

**EARNED INCOME TAX REGULATIONS  
OF THE CITY OF WILMINGTON**



**DEPARTMENT OF FINANCE**

**FEBRUARY 2011**

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**INCOME TAX REGULATIONS  
PROMULGATED BY THE DIRECTOR OF FINANCE  
RELATING TO THE ORDINANCE OF CITY COUNCIL  
APPROVED JUNE 16, 1969**

## ARTICLE I

### GENERAL PROVISIONS

#### SECTION 101      DEFINITIONS

For the purpose of these regulations, the following terms shall have the definitions hereinafter given:

- A. "Business" means an enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, governmental body or unit or agency, or any other entity.
- B. "City" and "city" both shall mean and refer to the City of Wilmington located in New Castle County of the State of Delaware unless the context clearly indicates to the contrary. Similarly, the phrases "in the City," "in the city," "within the City," and "within the city," each shall mean "within the jurisdictional limits of the City of Wilmington located in New Castle County of the State of Delaware" unless the context clearly indicates to the contrary."
- C. "Director" shall mean Director of the Department of Finance of the City of Wilmington.
- D. "Domicile" means a place where a person has its true, fixed, permanent home or principal establishment, to which whenever absent therefrom, he intends to return and continue to remain until such time as another permanent home or principal establishment is required (See Section 206).
- E. "Employee" means any person who renders or has rendered any services to another for a consideration or its equivalence, under an expressed or implied contract, and who is or was under the control and direction of the latter when rendering the services and shall include temporary, provisional, casual, or part-time employment.
- F. "Employer" means an individual, partnership, association, corporation, governmental administration, agency, arm, authority, board, body, branch, bureau, department, commerce division, section or unit, or any other entity, for whom or for which one or more persons render or have rendered any services on a salary, wage, commission, or other compensation basis, whether or not such employer is engaged in business as hereinbefore defined.

- G. "Independent Contractor" is a person who, while performing services for another, is not under the direction and control of such other person, as to the result to be accomplished by the work and as to details and the means by which that result is accomplished, including but not limited to authors, professional persons, seamstresses, laundresses, tailors and registered nurses.
- H. "Net Profits" means the net gain from the conduct, operation or prosecution of a trade, business, profession, enterprise or other activity, after provision for all allowable costs and expenses incurred (either accrued or paid in accordance with the method of accounting employed) in the conduct thereof, but without any deduction for taxes which are themselves based on income.
- I. "Nonresident" means a person, partnership, association, corporation, or other entity domiciled outside the City of Wilmington.
- J. "Ordinance" means the Earned Income Tax Ordinance, as amended of the City of Wilmington.
- K. "Person" means every natural person, partnership, fiduciary, association, or corporation. Whenever the term person is used in any clause describing and imposing a penalty, the term, as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.
- L. "Resident" means a person, partnership, association, corporation, or other entity domiciled in the City of Wilmington.
- M. "Salaries, Wages, Commissions and Other Compensation" shall include salaries, wages, commissions, bonuses, incentive payments, fees and tips or other compensation of whatever nature, that may accrue or have accrued or be received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered.
- N. "Taxpayer" means a person, whether an individual, partnership, association, or any other entity, required by this Ordinance to (1) file a return of earnings or of net profits or both, or (2) pay a tax thereon.
- O. A "Working Day" is any day for which an employee actually performs services on behalf of his employer. The term "Working Day" shall not include any holiday, vacation day, sick day, leave day, Saturday, Sunday, etc., unless services are actually performed on such day."

**SECTION 102**      **TAX BASE**

The tax levied by this Ordinance relates to and is imposed upon:

- A. On salaries, wages, commissions and other compensation earned by residents of the City; and
- B. On salaries, wages, commissions and other compensation earned by nonresidents of the City for work done or services performed or rendered in the City; and
- C. On the net profits in businesses, professions and other activities conducted by residents of the City; and
- D. On the net profits earned in businesses, professions and other activities conducted in the City by nonresidents (Sub. #2 to Ord. No. 73-054, S 1).

**SECTION 103**      **WHO IS SUBJECT TO THE ORDINANCE**

The following persons are subject to the provisions of this Ordinance:

- A. An individual, partnership, association, corporation, trust estate, governmental body or unit, or any other entity that employs one or more persons on a salary, wage, commission or other compensation basis, must file a return of tax withheld.
- B. An individual, partnership, association, trust, estate, or joint venture, must file a return on net profits earned from the conduct of a business, profession or other activity.
- C. An individual employed on a salary, wage, commission or other basis by an employer who does not withhold the tax.

**SECTION 104**      **EXCLUSIONS FROM TAXATION**

- A. The following payments or benefits received by an individual shall not be subject to this tax:
  - 1. Social Security, Retirement, Pensions. Retirement Pay or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment. This normally includes all payments from pension plans defined in HB 394 (U.S. House Bill 394). In addition, if an employer elects under IRS regulations to include in an employee's current W-2 federal taxable wages or social security taxable wages a taxable amount related to employer contributions directly to a supplemental pension plan under IRS reg 3121(v)(2)(C), the amount is considered to be a payment to a pension plan ultimately payable to the employee as a pension and shall not be subject to the tax.

2. Qualified and non-qualified plans (Retirement/pension related). These plans are not taxable if the employee cannot receive this compensation until after retirement. Changes to existing or new plans must be submitted to the Earned Income Tax Division for review.
3. Sick or Disability Benefits. Periodical payments received by an individual under a sickness or disability plan are not taxable. Where, however, an employee shall receive the full amount of this regular salary from his employer, or a third party, or a combination of payments from the employer and a third party that are equal to his full salary, during a period of sickness or disability, by virtue of his contract of employment, such compensation shall be fully taxed.
4. Benefits Arising Under the Workmen's compensation Act. Compensation received by employees under the provision of the Workmen's Compensation Act for injury sustained during the course of employment, together with any amount received as damages by suit or agreement on account of such injury, shall not be taxed under this ordinance.
5. Benefits arising under the Unemployment Compensation Act. Compensation received by employees under the provisions the Unemployment Compensation Act shall not be taxed under this Ordinance.
6. Active Military Service Pay. Wages or compensation paid by the United States to any person for active service shall be excluded from this tax. For purposes of this section, a person in "active service" shall be defined as one whose principle occupation for a period of more than 18 consecutive days is serving as a member of the Armed Services of the United States. However, wages or compensation paid by the United States to any person serving 18 consecutive days or less as a member of the National Guard or the Army Reserves shall be subject to the tax.
7. Bonuses Paid by United States, Delaware, or any other State, for active military service. Any bonus or additional compensation paid to a person by the United States, or State of Delaware, or any other State for active service in the Army, Navy, or Air Force of the United States, shall likewise be exempt from the tax.
8. Death Benefits. Where an employer makes death benefit payments to the beneficiary of an employee or to his estate, whether payable in a lump sum or otherwise, such payments shall not be subject to the tax.
9. Proceeds of Life Insurance Policies. Such proceeds, payable by reason of the death of an insured to his estate or to a beneficiary, are not taxable.



