter plan by an employer is deemed to be other compensation subject to withholding if the employee's interest in or entitlement to the amount contributed is vested and non-forfeitable at the time of the contribution.

.10 Stock options given as compensation and when exercised, regardless to the treatment by the I.R.S. the employer would be required to withhold on the difference between the fair market value and the amount paid by the employee.

Employers must withhold municipal income tax on the exercise of non-qualified stock options if the employee acquired the option as compensation or in lieu of wages.

In the case of the disqualifying disposition of a stock option, the employer has no obligation to withhold and the responsibility of the tax is on the employee.

.11 Royalty Income - Income earned by a taxpayer from a royalty interest in the production of an oil or gas well whether managed,, extracted or operated by the taxpayer individually or through an agent or other representative shall be included in the computation of net profits from a business activity to the extent that such royalty interest constitutes a business activity of the taxpayer.

Where the gross income received by the taxpayer from a royalty interest in the production of an oil or gas well in a taxable year exceeds \$3000.00, it shall be prima facie evidence that the income was derived from a business activity of such tax-payer and the net income from such royalty interest shall be subject to tax.

.12 Profit sharing plans.

.13 Supplemental unemployment benefit pay.

.14 If the income appears on W-2 and is not defined in Article III-G as non-taxable income, it shall be considered other compensation and, therefore, taxable.

.15 The employer's income derived from finance and carrying charges associated with their consumer's account receivable to the extent that any of this income represents tangible income.

.16 Group term life insurance protection over \$50,000.00 taxed on the entire cost.

.17 Losses from the operation of a business or profession are not deductible from employee earnings. Rental and business losses may not be used to offset wage income. Rental and/or business losses from one entity cannot be used to offset rental and/or business profits from another entity. Rental losses outside the Brook Park municipal boundary cannot be used to offset the rental profit within the Brook Park municipal boundary.

.18 Money received from covenants not to compete;

.19 Severance pay

.20 Jury fees

.21 Income deemed taxable per Federal Code section 89 or its substantial equivalent;

.22 Ordinary gains reported on Federal Form 4797

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.23 Contributions to a SEPP

.24 Contributions made by or on behalf of employees to profit sharing plans.

.5 Payments made to employees by an employer as vacation wages are taxable. Payments made to an employee by an employer under the wage continuation plan during periods of disability or sickness, are taxable whether paid by the employer or by a third party on behalf of the employer. Vacation, sickness, or other types of payments made under a wage or salary continuation plan including 'sub' pay received from a union in lieu of wages during periods of absence from work are taxable when paid. Payments made by an employer to an employee during periods of absence from work are taxable when paid. Sick leave or sick pay, disability, vacation, terminal pay, supplemental unemployment pay, severance pay may not be excluded from taxable income by an employer or a non-resident employee. Payments made to an employee, either directly or by an insurance company under a wage continuation plan may not be excluded from taxable income by an employer or non-resident employee.

When the period of disability or sickness exceeds one year (365 consecutive days), the liability for city tax shall cease.

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

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

d. Other tangible income for residents shall include all income not otherwise excluded by Article III (G) or forbidden by ORC 718.01 and shall include distributions from trusts, partnerships, and income from any other pass-through entity including S-corporations.

e. Effective January 1, 2004, prizes, awards and other income, whether paid in cash or property, associated with lottery winnings, games of chance, game shows, wagers, or others are tangible income.

.1 For purposes of this section, the resident's domicile on the date of the drawing or other form of win shall be determinate in defining the taxability of income to the City of Brook Park associated with the lottery and other games of chance. Residence at the time of the distribution of the payment shall not be considered. As used, "resident" includes any trust, corporation, or other entity established by the resident to protect his or her identity or for any other reason.

.01 The taxable amount shall be the realized cash value of the award whether paid in cash, property or by other means on the date of payment. In the event payment is taken as an annuity whereby payment of the prize is spread out over a period of time, the annuity is specifically excluded from the exceptions in Article III G 2.

.02 Residents earning prizes in excess of two thousand dollars (\$2,000.00) are automatically subject to the provisions of ordinance Chapter 1713.04 and may be required to file a new or revised declaration of estimated tax and to make such payments required under the Ordinance to avoid the penalties dictated by Chapter 1715 regarding underpayment of estimated tax.