10. Gifts and Bequests. Cash or property, received as a gift, or under a will or under statutes of descent and distribution, is exempt from this tax.
11. Interest Received. All forms of interest on obligations of the United States or its possessions or of the State of Delaware, or any political sub-division thereof, or on bank or postal savings accounts, or on mortgages, or on loans, etc., received by a person shall not be subject to this tax.
12. Dividends Received. All forms of dividends received by a person, shall not be subject to this tax unless such person is a dealer in securities. Employers or employer deferred compensation plans that calculate and pay dividends or interest that is reportable as ordinary income on a W-2 is subject to the tax.
13. Scholarships. Tuition fees paid from a scholarship fund are not taxable to the recipient.
14. Board or Lodging to Employees for Convenience of Employer. The value of meals or lodging furnished to employees by the employer for the latter's convenience, shall not be considered as wage earned. Where, however, board or lodging is provided by the employer and the employee is not required to reside on the premises by his employer, the fair market value of the board or lodging shall be included in the employee's earnings.
15. Premiums paid by an employer for up to \$50,000 of life insurance coverage for the employee are not taxed to the employee. The cost (based on the IRS uniform premium cost table) of Group Term Life Insurance provided by one or more employers to the extent such cost exceeds the cost of \$50,000 of such insurance is taxable to the employee in his tax year in which the premiums are paid, even if his rights under the policy are assigned. If the insurance is provided by more than one employer, the \$50,000 exemption applies to the total coverage. For example, if an employee is covered by two \$40,000 policies by different employers he is taxed on the cost of \$30,000 (less his contribution, if any).
16. Moving Expense Reimbursements. An individual who is required to change his or her residence in connection with the commencement or continuation of employment shall be permitted to exclude from taxable income, reimbursements for moving expenses paid by the taxpayers' employer. However, such exclusion shall be permitted only to the extent the employee is permitted to deduct such reimbursement from gross income for federal tax purposes. (1/1/92)

17. Reimbursed Employee Business Expenses. Payments made to an employee by an employer for reimbursement of expenses which are recognized as business deductions from gross income for federal tax purposes and are actually incurred by the employee in furtherance of the employers' trade or business shall not be subject to this tax.
  18. Employer matching contributions to a deferred compensation plan.
  19. Flexible Spending Accounts. Any amount or benefit not included in federal gross income pursuant to Sections 125, 129, and 132 (8/30/99) of the Internal Revenue Code, shall not be subject to this tax. (1/1/93)
- B. No person shall be exempt from the application of the City Income Tax Ordinance unless specifically excluded or exempted under the terms of any State or City of Wilmington law, ordinance or regulation.
- C. In all other instances, there shall be no exemption or exclusion from the application of this Ordinance.

## ARTICLE II

### IMPOSITION AND RATE OF TAX

#### **SECTION 201**      **SALARIES, WAGES, ETC., OF EMPLOYEES**

An annual tax for general revenue purposes is imposed on residents of the City regardless of the place where their services are performed and on nonresidents of the City, for work done or services rendered in the City on salaries, wages, commissions, and other compensation earned on and after July 1, 1978, at the rate of one and one quarter percent (1.25%).

#### **SECTION 202**      **NET PROFITS OF BUSINESS, PROFESSION, ETC.**

An annual tax for general revenue purposes is imposed on net profits of businesses, professions, etc., conducted by residents of the City, and of nonresidents of the City, to the extent conducted in the City, earned on and after July 1, 1978, at the rate of one and one quarter percent (1.25%).

#### **SECTION 203**      **TAXABLE COMPENSATION OF EMPLOYEES**

Except as otherwise provided herein, taxable compensation shall include, but not be limited to the following items of remuneration received by an employee, whether directly or through an agent, and whether in cash or in property, and whether based on an hourly, daily, weekly, semimonthly, monthly, annual unit of production or piecework basis, for services rendered as an employee, agent or officer of an individual, partnership, corporation (profit or nonprofit) or governmental agency:

- A. Salaries.
- B. Wages.
- C. Commissions.
- D. Bonuses.
- E. Incentive Payments.
- F. Tips received by waiters, waitresses, and others.
- G. Fees (e.g. payments received by the director of a corporation).
- H. Benefits accruing by virtue of the employment, such as:
  - 1. Vacation and Holiday payments. Such payments are fully taxed to a resident employee and to a nonresident employee if his employment is entirely within Wilmington. With respect to a nonresident employee working partly within and partly outside of Wilmington, the tax is pro-rated on the same basis as that used in computing the tax while actually employed prior to vacation or holiday.

Illustration A: Prior to vacation, if a nonresident employee worked fifty percent (50%) of his time within Wilmington and his weekly pay was one hundred dollars (\$100.00), the tax during his vacation period would be based on fifty percent (50%) of his compensation, or fifty dollars (\$50.00) weekly.

2. Supplemental Unemployment Benefits (Sub Pay).
3. Severance or Termination pay, voluntary, or involuntary. Employee is a resident upon severance from company – 100% taxable regardless of employment base. Employee is a non-resident, but was employed in Wilmington and has not allocated time out of the City during his last year of employment – 100% taxable. Employee is a non-resident, but is employed in Wilmington and has allocated time out of the City during his last year of employment – subject to the tax on allocation that is inside the City. This allocation is used for all future severance payments.
4. Premiums for Group Term Life Insurance coverage in excess of \$50,000 only.
  - I. Tax assumed by employer.
  - J. Fellowships. Payments or other benefits received under the terms of a fellowship, which are made in return for services performed.
  - K. Compensation received in property shall be taxed at its fair market value at the time of receipt.
  - L. Board and lodging shall be taxed at fair market value. However, the value accepted by the State and Federal Government for payroll tax purposes may be accepted by the Director. (In the case of domestics and other employees whose duties require them to live at their place of employment, board and lodging shall not be considered taxable compensation.)
  - M. Earnings which are deferred by a taxpayer as part of a deferred compensation plan, such as an individual retirement account and Keogh plans, profit sharing, stock options, incentive payments, bonuses, vacation pay, etc., must be taxed at time of deferral. Resident employees are subject to tax at 100%, regardless of employment base. Non-resident employees whose employment base is in the City during the year of deferral are subject to the tax at 100%. Non-resident employees whose employment base is in the City during the year of deferral, but have allocated travel time are subject to the tax on the allocation within the City.

Non-resident employees whose employment base is out of the City at the time of deferral are not subject to the tax, unless they allocate time worked inside versus outside the City. Any employees that were subject to the tax at the time of deferral and have not been taxed, and have elected to draw on this compensation while still employed, should be taxed using their residence and employment base at the time of receipt. Any special circumstances must be presented to the City's Earned Income Tax Division for a determination.

- N. Stock Options, Stocks. These are subject to tax at exercise. City resident employees will be subject to the tax at 100%, regardless of employment base. Non-resident employees whose employment base is in the City during the year of exercise and have not allocated time worked out of the City during that year are subject to the tax at 100%. Non-resident employees whose employment base is in the City during the year of exercise and have allocated time worked out of the City during the year of exercise are subject to the tax on that allocation which is in the City. Non-resident employees who exercise after retirement are not subject to the tax. Non-resident employees who are not employed in the City during the calendar year of exercise are not subject to the tax, unless they allocate time worked inside versus outside the City. Any restricted or special stock plans or related items must be presented to the City's Earned Income Tax Division for a determination.
- O. Guaranteed Payments to Partners. In accordance with Internal Revenue Code Section 707(c); Reg. §1.707-1(c), any fixed or guaranteed payments made to partners for services or for the use of capital are generally treated as though paid to an outsider for purposes of computation of partnership gross income and business expense deductions. Thus, guaranteed payments are regarded as part of the recipient partner's distributive share of ordinary income.

**SECTION 204**      **EMPLOYEES' DEDUCTIONS FOR EXPENSES DIRECTLY CONNECTED WITH EMPLOYMENT**

- A. Employees who incur and pay expenses directly connected with the performance of their duties or services, may deduct such expenses in computing the amount subject to the tax provided the expenses meet all the following conditions:
1. No reimbursement is made by the employer.
  2. They are reasonable and actual.
  3. They are recognized as business deductions from gross income for federal income tax purposes.

- B. Expenses which may be deducted are:
1. Traveling, provided (a) the employee is away from the City, where he usually works, (b) remains away at least overnight, and (c) is on the employer's business. These include cost of transportation, meals, lodging, tips, and business telephone calls.
  2. Articles of wearing apparel which are specifically required by the employee, being used solely in the employer's business, and not adaptable for general wear, the cost and the upkeep may be deducted. Where the employee elects to wear a uniform, overalls, coveralls, or similar apparel merely for the protection of his regular clothing or his own convenience, the cost and upkeep become a personal expense and, therefore, not deductible.
- C. Expenses which may not be deducted are such items as (1) personal, family, or living expenses; (2) commuting to and from work; (3) Social Security taxes; (4) Federal and State Income Tax; (5) group insurance payments; (6) hospitalization; (7) pension plan payments.

**SECTION 205**            **RESIDENT EMPLOYEES**

The entire compensation received by a resident employee for services rendered is subject to the tax. Neither the source of the earnings, nor the place or places in or at which the services were rendered, is material in determining liability for the tax. A resident employee is fully taxed as to all items set forth in Section 203 of these regulations.

**SECTION 206**            **WHO IS A RESIDENT?**

For the purpose of this tax, a resident of Wilmington is a person who is domiciled in the City.

- A. What constitutes domicile?

Domicile is the place where one lives and has his permanent home or principal establishment, and to which he has the intention of returning whenever he is absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode, which in the intention of the taxpayer, is permanent rather than transitory. It is the place in which a person has voluntarily fixed the habitation of himself and his family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event shall occur to induce him to adopt some other permanent home. A domicile once established continues until a new one is established through the intent of establishing, and the actual establishing of a new domicile coupled with the abandonment of the old.

Every person has one and only one domicile. What constitutes domicile is a question of fact rather than of law, frequently depending on a variety of circumstances. Ordinarily, the domicile of a minor is that of the parent(s) or guardian with which he resides. The Department of Finance shall require that individuals claiming domicile outside the city of Wilmington provide a statement of information with respect to their particular case. Evidence of the mailing address contained in bank statements, credit accounts, and public utility invoices, place of voting, address shown on drivers' licenses or other forms of licenses and establishment of business and social contacts are all considered evidence of domicile, although no one such item is controlling.

**SECTION 207**      **NONRESIDENT EMPLOYEES**

A nonresident of the City, i.e., one whose domicile is outside of the City, is subject to this tax on salaries, wages, commissions, and other compensation earned for work done or services rendered within the City of Wilmington. The items subject to tax are those listed and defined in Section 203 of these regulations.

**SECTION 208**      **NONRESIDENT EMPLOYED FULL-TIME IN WILMINGTON**

The entire compensation earned by a nonresident shall be fully taxed if he performs the services for which he was hired exclusively within the City.

**SECTION 209**      **NONRESIDENT EMPLOYEE WORKING PART-TIME WITHIN WILMINGTON**

Where a nonresident received compensation for services rendered or performed partly within and partly outside the City, the tax shall attach to that portion of the compensation, which is earned within the City in accordance with the following rules of apportionment or allocation:

- A. If the nonresident is paid on a straight salary basis, the tax shall be based on that portion of his compensation, which the total number of working days employed within the City, bears to the total number of working days employed within and outside of City.

Illustration A: A resident of Pennsylvania was employed on a five-day week as a television repairman at a weekly salary of \$180. His duties required the servicing of customers in Wilmington, and West Chester, Pennsylvania. He worked within Wilmington approximately three (3) days each week. The tax on his weekly earnings would be \$1.35, computed as follows:

$$\frac{3 \text{ days within Wilmington}}{5 \text{ working days}} \times \$180 = \$108 \times 1.25\% = \$1.35$$

The claim for an apportionment or allocation, to be allowed by the Director, must be supported by a written statement such as travel orders signed by the employer, setting forth the date or dates the employee was assigned outside the City.

- B. If the nonresident is paid commissions based on the volume of business transacted by him, the tax is computed on that portion of his entire commission, which the volume of business transacted, by the employee within the City, bears to the volume of business transacted by him both within and outside the City. The place of solicitation shall, generally, determine whether the business transacted was within or outside the City.

Illustration B: A resident of Chester, Pennsylvania, was employed as a traveling salesman, receiving \$10,000 in commissions based on volume of sales made by him. He solicited business within Wilmington and Chester during the year totaling \$100,000 of which \$60,000 was attributable to Wilmington. The tax would be \$75 computed as follows:

$$\frac{\$60,000 \text{ within Wilmington}}{\$100,000 \text{ total business}} \times \$10,000 = \$6,000 \times 1.25\% = \$75$$

- C. If the employee receives both salary and commission, the tax on the portion, which constitutes salary, shall be allocated in accordance with (a) above, and the tax on the portion, which constitutes commissions, shall be allocated in accordance with (b) above.
- D. Notwithstanding and other provisions in these regulations, in the event of any dispute concerning the amount of tax liability of a nonresident taxpayer working or doing business both within and without the confines of the City, said taxpayer may, upon supplying the Director or his assistants with proper verification, allocate income and pay taxes on that part of his income which is attributable to time spent or services rendered within the City.

**SECTION 210**            **TAX LIABILITIES OF CERTAIN OCCUPATIONS INVOLVING NONRESIDENTS**

“All nonresidents whose employment base is outside the jurisdictional limits of the City and who earn compensation for services performed or rendered within the City shall be subject to taxation, provided, however, that the occasional entry into the City of a nonresident employee who performs the duties or services for which he or she is employed entirely outside the City but who enters the City – for purposes incidental to his or her duties outside the City shall not be subject either to the City’s otherwise applicable withholding requirements or to the City’s taxation of earned income. For purposes of these regulations, “incidental” to his/her services means any service which is *de minimus* or casual with respect to the nonresident’s employment.”



The following examples illustrate the method for calculating the tax liability of certain common occupations and activities:

A. Transportation Employees.

1. Railroad Train and Engine Service Employees. If it is impracticable, because of the peculiar nature of the service performed by railroad train and engine service employees, who are nonresidents of Wilmington working on trains passing through Wilmington or on runs which begin or terminate in Wilmington, as well as the unusual bases of compensation paid to such employees, to apportion their earnings, the following rules of allocation, determined on a daily basis, are prescribed:
  - a. Services performed on trains passing through the City. The services performed within the City are merely incidental to the services performed outside the City, and the employee shall not be deemed engaged in a taxable activity within the City.
  - b. Services performed on trains, which either begin or terminate in the City. Where such service is preponderantly outside the City, the employee shall not be deemed to be engaged in a taxable activity within the City. "Preponderant" shall mean in excess of ninety percent (90%).
2. In all other cases, where train runs are operated both within and without the boundaries of the City, the compensation earned within the City, shall be determined on the basis of mileage operated with the City computed in accordance within the basic mileage rate of the particular individual.

Illustration A: An engineer, on a train operation between Wilmington and Philadelphia, makes five (5) daily round trips and is paid at the basic rate of 40 cents per mile. The train travels approximately one mile within the City limits. The tax per day would be one cent computes as follows:

$$2 \text{ miles per round trip} \times 5 = 10 \text{ miles per day} \times \$0.40 = \$4$$

- c. Railroad train and engine service employees who are nonresidents performing all of their work within the limits of the City of Wilmington, are taxable upon their entire gross earnings.
3. Motor Freight and Commercial Transportation Employees other than Railroads and Waterways. Since the circumstances involved in the employment of such employees are substantially analogous to those of railroad train and engine service employees, the regulations applicable thereto shall apply to employees in the aforementioned category.

4. Seamen.

- a. Operating in Foreign or Coastwide Commerce. The wages earned by a nonresident seaman on a ship, which is docked at Wilmington, operating exclusively in foreign or coastwide commerce, is not to be regarded as income earned in Wilmington. This is true even though the ship remains in the Port of Wilmington a reasonable length of time for the transaction of its business. This paragraph applies to those who are regular members of the crew and not to night relief engineers and mates who relieve the regular crew members while a vessel is docked in the Port of Wilmington and perform all of their services in the City. Such individuals are taxable under these regulations.
- b. Subsistence and Maintenance. In computing the tax due to the City on the wages of any seaman, the base to be used is the actual wages paid, be they wages, money, or property. The base pay should not include the fair value of subsistence and maintenance supplied as a necessary incident to the employment.