.03 In the case of multiple winners or a shared prize, the resident's tax is on the apportioned share of the total.

2. Nonresident Employee:

a. Except as otherwise stated in Article VI, in case of individuals who are not residents of the City of Brook Park, there is imposed under Chapter 1705 paragraph (b) of the ordinance, a tax of two percent (2.0%) on all salaries, wages, commissions, compensation, prizes and awards, and on other taxable income, earned and received, earned and accrued or earned and deferred subject to the definition of wages and the exclusions in ORC 718.01 and Article III(G) during the effective period of this ordinance for work done or services performed or rendered within

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the City of Brook Park whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or property. The location for which payment is made is immaterial.

b. The items subject to tax under Chapter 1705 paragraph (b) of the ordinance are the same as those listed and defined in Article III-B. For the methods of computing the extent of such work or services performed within the City of Brook Park, in cases involving compensation for personal services partly within and partly without the City of Brook Park, see Article VI-A.6.

3. a. Imposition of Tax on Net Profits of Resident Unincorporated Businesses:

.1 In the case of resident unincorporated businesses, pass-through entities or professions or other activities conducted, operated, engaged in, prosecuted or carried on, irrespective of whether such taxpayer has an office or place of business in the City of Brook Park, there is imposed an annual tax of two percent (2.0%) on net profits earned, accrued, or received during the effective period of the ordinance attributable to the City of Brook Park, under the formula or alternate accounting method provided for in Article III of the Rules and Regulations, derived from sales made, work done or services performed or rendered and business or other activities conducted in the City of Brook Park.

4. a. Imposition of Tax on Net Profits of Resident Unincorporated Businesses:

.1 In the case of resident unincorporated businesses, pass-through entities or professions or other activities conducted, operated, engaged in, prosecuted or carried on, irrespective of whether such taxpayer has an office or place of business in the City of Brook Park, there is imposed an annual tax of two percent (2.0%) on net profits earned, accrued, or received during the effective period of the ordinance attributable to the City of Brook Park, under the formula or alternate accounting method provided for in Article III of the Rules and Regulations, derived from sales made, work done or services performed or rendered and business or other activities conducted in the City of Brook Park.

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

.3 The tax imposed by Chapter 1705, paragraph (c)(1) of the ordinance is imposed on all resident unincorporated businesses, pass-through entities or professions or other activities having net profits attributable to the City of Brook Park under the method of apportionment provided for in the ordinance, regardless of where the owner or owners of such resident unincorporated business entity reside.

.4 Resident unincorporated entities owned by two or more persons all of whom are residents of the City of Brook Park shall disregard the method of apportionment provided for in the ordinance and pay the tax on their entire net profits thereof. 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 such net profits; however, an additional 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

.5 Each entity shall be considered a separate income stream. Losses from one entity cannot be used to offset profits from a different entity.
than one persons is upon the entities rather than the individual members or owners thereof but the tax imposed on an unincorporated resident entity owned by one person is upon the individual owner. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III-B.3b)

.3 The tax imposed by Chapter 1705, paragraph (c)(1) of the ordinance is imposed on all resident unincorporated businesses, pass-through entities or professions or other activities having net profits attributable to the City of Brook Park under the method of apportionment provided for in the ordinance, regardless of where the owner or owners of such resident unincorporated business entity reside.

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.4 Resident unincorporated entities owned by two or more persons all of whom are residents of the City of Brook Park shall disregard the method of apportionment provided for in the ordinance and pay the tax on their entire net profits thereof. 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 such net profits; however, an additional 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

.5 Each entity shall be considered a separate income stream. Losses from one entity cannot be used to offset profits from a different entity.

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

.1 A resident individual who is sole owner of a resident unincorporated entity shall disregard the business apportionment formula and pay the tax on the entire net profits of this resident unincorporated business entity to the City of Brook Park.

.2 In the case of a resident individual partner or part owner of a resident unincorporated entity, there is imposed an annual tax of two percent (2.0%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the ordinance not attributable to the City of Brook Park, under the method of apportionment provided for in Chapter 1705 of the ordinance as specified in Article III C, and not taxed against the entity by the City of Brook Park

.3 Each entity shall be considered a separate income stream. Losses from one entity cannot be used to offset profits from a different entity.