5. Insurance Agent.

- a. An agent is an individual, partnership, or corporation holding an agent's certificate of authority and appointed by an insurer to solicit applications for policies of insurance, or to negotiate for policies of insurance on its behalf and, if authorized to do so by the insurer, to issue conditional receipts, to effectuate and/or to countersign insurance contracts.
- b. Basic Commissions. Agents are taxable on that part of basic commissions, which are attributable to time spent, or services rendered within the City. Alternatively, such agents may allocate taxable income in accordance to the location of risk at the time of issuance of the policy. In the case of life, accident and health insurance, the location of the risk shall be the residence of the insured. In the case of casualty and fire insurance, the location of the risk shall be the physical location of the property insured. In the case of professional liability insurance, the location of the risk shall be the principal place of business.
- c. Renewal Commission.
  - (1) Renewal commissions paid to a nonresident agent are taxable based on time spent or services rendered within the City in making the sale of the original policy. Alternatively, agents may use the location of risk test as follows: business written by him outside the City, at a time

the agent was not a resident of Wilmington, are deemed not taxable. This ruling applies only to those cases in which the agent is entitled to the renewal commissions regardless of the amount of insurance written by him in the succeeding years. Where, however, the contract of the agent required the sale of a minimum amount of new policies in order to entitle the agent to renewal commissions, such commissions, when paid, are deemed income earned in the City of Wilmington and shall be taxed in accordance with the provisions of (5) (1) (c) above.

- (2) Renewal commissions payable on policies of residents of Wilmington, paid or payable to an agent formerly under contract at Wilmington, but who at the time the same are paid, or shall become payable, resides and is under contract in another city, are deemed not taxable.
  - (3) The above regulations are applicable to renewal commissions paid or payable on contracts of insurance negotiated or delivered to the insured prior to July 1, 1969, if such renewal commissions are contingent upon the sale of a minimum amount of new policies.
- d. Bonuses and Incentive Payments. Bonuses and incentive payments received by a nonresident agent shall be allocated and, therefore, be taxable on the same basis as basic commissions as contained in paragraph (5)(b) above.
- e. Advances and Drawing Accounts. There are two (2) main types of advances and drawing account payments:
- (1) Those which impose upon the agent a written obligation to repay if they are not, in fact, earned.
  - (2) Those which, although offset by earned commissions, cannot be recovered at law even though agent fails to produce enough business to justify them.

The first of these two types of advance and drawing account payments is in the nature of a loan and accordingly is never subject to this tax. All commissions or bonuses applied toward the repayment of these types of advances and drawing accounts are taxable in accordance with the regulations set forth above.

The second type of advance and drawing account payment is taxable compensation when received to the extent that it exceeds compensation earned.

This income shall be apportioned and taxes paid on the basis of time spent or services rendered within the City.

- f. Collection of Tax at Source. It is the duty of all companies doing business in the City (or General Agents in the cases of agents whose contracts are with a General Agent alone and to whom payment is made by General Agent out of funds of General Agent) to deduct or withhold the tax on all taxable compensation paid to both residents and nonresident, full-time agents who are employees.

In computing the amount of compensation of any agent which should be subject to the tax it is obliged to withhold, the company (or General Agent) withholding the tax shall deduct each month an amount equal to one-twelfth (1/12th) of the amount stated in writing by the agent to be his estimate of the aggregate of business expenses which should be incurred by him during the current year in earning the taxable compensation which he will receive from the withholding company (or General Agent).

**SECTION 211**      **REAL ESTATE SALESMEN BROKERS**

- A. Nonresident real estate salesmen or brokers whether engaged in the business as employees or acting as independent contractors, are subject to a tax on that part of their commissions or other income attributable to time spent or services rendered in the City. Alternatively, such agents may allocate taxable income in accordance with the location of the property sold.
- B. Real Estate Appraisers. Compensation paid to a real estate committee and/or to a mortgage loan committee by building and loan associations, is taxable income subject to withholding by the association. Employees of trust companies, who are employed occasionally by the company as real estate appraisers in addition to their regular employment, are deemed not to be engaged in a separate activity. The tax on compensation received for such services shall be withheld by the company together with any other salary received by employee.

**SECTION 215**            **MINISTERS AND CLERGYMEN**

Salaries paid by organized religious bodies to ministers, clergymen, evangelists or religious workers, are considered taxable salaries on which deductions and remittance should be made to the Department by such organized religious bodies. Where, however, voluntary offerings are made to a clergyman at marriage, baptisms, funeral services, masses and prayers for the dead, such voluntary offerings are not considered earned income and not subject to the tax.

**SECTION 216**            **DOMESTIC WORKERS**

The compensation received by individuals referred to as "domestic workers" is subject to the tax.

The employer may with the consent of the domestic worker, withhold the tax. Where the employer does not withhold the tax, it is the duty of the domestic worker to pay the tax in accordance with the procedures contained herein.

**SECTION 217**            **OFFICERS AND EMPLOYEES OF THE STATE OF DELAWARE, AGENCIES, COMMISSIONS, AND ALL OTHER SUBDIVISIONS THEREOF**

Salaries paid to the officers and employees of the State of Delaware are subject to the tax. The State Treasurer must deduct the tax at the source.

**SECTION 218**            **CIVILIAN EMPLOYEES OF THE FEDERAL GOVERNMENT**

Salaries received by officers and employees, not in active military service of the United States Government, are subject to the tax. Such salary shall be taxable though the services of the employee be performed within a Federal area or reservation.

**SECTION 220**            **NET PROFITS OF BUSINESSES, PROFESSIONS, ETC.**

- A. Taxable Entities. Persons subject to tax on net profits shall be individuals, partnerships, associations or other unincorporated enterprises owned by two or more persons, and trusts or estates.
  - 1. Individuals. Any individual engaged in a business, trade, profession or other activity, carried on for profit, shall pay a tax on the net profits therefrom.
  - 2. Partnerships, Associations. A partnership, association or other unincorporated enterprise owned by two or more persons, engaged in a business, trade, profession or other activity or performing services wholly or in part within the City shall be subject to a tax on the net profits derived from services performed within the City. Such partnership or association shall be taxed as an entity. If all partners are residents of Wilmington, irrespective of where the activities of the partnership are conducted or if all the activities of the partnership are conducted in Wilmington,

irrespective of the residence of the partners, all of the net profits of the partnership shall be taxable on the partnership net profits tax return. In the case of a nonresident partnership, association or unincorporated enterprise composed of resident and nonresident partners or members, such persons must include in their individual return their distributive share of such net profits not taxed to the partnership as an entity.

3. Limited liability company that elects to file with I.R.S. as a partnership is subject to the net profits tax as an entity. Single-member LLC's are taxed as individuals.
4. A net loss resulting from an individual business or a partnership can be offset against the net profits of another individual business or partnership, but not against wages or other types of earned income. An individual may offset a net loss resulting from an individual business against the net profits of another individual business or against his taxable distributive share of a partnership or association profits that are not taxed as an entity. A partner or member may offset his distributive share of net loss against the net profits of another individual business or against his taxable distributive share of partnership or association net profits that are not taxed as an entity.

Illustration A: Partnership domiciled in Wilmington; both partners residents of Wilmington; net profits \$100,000 - \$100,000 taxable to partnership as an entity.

Illustration B: Partnership domiciled in Wilmington; one partner a resident of Wilmington; two partners are nonresidents of Wilmington; net profits \$100,000; 45% of business conducted in Wilmington, 55% outside the City--45% (\$45,000) is taxable to the partnership as an entity; 55% of the resident partner's distributive share is taxable (100% less the 45% taxed to the partnership).

Illustration C: Partnership domiciled in New York; both partners residents of Wilmington; none of business conducted in Wilmington - each partner in his individual capacity must return as part of his net business profit his distributive share of the entire profits in said partnership.

Illustration D: Partnership domiciled in Jersey City; one partner (a resident of Wilmington) has a 40 percent interest; remaining partners nonresidents of Wilmington; none of business conducted in Wilmington--partner, a resident of Wilmington, must return as part of his net business profits, his distributive share of the net profits in said partnership.

5. A resident partnership, which purchases Federal, state or municipal bonds, with partnership funds, whether or not engaged in the business of buying and selling stocks and bonds, must include any income received on such bonds in the net profits of the partnership business.
6. Trust or estates. Every estate or trust (whether the fiduciary is an individual or corporation) must file a return and pay the tax on the net profits if the estate or trust is engaged in any business, trade or activity, which would require the filing of a return by an individual or partnership, or receive income subject to tax, had it been received by an individual or partnership.
7. S-Corporation Entity Owners/Shareholders
  - a. S-Corporation entities are not subject to the City of Wilmington net profits tax.
  - b. Owners/shareholders must report and pay City wage tax as an employee of the S-Corporation **OR** net profits tax on the distribution that he/she receives from the S-Corporation.
    - (1) As an employee, the owners/shareholders must pay themselves a reasonable salary and wage-related income, and withhold City wage tax based on the allocation of time inside the City by nonresidents, if the employment base is outside of the City, and residents must have the tax withheld on all of their salary and wage-related income, regardless of where the services were performed. The tax must be remitted on a quarterly or monthly basis and at the end of the calendar year, an annual reconciliation, and W2 forms must be filed. This Amendment shall be deemed effective as of January 1, 2011.
    - (2) If the owners/shareholders do not make themselves employees of the S-Corporation, then they must obtain an individual net profits account under their own social security number and pay net profits tax on their distributive share of income that they received from the S-Corporation that was derived from business within the City of Wilmington. This income should be reported on Schedule A of the net profits tax return.
  - c. Any questions or concerns should be addressed in writing to the Tax Manager, Earned Income Tax Division, 800 North French Street, 5<sup>th</sup> Floor, Wilmington, Delaware 19801.

B. Activities Subject to Tax on Net Profits.

1. Income from Rentals and/or Sale of Real Estate. For the purpose of this regulation, the following terms shall have the definitions hereinafter given:
  - (i) "Real Estate" shall embrace unimproved land, lots, or loft buildings, apartment hotels, hotel buildings, office buildings, apartment houses, single dwellings, duplex apartments, garages and similar structures.
  - (ii) "Labor" is intended to apply to janitor, maid, or supervisory service, whether performed by the owner, his agents, or employees.
  - (iii) "Service" shall include elevator, heat, light, power, and the like.
2. Income from Rental of Real Estate. Rental income received from the operation of real estate by persons, trust companies or real estate agents, or other representatives acting for or on behalf of such persons or estates, is subject to the tax if the owner deliberately acquires the property for the purpose of conducting a rental business or if the owner, either himself or through agents or servants, manages and supervises the real estate by providing labor or service in connection therewith.

The furnishing of labor or service signifies activity and participation on the part of the taxpayer and classifies him as conducting or carrying on a "business" as defined in the Ordinance and regulations herein.

When any property falls within the taxable classifications above given, the manner of its acquisition, i.e., purchase, gift inheritance, fiduciary, or as fiduciary mortgagee in possession, etc., does not affect the taxability of the income derived therefrom.

Where such property is located outside the geographic limits of the City of Wilmington, the income earned therefrom by Wilmington residents is taxable.

If, however, the said property is situated outside the City of Wilmington and the operation of such business was not subject to the City of Wilmington Earned Income Tax, then the operation of such business by a trustee would be deemed not subject to the City of Wilmington Earned Income Tax.



3. Income from Sale of Real Estate. Any gain or profit realized from the sale of real estate shall be considered taxable to the extent that the gain or profit is due to the activity conducted. The full amount of the gain or profit shall be reported without regard to the length of time of ownership thereof by the owner.

Where a taxpayer is in doubt as to the taxable status of rental income, or the gain or profit from the sale of real estate, he shall submit a detailed written statement to the Department for a ruling.

- a. Fiduciaries. A fiduciary is a person who holds in trust, property, monies or properties to which another has a beneficial title or interest, or who receives and controls income for another person or persons. Commissions or fees received by a fiduciary constitute taxable income.
- b. Royalties. Income received as a "royalty" is considered taxable under the Ordinance. This type of income consists of monies received by the owner of a patent or private formula for the use of it, or the right to act under it; or by the author of a book, or by the owner of a mine for permitting another to remove minerals from it.
- c. Persons Engaged in Professions. Were an individual or partnership or association, is engaged in the conduct of a profession, i.e., physician, lawyer, dentist, engineer, accountant, etc., his income is subject to the net profits tax. Where the individual in addition to his general practice, is also employed on a fixed salary, such compensation is subject to withholding by the employer.

Illustration A: John Doe, a physician, maintains an office in his home where he examines and treats patients. He is also employed at a salary by a local hospital. His salary would be subject to the withholding tax provision by the hospital and the physician would, in addition, be required to pay on the net profits of his private practice.

3. Holding/Passive Investment Companies. No earned income tax shall be imposed upon any domestic corporation which qualifies as a passive investment and/or holding company and is exempt from the State of Delaware income tax pursuant to 30 Del. C. § 1902(b)(8), provided that a copy of the corporation's 1902(b)(8) Exemption Letter of Form 1908(b) Information Return issued by the State of Delaware is submitted to the Department of Finance. No earned income tax shall be imposed upon any limited liability company, limited liability partnership, or other business entity whose activities within this City are confined to the maintenance, management, collection, and distribution of the income from intangible

investments, provided that the business entity submits to the director of finance a notarized statement of a person authorized to bind the entity on a form provided by the Department of Finance certifying that:

- (1) The activities of the business entity are limited to maintenance and management of intangible investments and the collection and distribution of the income from such investments or from tangible property physically located outside the State.
- (2) He/She acknowledges that he/she has a continuing obligation to inform the director of the Finance Department in writing if the business entity's activities cease to qualify the business as a holding company, as defined in this section.

**SECTION 221**            **NET PROFIT OF RESIDENTS**

The entire net profits resulting from the conduct of operation of a trade, business, profession, enterprise, undertaking, or other activity, by a resident of Wilmington are subject to the tax. In determining liability for the tax, the place where the business is actually conducted, transacted, or operated is immaterial. Thus, an individual whose permanent residence is located in Wilmington and who has a place of business in Camden, New Jersey, would be required to pay the tax on his entire net profits from such business.

**SECTION 222**            **NET PROFITS OF NONRESIDENTS**

Where Entire Business is Transacted in Wilmington. A nonresident individual, partnership, association or other entity, conducting or carrying on any business, profession, enterprise, or other activity, is required to pay the tax on the entire net profits hereof, if the entire business is conducted or carried on in Wilmington even though such nonresident may not maintain a store or office in this city.

Nonresidents are considered to be "conducting" a business in Wilmington if they (1) solicit orders; (2) execute or perform contracts; (3) engage in manufacturing; (4) make sales; or otherwise render services or engage in activities in the City for which they receive compensation. Thus, a farmer, residing in New Jersey with no place of business in Wilmington, would be liable for the tax where he sells his farm products from his truck within the confines of this City. Where the nonresident has a branch store or office located in Wilmington, he shall be considered to be conducting a business to the full extent of all transactions originating or consummated in, by, or through, such Wilmington branch, office, or store.