4. a. Imposition of Tax on Net Profits of Nonresident Unincorporated Businesses:

.1 In the case of a nonresident unincorporated businesses, professions, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of two percent (2.0%) on the net profits earned, accrued or received during the effective period of the ordinance attributable to the City of Brook Park, under the formula or alternate accounting method provided for in the ordinance.

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

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

.4 Each entity shall be considered a separate income stream. Losses from one entity cannot be used to offset profits from a different entity.

b. Imposition of Tax on Resident's Share of Profits of a Nonresident Unincorporated Business Entity Not Attributable to the City of Brook Park, see Article XV for Credits.

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.1 In the case of a resident individual partner or part owner of a nonresident unincorporated entity, there is imposed an annual tax of two percent (2.0%) 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 apportionment provided for in Chapter 1705 of the ordinance and not taxed against the entity by the City of Brook Park.

.2 A resident individual who is sole owner of a nonresident unincorporated business entity shall disregard the business apportionment formula and pay the tax on the entire net profits of this unincorporated entity to the City of Brook Park.

.3 Each entity shall be considered a separate income stream. Losses from one entity cannot be used to offset profits from a different entity.

5. Imposition of Tax on Net Profits of Corporations:

a. In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the City of Brook Park, there is imposed an annual tax of two percent (2.0%) on the net profits earned, received or accrued during the effective period of the ordinance apportioned to the City of Brook Park under the apportionment formula or alternate accounting method provided for in the ordinance.

b. In determining whether a corporation is conducting a business or other activity in the City of Brook Park, the provisions of Article III-C. of these regulations shall be applicable.

c. Corporations which are required by the provisions of Sections 5727.38 to 5727.41, inclusive, of the Revised Code of Ohio, to pay an excise tax in any taxable year as defined by the ordinance, may exclude that part of their gross receipts upon which the excise tax is paid. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to the tax imposed by the ordinance.

6. Imposition of Tax on Distributive Share of Net Profits of an S Corporation

An S corporation shareholder's distributive share of the net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self employment as defined in section 1402(a) of the Internal Revenue Code shall not be taxed to a greater extent than such distributive share would be allocated or apportioned to the State of Ohio under division (B)(1) or (2) of the Ohio Revised Code if the corporation were a corporation subject to the taxes imposed under Chapter 5733 of the Ohio Revised Code.

7. Amplification:

In amplification of the definition contained in Article II of these regulations but not in limitations thereof, the following additional information respecting net business profits is furnished.

a. NET PROFITS.

.1 Net Profits as used in the ordinance and these regulations means net profits derived from any business, profession, enterprise, or other activity or undertaking carried on for profit or normally carried on for profit.

After January 1, 2004 net profit for a taxpayer other than an individual means:

- a) adjusted federal taxable income calculated as specified in the definitions, and

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b) for an individual, the amounts required to be reported on schedule C, schedule E or schedule F.

.2 For tax years beginning prior to December 31, 2003, net profits as disclosed on any return filed pursuant to the provisions of the ordinance shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service (providing such method does not conflict with any provisions of the ordinance). Net profits, shown on returns filed pursuant to the ordinance must be reconciled with the income reported to the Federal Internal Revenue Service. For tax years beginning January 1, 2004 or later, Net Profits shall mean the adjusted federal taxable income, if the taxpayer is not an individual, calculated as if the taxpayer were a C corporation as specified in the definition of "adjusted federal taxable income."

.3 Intangible income to the extent included in federal taxable income is not to be included in net profits subject to the tax.

b. GROSS RECEIPTS.

.1 Gross receipts shall reflect the main purpose of the business and shall include, but not be limited to income in the form of commissions, fees, rentals from real and tangible personal property, and other compensation for work or services performed or rendered as well as income from sales of stock in trade, depending on the type of business.

.2 The Director of the Department of Taxation is hereby charged with the authority to disallow any income that artificially inflates the gross receipts of the principal business activity, product sales or service provided, and used in the denominator of the gross receipts factor in the apportionment of income (Article III C).

.3 From gross receipts there shall be deducted allowable expenses to arrive at the net profit subject to tax.

c. EXPENSES.

.1 All ordinary, reasonable and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed, but no deduction may be claimed for salary or withdrawal, paid or accrued, of a proprietor or of the partners, former partners, members, former members or other owners of an unincorporated business, pass-through entity, profession or other enterprise or activity. Amounts paid or accrued to a qualified self-employment retirement plan, amounts paid or accrued to or for health insurance and amounts paid or accrued to or for life insurance of an owner or owner-employee shall not be allowed as a deduction. In the case of a real estate investment trust and regulated investment company, all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in computation of federal income may not be claimed as an expense or deduction for the City of Brook Park. Guaranteed amounts paid or accrued to a partner, former partner, member or former member shall not be allowed as a deductible expense. Any amounts paid to or accrued for purposes of federal self-employment tax shall not be allowed as a deductible expense.

.01 If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty, not compensated for by insurance or otherwise, of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the federal income tax. Provided, however, that loss on the sale, exchange or other disposition of depreciable property or real estate, used in the taxpayer's business shall not be allowed as a deductible expense.

.02 Current amortization of emergency facilities under the provisions of the Internal Revenue Code, if recognized as such for federal income tax purposes, may be included as an expense deduction hereunder.

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

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.04 Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Director of the Department of Taxation (if the reserve method is used), a reasonable addition to the reserve may be claimed, but in no event shall the amount exceed the amount allowable for federal income tax purposes.

.05 Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax, then 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 exclusive on the amount of Ohio Franchise tax computed on the net worth basis..
- (3)Gift, estate or inheritance taxes.
- (4)Taxes for local benefits or improvements to property which tend to appreciate the value thereof.

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

.07 If the taxpayer reports income that is non-taxable under the ordinance and such amounts are deducted in order to reconcile the return with the taxpayer's federal income tax return, expenses attributable to this non-taxable income shall not be allowed. In the absence of records showing the actual expenses attributable to such non-taxable income, and upon approval of the Director of the Department of Taxation, such amount shall be deemed to equal five percent of such non-taxable income.

.08 Capital gains and losses from sales, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned. Any amount received on a sale of tangible personal property or real property used in business, in excess of book value, shall be treated as taxable income under the ordinance to the extent of depreciation allowable after January 1, 1967. The balance shall be treated as capital gain

8. Rentals from Real Property:

- a. Rentals received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by the taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.
- b. Where the gross monthly rental or any real properties, regardless of number and value, aggregate in excess of \$125.00 per month, it shall be prima fascia evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to tax; provided that in case of commercial property the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$125.00 per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds \$125.00 per month; and provided further that the person who operated a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds \$125.00 per month.
- c. In determining the amount of gross monthly rental of any real property periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.

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- d. Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income. Ordinary income resulting from the sale, exchange or other disposition of real estate for a business normally engaged in rental is taxable. Any amount received on a sale, exchange or other disposition of tangible personal property or real property, in excess of book value, shall be treated as taxable income to the extent of depreciation allowable after January 1, 1967. The balance shall be treated as capital gains.
- e. Real property, as the term is used in this regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.
- f. In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for federal income tax purposes.
- g. Residents of the City of Brook Park are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned.
- h. Nonresidents of the City of Brook Park are subject to such taxation only if the real property is situated within the City of Brook Park. Nonresidents, in determining whether gross monthly rentals exceed one hundred twenty-five dollars (\$125.00), shall take into consideration only real estate situated within the City of Brook Park.
- i. Businesses owning or managing real estate are taxable only on that portion of income derived from property located in the City of Brook Park.
- j. In the case of a taxpayer who has a net profit from rental activity, the base for determining the amount of the net profit shall be the amount shown on and required by the taxpayer to be reported on Schedule E or the substantial equivalent, and having a taxable situs within the City of Brook Park.
- k. Approval in writing must be obtained from the Director of the Department of Taxation before changing the method of accounting.
- l. The Director of the Department of Taxation shall have the final authority to determine the taxable income due to rental activities as granted by Chapter 1723.03 of the Codified Ordinances subject to appeal as outlined in Chapter 1725 of the Ordinances.

9. Patents, Copyrights and Intangible Income

a. Income from patents and copyrights is not to be included in net profits subject to the tax if the income from such patents and copyrights is subject to the State Intangible tax prior to January 1, 2004. After January 1, 2004, intangible income, as defined in Article II, is not to be included in net profits subject to Brook Park tax. Conversely, ~~such~~ a state intangible tax on patents, copyrights and other intangible income is not deductible in determining the profits subject to city tax. Such items shall be clearly disclosed on an attachment to be filed with the city tax return.