Where Sole Store or Office is in Wilmington. A nonresident who maintains his sole store or office in Wilmington, and transacts business both within and outside of Wilmington, is entitled to an allocation on his net profits in accordance with the following rules:

- A. The tax is computed on that portion of net profits, which the volume of business transacted within the City of Wilmington, bears to the volume of business transacted both within and outside of the City. The location of services rendered

shall generally determine whether the business transacted was within or outside of Wilmington.

- B. Notwithstanding any other provision in these regulations, in the event of any dispute concerning the amount of tax liability of a nonresident taxpayer working or doing business both within and without the confines of the City of Wilmington, said taxpayer may, upon supplying the Director or his assistants with proper verification, allocate income and pay taxes on that part of net profits which is attributable to work performed or services rendered within the City of Wilmington.

Allocation where taxpayer has places of business inside and outside Wilmington. A nonresident of the City of Wilmington who, in addition to having a place of business or office outside Wilmington, and transacts business both within and outside of this City, shall be also entitled to an apportionment or allocation on his net profits in accordance to the rules set forth in subsection (b) above.

Alternative Allocation Formula. The Director may provide for a different method of allocation with due regard to the nature of the business concerned, where it appears that any of the prescribed allocation formula work unfairly or inequitable as to a particular taxpayer or class of taxpayers.

## **SECTION 223**      **BUSINESS DEDUCTIONS**

"Business Deductions" are the ordinary and necessary expenses actually incurred in the operation of the business. The following are considered allowable business deductions:

- A. Salaries and Wages Paid. Such payments made to employees in connection with the owner's trade or business are deductible. Withdrawals by the owner or proprietor of the business are not considered as an expense of doing business and, therefore, not allowed as a deduction.
- B. Rent. It must be paid for property actually used in the business. If the proprietor also owns the building in which the business is conducted, he may not claim this item as a deduction.
- C. Interest. An interest on indebtedness incurred by the business may be deducted. This includes mortgage interest (where proprietor also owns the building); interest payments on loans made for use in the business.
- D. Taxes. There may be claimed as a deduction, all taxes directly connected with the operation of the business and on business property if the income of such property is subject to tax. A few examples of deductible taxes are:
  - 1. Employer's contributions to Delaware Unemployment Compensation Fund.

2. Employer's portion of Social Security tax payments.
  3. Real Estate Tax (where proprietor also owns building in which business is located).
  4. If for any reason the income from property is not subject to tax, then the tax on such property is not deductible. In any event, the following taxes are not to be deducted:
    - a. The tax under the Earned Income Tax Ordinance.
    - b. Any Federal, State, or local taxes based upon income.
    - c. Gifts, estate, or inheritance taxes.
    - d. Taxes for local benefits or improvements to property, which tend to appreciate the value thereof.
- E. Losses. If a loss is claimed, there must be attached to the return a schedule showing in detail the nature of the loss and of the property damaged, destroyed or stolen, its cost or other valuation; the depreciation sustained prior to the time of the damage, destruction or theft; the measure of loss; and any recovery through insurance or otherwise.
- F. Bad Debts. This item may be claimed as a deduction if it is connected with the business and only where the taxpayer is on an "accrual" basis. It will only be allowed in the year ascertained as worthless and charged off, or at the discretion of the Director a reasonable addition to the reserve may be claimed (if the reserve method is used). In no event shall the amount allowed exceed the amount recognized as a deduction for the purpose of the Federal income Tax.
- G. Depreciation. The taxpayer may deduct a reasonable allowance for exhaustion, wear and tear, obsolescence, depreciation or depletion of property directly connected with the business or profession, provided he completes the information requested with the nature of the asset; date of acquisition; cost or other basis of valuation; depreciation previously deducted; and the remaining cost or other basis to be recovered. In no instance will the taxpayer be permitted to use as a cost or other basis of valuation an amount in excess of the depreciated or depleted value of the asset as of July 1968. If any difference exists between the amount claimed for depreciation, depletion, obsolescence, etc., in this report and that furnished to the Director of Internal Revenue, it should be clearly shown and the reason, therefore, stated.
- H. Repairs. Any repairs to building, machinery, furniture, equipment, etc., used in the business, may be deducted.

"Net Profits" or "Net Loss" shall represent the difference between gross profits and the total of net cost of goods sold and business deductions.

Taxpayer may not off set a net loss from his business, profession, or other activity, against a salary, wage, commission, or other compensation received from another.

A "Net Loss" in any year may not be carried over to any other year.

## **ARTICLE III**

### **RETURN AND PAYMENT OF TAX**

#### **SECTION 301      WHO MUST FILE A RETURN**

- A. Every person who is or was employed on a salary, wage, or commission basis, or who receives other compensation which is subject to tax, and which tax his employer fails to withhold any or an insufficient amount of tax.
- B. Every person engaged in any business, profession or other activity, the net profits of which are subject to tax.
- C. Each employer within the State who employs one or more persons on a salary, wage, commission, or compensation basis who is subject to this tax.

#### **SECTION 302      FILING RETURNS**

- A. In general.
  - 1. All returns must be filed with the Department of Finance, Earned Income Tax Division, Wilmington, Delaware 19801.
  - 2. Each return must set forth the taxpayer's name, his business, his business name and address and such other information as may be required by the Department of Finance for the purpose of arriving at the tax due.
- B. Signature and Certification of Return. If the taxpayer is an individual, he shall sign the return. If a partnership, it shall be signed by at least one of the general partners. If a corporation, the returns shall be signed by a duly authorized officer thereto. Any willful, false, or misleading statement contained in the return, shall be subject to the penalties provided in the Ordinance. If a taxpayer, through illness or absence from the City, is unable to make the certification and file the return, the return may be certified and filed by an authorized agent. In such a case, the return should be accompanied by a letter showing the reason for the taxpayer's inability to act personally. A Power of Attorney shall be submitted showing the agent's authority to certify to the correctness of the return. If the taxpayer is deceased, the return must be made and filed by his legal representative.

**SECTION 303**

**FILING AND PAYMENT DATES OF RETURNS**

A. By Employee Where Tax is not Deducted.

1. Required Conditions for Employee to File Own Return. In cases where the City tax is not deducted by the employer, the employee shall, on or before the last day of January, April, July, and October of each year, make and file a return on a form furnished by or obtainable from the Department of Finance, setting forth the aggregate amount of salaries, wages, commissions, and other compensation subject to the tax, earned by him during the three months ending on the last day of the month proceeding, as follows:

<b><u>RETURN AND PERIOD COVERED</u></b>	<b><u>PAYMENT DUE</u></b>
January, February, March	April 15
April, May, June	July 15
July, August, September	October 15
October, November, December	January 15

B. Filing Dates by Persons Engaged in Business, Professions, etc., on Net Profits.

1. Every person engaged in any business, profession, or other activity, the net profits of which are subject to the tax imposed by this Ordinance, operating on a calendar year basis, shall, on or before April 15th make and file a return on a form furnished by or obtainable from the Department of Finance, setting forth the net profits earned during the preceding year. (For computation of net profits, see Section 223).
2. Period Covered by Return.
  - a. Calendar Year. Shall be the period beginning January 1st and ending December 31st.
  - b. Fiscal Year. Where the fiscal year of business, profession or other activity, differs from the calendar year, the tax shall be applicable to the net profits of the fiscal year. A fiscal year will be recognized only if it ends on the last day of same calendar month, and has been or is being recognized by the Director of Internal Revenue for the purpose of the Federal Income Tax.

The return shall be made within one hundred and five (105) days from the end of the fiscal year.