C. Apportionment of Business Profits

A request to change the method of apportionment must be made in writing before the end of the taxable year. Returns must be filed consistently from year to year. The Director of the Department of Taxation shall, subject to appeal, make such adjustments in the apportionment formula, per Article III, as are necessary to ensure consistent filing.

1. Alternate Accounting Method:

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- a. The net profits allocable to the City of Brook Park from business, professional or other activities conducted in the City of Brook Park by corporations or unincorporated entities (whether residents or nonresident) may be determined from the records of the taxpayer if taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within the City of Brook Park
- b. If the books and records of the taxpayer are used as the basis for apportioning net profits rather than the business apportionment formula, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Director of the Department of Taxation to determine whether the net profits attributable to the City of Brook Park are apportioned with reasonable accuracy.
- c. In determining the income allocable to the City of Brook Park from the books and records of a taxpayer an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the City of Brook Park.

2. Business Apportionment Percentage Method:

- a. STEP 1: For taxable years beginning December 31, 2003 or earlier, ascertain the percentage which the average net book value, i.e., the total costs as shown on the Federal Return less allocable depreciation as shown on the entity's Federal return as filed, including leasehold improvements, owned or used in the business and situated within the City of Brook Park is of the average net book value of all real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.

For taxable years beginning January 1, 2004, or later, ascertain the percentage which the average original cost of all real and tangible personal property including leasehold improvements, as shown on the entity's Federal return as filed, owned or used in the business and situated within the City of Brook Park, is of the average original cost of all real and tangible personal property including leasehold improvements used in the business wherever situated during the period of the return.

.1 For taxable years beginning December 31, 2003 or earlier, the percentage of taxpayer's real and tangible personal property within the City of Brook Park is determined by dividing the average net book value of such property within the City of Brook Park (without deduction of any encumbrances) by the average net book value of all such property within and without the City of Brook Park. In determining such percentage property rented to the taxpayer as well as real and tangible personal property owned by taxpayer must be considered. For taxable years beginning January 1, 2004 or later, the average original cost of real and tangible personal property shall replace the "average net book value".

.01 For tax years beginning December 31, 2003 or earlier, the net book value of real and tangible personal property rented by taxpayer shall be determined by multiplying gross annual rents payable by eight (8). For tax years beginning January 1, 2004 or later, the value of real and tangible personal property rented by the taxpayer shall be determined by multiplying gross annual rents payable by eight (8).

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

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

.002 Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs or other amounts required to be paid by the terms of a lease or other arrangements.

b. STEP 2: Ascertain the percentage which the total wages, salaries, commissions, other income, and other compensation of employees within the City of Brook Park is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without the City of Brook Park during the period covered by the return. Wages shall be reported on a basis consistent with the definition of "Wages" as used within the ordinance and these Rules and Regulations.

.1 Salaries and reasonable compensation paid by owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purpose of this computation

.2 Wages, salaries, other income, and other compensation shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire income of the taxpayer. The method shall be specified by the taxpayer.

.3 In the case of an employee who performs services both within and without the City of Brook Park the amount treated as compensation for services performed within the City of Brook Park shall be deemed to be:

.01 In the case of an employee whose compensation depends directly on the volume of business accrued by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the City of Brook Park.

.02 In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services within the City of Brook Park bears to the value of all his services.

.03 Except as specified in Article VI A, in the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the City of Brook Park is of his total working time.

c. STEP 3: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made and services rendered in the City of Brook Park is of the total gross receipts wherever derived during the period covered by the return. provided, however, if the percent of sales allocated to the City of Brook Park is LESS THAN the average of percentages used in STEP 1 (Property) and STEP 2 (Payroll), a statement must be submitted with the return listing:

.1 The other locations (cities, municipalities, villages, etc) to which sales are allocated;

.2 The percentage of sales that are allocated to each of the other locations;

.3 Whether or not a return was filed and/or a tax was paid on the sales allocated to each of the other locations.

Failure to submit this statement will result in the percentage of sales allocated to the City of Brook Park being no less than the average of percentages used in STEPS 1 and 2. Also, when the statement indicates that no return was filed or no tax was paid on sales allocated to another location, such sales shall be considered to have been the City of Brook Park sales and shall be allocated as such.