3. Payment of Tax. The person making the return shall, at the time of filing thereof, pay the total amount shown to be due by the return.
4. Where Taxpayer Terminates Business During Year. If the taxpayer shall terminate his business during the year, the return shall be filed and the tax paid within 105 days after such termination.
5. Persons Temporarily Engaged in Business. Where the taxpayer is engaged in a temporary, seasonal, or itinerant business, the return shall be filed and the tax paid upon the completion of said business.
6. Basis Used in Filing Return.
  - a. Cash
  - b. Accrual
  - c. Long-term Contract or Installment

Where the books and records of the taxpayer are kept on an "accrual," "Long-term contract," or "installment" basis and this basis is used in the filing of the Federal income tax returns, such basis must be used for the purpose of this tax.

The taxpayer may not change from an accrual to a cash basis, or a cash basis to an accrual basis, without written permission first being obtained from the Department of Finance.

7. Where a Nonresident Taxpayer Has More Than One Place of Business. If a nonresident engaged in a business, profession, or other activity, maintains more than one place of business, he shall file one return and attach a schedule showing the computation of the net profits from the various locations at which the taxpayer conducts his business.
8. Reconciliation With Federal Return. The taxpayer shall set forth, in a schedule designated for that purpose, in the return, all items of income which were not included as taxable under the Ordinance but which were reported on the Federal income tax return as taxable.
9. Report of Changes Made in Federal Return. If, as a result of an examination by the Internal Revenue Service, items of unreported business income have been assessed and/or items of business expense disallowed by the Internal Revenue Service in connection with a Federal Income Tax return originally filed with the Internal Revenue Service by a taxpayer, a report of such change shall be filed in the form of an information return by the taxpayer with the City within thirty (30) days of receipt by the taxpayer of the final notice of such change from the Internal Revenue Service.



C. Employer's Return.

1. Quarterly Return of Tax Withheld. Every employer who has withheld the City tax on salaries, wages, commissions and other compensation in accordance with the provisions of the Ordinance, shall, on or before the fifteenth day of April, July, October, and January of each year, make a return and pay to the Department of Finance the amount of tax actually deducted for the three months ending on the last day of the month preceding.

Where the employer has transmitted tax withheld during the first and/or second months of a calendar quarter to the Department, on an intermediate return or returns, the amount of tax to be remitted with the quarterly return shall be the difference between the total amounts remitted during the said first and/or second months of the calendar quarter and the total amount of tax actually withheld during said entire calendar quarter.

2. Employer's filing and payment dates of returns.

<b><u>RETURN AND PERIOD COVERED</u></b>	<b><u>PAYMENT DUE</u></b>
January, February, March	April 15
April, May, June	July 15
July, August, September	October 15
October, November, December	January 15

The return shall be a form furnished by or obtainable from the Department of Finance, and shall set forth the following information during all or any part of the period covered by the return:

- a. Total number of taxable employees;
- b. Total salaries, wages, etc., paid;
- c. Total nontaxable salaries, wages, etc.;
- d. Total taxable salaries, wages, etc., paid;
- e. Total tax actually withheld; and
- f. Tax paid with the return.

Where the entire earnings for the year are paid by one and the same employer and the tax has in each instance been withheld or deducted by the employer from the gross amount of compensation without adjustment for expenses, it shall not be necessary for such employee to file a return for the year unless required. In every case in which gross compensation is or has been adjusted for expenses, a return must be filed by the employee.

3. Monthly Intermediate Return of Tax Withheld. Where an employer, required to deduct the tax imposed by the Ordinance, withholds an aggregate amount of tax in excess of \$50 during the first or second month of any calendar quarter, he is required to remit the actual amount of tax so withheld to the Department of Finance on or before the 15th Day of the month following the month during which the tax was deducted. The remittance shall be accompanied by an intermediate return, furnished by or obtainable from the said Department, and shall furnish such information as the Department may require, i.e., number of taxable employees, total salaries paid, nontaxable salaries, taxable salaries, actual tax deducted, tax paid with the return.
  
4. Annual Information Return by Employer. Annually, on or before the thirty-first day of January, every employer who has filed returns of tax withheld, and remitted the tax for one (1) or more quarters of the preceding calendar year, or, if not, was in any event required to file such returns and remit such tax shall be required to file a completed and legible copy of form W-2, or a form similar to Form W-2 of the Federal Internal Revenue Service for each employee, which must set forth the following information:
  - a. Full name and residence address of individual employee.
  - b. His or her Social Security Number.
  - c. Total wages paid during the year (before any deductions).
  - d. Total City taxable wages paid.
  - e. Total City tax withheld.
  - f. Beginning and separation dates of less-than-calendar year employees.
  - g. Name and Address of employer.
  - h. The information required by Form W-2 or similar federal form shall, except as otherwise provided in this section, be submitted on magnetic tape or on such other magnetic medium which conforms to specifications as prescribed by

the Department of Finance. In addition, an employer required to file such information on magnetic tape, shall also be required to file photocopies of each employee's form W-2 (or similar form) filed with the Internal Revenue Service.

An employer shall be subject to the mandatory filing on magnetic tape requirement of this section for a withholding tax year if the employer has withheld and remitted the tax for or, if not, was in any event required to withhold and remit such tax for 150 or more City-taxable employees in the withholding tax year. All employers subject to the mandatory magnetic filing shall be required to file their annual information returns on the last day of February immediately following the calendar tax year. Any employer who is required to file on magnetic media under this section and fails to do so and files the required return via any other medium shall be charged a penalty of \$25.00 per employee record filed. This penalty shall be in addition to any and all penalties imposed for failure to comply with any section of City Code or these regulations.

The Director of Finance may waive the mandatory magnetic media filing requirement of this section if hardship is shown. A waiver may be obtained only upon application in writing filed with the Department of Finance at least 90 days before the filing of the first return for which a waiver is requested in all other cases. In determining whether hardship has been shown, the Director of Finance will take into account the amount, if any, by which the cost of filing returns on magnetic media exceeds the cost of filing paper returns.

The total wages, salaries, etc., reported for each employee, shall be for the entire calendar year (January 1st through December 31st).

D. Extensions and Late Filings of Returns.

1. Extensions of Time to File Returns. The Department may, upon receipt of a copy of the Federal request for extension, on or prior to the last day for filing any return grant to the taxpayer required to file such return, an extension of not more than one hundred and twenty (120) days within which such return may be filed. In case the Federal income tax authorities at any time grant a longer extension of time for filing such returns with the Federal Government, the Department may grant an additional extension of time for filing the return under the Ordinance of not more than sixty (60) days after the termination of the Federal extension. Where the total tax

liability has not been paid by the initial filing and payment dates of returns as prescribed in this section, a one-time five percent (5%) penalty and interest, at the rate of one and one-half percent (1.5%) per month, shall be charged on the unpaid tax liability from the initial filing date of the return to the extended filing date. If the return is not filed on or before the extended filing date, such non-filing shall be considered a failure or refusal to file and shall be subject to any and all penalties prescribed in Section 303.D.2.

2. Failure or Refusal to File Returns. If any person shall fail or refuse to file any report or return, a penalty at the rate of five percent (5%) of the amount of the unpaid tax shall be added on the first day of each month during which the report or return shall remain unfiled.

If the return is not filed on or before the extended date, the penalty provided by Ordinance shall be added to the tax at the rate of a one-time 5 percent penalty (minimum \$5.00).

- E. Information Concerning Transactions With Other Persons. Any person engaged in a trade, business, profession, or other activity, and in the course thereof, paying to another person (except corporations) commissions, fees, compensation (on which City Wage Tax has not been withheld), rents, royalties, aggregating \$600 or more in any taxable year, must file a complete and legible copy of Federal Form 1099M for each recipient, which shall set forth the following:

1. Name, address, and federal identification number of payor.
2. Name, address, social security number or federal identification number of recipient.
3. Amount of payment.

Rents paid directly to a landlord (other than a corporation) in the course of the tenant's business must be reported. However, the tenant is not required to submit the information return if the rent is paid to a real estate agent. In such case, the agent must file the return.