.4 The following sales shall be considered Brook Park's sales:

.01 All sales made through retail stores located within the City of Brook Park to purchasers within or without the City of Brook Park except such of said sales to purchasers outside the City of Brook Park that are directly attributable to regular solicitations made outside the City of Brook Park personally by the taxpayer's employees.

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

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

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

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All solicitation of customers outside the City of Brook Park by mail, telephone, fax, electronic mail or other electronic media from an office or place of business within the City of Brook Park shall be considered a solicitation of sales within the City of Brook Park.

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

.5 In the application of the foregoing subparagraphs a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale; and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside the City of Brook Park by mail or phone from an office or place of business within the City of Brook Park shall not be considered a solicitation of sales outside the City of Brook Park.

- d. STEP 4: Add the percentages determined in accordance with steps 1, 2 and 3 or such of the aforesaid percentage as may be applicable to the particular taxpayer's business and divide the total so obtained by the number of percentages used in ascertaining said total. The result so obtained is the business apportionment percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely outside the City of Brook Park. A factor is excluded only when it does not exist any where.
- e. STEP 5: The business apportionment percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits allocable to the City of Brook Park.

3.Substitute Method:

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

b. Application to the Board of Review or the Director of the Department of Taxation to substitute other factors in the formula or to use a different method to apportion net profits must be made in writing by the taxpayer before the end of the taxable year and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. A copy thereof shall be served at the time of filing upon the taxpayer or Director of the Department of Taxation as the case may be. The Board of Review or Director of the Department of Taxation must approve any changes in the method of calculating any factor before it can be implemented by the taxpayer. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the Board of Review or the Director of the Department of Taxation.

D. Operating Loss Carry Forward

1. The portion of a net operating loss, based on income taxable under the ordinance sustained in any taxable year subsequent to (effective date of "first" ordinance permitting loss carry-forwards) allocable to the City of Brook Park may be applied against the portion of the profit of the succeeding year(s) allocable to the City of Brook Park, until exhausted but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.

Partnership and Subchapter S corporation losses are never deductible from rental or sole proprietorship income.

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2. In the event net profits are apportioned both within and without the City of Brook Park, the portion of a net operating loss sustained shall be apportioned to the City of Brook Park in the same manner as provided herein for apportioning net profits to the City of Brook Park. The portion of a net operating loss to be carried forward shall be determined in the year the net operating loss is sustained on the basis of the apportionment factors applicable to that year. The same method of accounting and apportionment must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained, except that, for years beginning January 1, 2004 or later, losses incurred for tax years beginning December 31, 2003, or earlier, may be used as approved and need not be recalculated to conform to the revised apportionment formula for tax years beginning January 1, 2004 or later.

3. In the case of fiscal years beginning prior to the effective date of the ordinance, the net operating loss deduction will be that portion of the operating loss that the number of months of the fiscal year after the effective date of the ordinance bears to the total number of months in such fiscal year.

4. A short fiscal year (a fiscal year of less than twelve (12) months) in cases where there has been a change in the accounting period, where a new taxpayer selects a short fiscal year, or where a new taxpayer operates in the City of Brook Park for less than his full accounting period, shall be considered as a full taxable fiscal year.

5. In any return in which a net operations loss deduction is claimed, a schedule should be attached showing:

- a. Year in which net operating loss was sustained.
- b. Method of accounting and apportionment used to determine portion of the net operating loss allowable to the City of Brook Park.
- c. Amount of net operating loss used as a deduction in prior years.
- d. Amount of net operating loss claimed as a deduction in current year.

6. The net operating loss of a business which loses its identity through merger, consolidation, fundamental change, etc., shall not be allowed as a carry-forward loss deduction to the surviving business entity.

7. In the case of a net operating loss in the filing of consolidated returns, see Article III, paragraph E.

8. Returns must be timely filed to take advantage of the five (5) year loss carry forward.

E. Consolidated Returns

1. Consolidated returns may be submitted by first time filers if:

- a. the group of corporations are affiliated through ownership
 1. For a subsidiary corporation to be included in a consolidated return, 80% of its stock must be owned by the other members of the affiliated group. A consolidated return must include all companies which are so affiliated.
- b. the group has filed a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Service Code for the same tax period.

2. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership that have previously filed separately provided that:

- a. For a subsidiary corporation to be included in a consolidated return eighty percent (80%) of its stock must be owned by the other members of the affiliated group.,
- b.. A consolidated return must include all companies which are so affiliated,
- c. A request to change the method of reporting has been made in writing before the end of the reporting period,
- d. The group filed, or will file, a consolidated income tax return for federal tax purposes pursuant to Section 1501 of the Internal Revenue Code

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

- a. Permission in writing is granted by the Director of the Department of Taxation to file separate returns.

b. A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year.

c. A corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.

4. If a corporation becomes a member of the group during the taxable year the consolidated return must include the income for the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group.

For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group, but not the period after it ceases to be a member. A separate return must be filed for the period after a subsidiary ceases to be a member of a group.

If a corporation has been a member of the affiliated group for less than one month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one month

If a subsidiary is a member of the consolidated group for only part of a taxable year, the income considered to be earned in such fractional part of the year shall be that portion of the net income for the entire year which the number of days it was a member of the group bears to the total number of days in the taxable year.

5. In determining the apportionment fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property fraction (Step 1 of the formula) shall be determined on the basis of the average net book value of the property during the period such corporation was a member of the group for taxable years beginning prior to December 31, 2003, and thereafter shall be determined on the basis of original cost. The rental portion of the fraction, however, shall be computed at 8 times the annual rent whether paid, accrued or deferred. The gross receipts and wage fractions shall be based on the actual figures utilizing definitions within these Rules.

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

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

8. In consolidating the net income, the taxable income of each corporation shall be computed in accordance with the provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of an affiliated group.

9. In determining expenses that are not allowable because they are allocable to non-taxable income, such calculations shall be based on the consolidated net income. As an example, inter-company dividends which are eliminated in the consolidation will not be taken into consideration in determining non-taxable income.

F. Apportionment of Net Profits by Administrator

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In the case of a corporation that carried 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 Brook Park constituting a portion of its total business, the Director of Taxation shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City of Brook Park.

If the Director of Taxation finds that net profits are not properly apportioned to the City of Brook Park by reasons of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such divisions, branches, factory, office, laboratory or activity or by such other method, he shall make such apportionment as he deems appropriate to produce a fair and proper allocation of net profits to the City of Brook Park.

G. Exceptions

The following shall not be considered taxable:

1. Poor relief, unemployment insurance benefits, old age pensions or similar payments received from local, state or federal government or charitable or religious organizations.
2. Proceeds of insurance, annuities, with the exception of annuities paid through winnings in lottery and other games of chance, workman's compensation insurance, social security benefits, pensions, compensation for damage for personal injuries and like reimbursements not including damages for loss of profits.
3. Compensation for damage to property by way of insurance or otherwise.
4. Personal earnings of any person before the year in which that person turned eighteen.
5. Interest, dividends and other revenue from intangible property subject to Ohio Intangible Property Tax or specifically exempted therefrom.
6. Military pay and allowances received as a member of the armed forces of the United States for active duty as defined by Federal law. This exemption includes not only the military pay and allowances received by the members themselves, but also military pay and allowances, such as dependency allowances, received by another person by reason of the member's service. Any bonus or additional compensation paid to a person by the United States, State of Ohio, or any other state for active service in the Army, Navy, or Air Force, shall also be exempt from tax. Income received for inactive duty is taxable.
7. Any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Section 718.01 of the Revised Code of Ohio which is exempt from payment of real estate taxes is exempt from payment of the tax imposed by this ordinance to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities. The income and profits of organizations exempt from Federal Income Tax under Section 501(a) of the Internal Revenue code shall be exempt from taxation under this ordinance.
8. Any association or organization falling into the category listed in the preceding paragraph not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the taxes levied under this ordinance on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.
9. Where such non-profit association or organization conducts income producing business both within and without the corporate limits, it shall calculate its profits allocable to the City of Brook Park under the method or methods provided above.
10. 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.

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11. Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct election official to a maximum limit of \$1000.00

12 Salaries and wages not considered received by the individual member but by a religious order of organization under a vow of poverty are exempt from the tax imposed by this ordinance. Housing allowances for clergy to the extent that allowance is used to provide a home are exempt from the tax imposed by this ordinance.

13. Compensation attributable to a plan or program described in section 125 of the Internal Revenue Code after January 1, 2004.

14. Such other items as may be prohibited from taxation by Ohio Revised Code Section 718.01.