The payer is not required to report the following:

1. Payments of any type to a corporation.
2. Distributions or salaries to partners.
3. Distributions to beneficiaries of any estate or trust.
4. Rent paid by tenants to a real estate agent.
5. Payments by a broker to his customers.

6. Salaries, wages, other compensation on which City Wage Tax was deducted.
7. Payments for merchandise, telegrams, telephone, freight, storage, and similar charges.
8. Payments to a nonresident, who does not have a Wilmington place of business, for services rendered outside Wilmington; provided that the payer shall report not only payments for services rendered in Wilmington by recipients having a place of business in Wilmington, but total payments to such recipients.
9. Payments not made in the course of a business, trade profession or other activity.
10. Payments made to employees by way of expense reimbursement, necessarily and actually incurred by the employee in the actual performance of services for which an accounting has been made by the employee to the employer.
11. Dividends and interest payments.
12. Payments of commissions made by companies insuring property to general agents, except when specifically directed by the Director of Finance to be reported.

F. Annual Information Returns by Employee. Every employee, from whose company his employer does not withhold the City Income Tax, shall, annually, on or before the last day of February, file a true and correct copy of his Form W-2 of the Federal Internal Revenue Service showing the following information:

1. Name and address of employee;
2. Name and address of employer;
3. Total salaries, wages, etc., received (prior to payroll deductions) from the employer;
4. Social Security account number of employee; and
5. Beginning and separation dates of less-than-calendar year employees.

## ARTICLE IV

### WITHHOLDING TAX AT SOURCE

#### **SECTION 401**      **REQUIREMENT OF EMPLOYER TO WITHHOLD AND REMIT EARNED INCOME TAX**

It is the duty of each employer, as the same is set forth in Wilmington Code, Section 44-106, to make the following withholding and remittance of the earned income tax:

- A. Any employer who is resident in the State of Delaware is required to withhold and remit the earned income tax on the entirety of the earned income of any “resident” of the City of Wilmington, as the term is defined by Wilmington Code, Section 44-106, irrespective of whether or not the employer is a “resident employer,” as the term is defined in the paragraph next succeeding.
- B. A “resident employer” is defined in Section 44-139(b) as “any employer having a place of business or physical presence situated within the jurisdictional limits of the City of Wilmington.”
  1. A resident employer is also required to withhold and remit the earned income tax on the entirety of the income earned, i.e., 100% of the income earned, of a nonresident “employee” (as the term “employee” is defined in Wilmington Code, Section 44-106) who is “employed at a work location situated within the jurisdictional limits of the City.” For purposes of these regulations, “employed at a work location situated in the jurisdictional limits of the City” includes, but is not limited to, any situation where the employee is based at or has a functional employment attachment to a City work location (otherwise denominated as employer-based premises situated within the jurisdictional limits of the City of Wilmington). Indicia of an attachment to a City work location sufficient to establish an employment nexus that would support subjecting a nonresident employee to the requirement to withhold and remit the earned income tax on the entirety of the employee’s earned income, as provided in this section, shall include but not be limited to: maintaining or sharing an office or work area at a City work location; and/or performing work or rendering services at a City work location, as the term is defined herein, in any way or manner that is other than incidental, as the term is defined in Section 210.
  2. For purposes of these regulations, in the case where a resident employer’s sole place of business or physical presence is situated within the jurisdictional limits of the City, the City requires that the resident employer withhold and remit the earned income tax on the entirety of each employee’s earned income (i.e., withhold and remit at 100%) without regard to allocation.

- C. A “nonresident employer” is any employer who does not have a City work location (i.e., does not have employer-based premises situated within the jurisdictional limits of the City of Wilmington). A nonresident employer is not required to withhold and remit the earned income tax on the entirety of the income earned, i.e., 100% of the income earned, of a nonresident “employee” (as the term “employee” is defined in Wilmington Code, Section 44-106) who is “employed at a work location situated within the jurisdictional limits of the City,” provided, however, that a nonresident employer, as the term is defined herein, who maintains employer-based premises within the State of Delaware is and shall be subject to the duty to withhold and remit the earned income tax based on:
1. The entirety of the earned income of a “resident” of the City of Wilmington, as the term is defined in Wilmington Code, Section 44-106. (See also 22 Del. C. Section 901; Wilmington Code, Section 44-107); and
  2. The actual income earned in the City by a “nonresident” employee, as the term is defined by Wilmington Code, Section 44-106, for work done or services performed or rendered in the City. (See also 22 Del.C. Section 901; Wilmington Code, Section 44-107) subject to the terms expressed in Section 405 of the Earned Income Tax Regulations of the City of Wilmington.
- D. If an employer is uncertain as to the application of the requirement to withhold and remit the earned income tax on the entirety of any employee’s earned income, it can request a private letter ruling from the Department of Finance.

The request for a private letter ruling must be in writing and succinctly set forth the relevant and material factual circumstances upon which the private letter ruling of the department will be based. The private letter ruling shall be limited to the facts submitted for consideration by the Department and may not be relied upon as authority by any employer other than the employer requesting the private letter ruling. See City of Wilmington Earned Income tax Regulations, Section 503.

#### **SECTION 402**      **ADVANCES ON ACCOUNT OF COMMISSIONS**

An employer is required to withhold the tax on the full amount of any advances made to an employee on account of commissions which are in excess of commissions earned, provided there is no obligation to repay the difference.

#### **SECTION 403**      **ALLOWANCES FOR BUSINESS EXPENSES CLAIMED BY EMPLOYEE**

An employer required to withhold the tax (on compensation paid to an employee) may, in determining the amount of which the tax is to be withheld;

- A. Omit any amount allowed and paid by the employer to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, or;

- B. Deduct any amount necessarily incurred and expended by the employee in the actual performance of his services for which expense he is not to be, or has not been reimbursed by the employer; provided that in either case, such expense must be recognized by the Federal and State authorities for payroll tax purposes and the Federal authorities for income tax purposes, and the employee shall furnish the employer, before said deduction is made, an itemized statement of the expenses claimed.

**SECTION 404**      **NONRESIDENT EMPLOYERS**

An employer located outside of Wilmington is required to withhold the tax on all income earned by employees who are residents of Wilmington, and on all income of non residents made taxable under the provisions of these regulations and applicable State and local law.

**SECTION 405**      **WITHHOLDING WHERE NONRESIDENT EMPLOYEE IS ENTITLED TO ALLOCATION**

- A. Where a nonresident employee received compensation for personal services rendered or performed partly within and partly outside the City of Wilmington, the withholding agent shall deduct and withhold taxes at the full tax rate on that portion of the compensation, which is earned within the City.
- B. If for any reason it is impossible to ascertain the exact amount of taxable earnings as provided in (A) above, the employer may apply to the Department of Finance for written permission to apportion withholding in accordance with a reasonable formula based on the particular facts or circumstances of employment. In connection with such application, the employer shall furnish the Department with a detailed settlement of the facts upon which the request is based.
- C. Withholding is not required where the nonresident employee occasionally enters the City of Wilmington merely for the purpose of reporting, receiving instructions, accounting, etc., incidental to the duties performed outside.

**SECTION 406**      **LIABILITY OF EMPLOYERS**

Any employer, required to withhold the tax, shall be personally liable for payment of tax in the event he fails, refuses, or neglects to withhold. Furthermore, the failure of any employer to deduct the tax and to make a return shall not relieve the employee from his obligation to pay such tax, where payment cannot for some reason be obtained from such employer.

**SECTION 407**      **AMOUNT TO BE WITHHELD WHERE FRACTIONAL PART OF CENT INVOLVED**

In deducting and withholding the tax at source and in the payment of any tax due, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.



## ARTICLE V

### DUTIES AND POWERS OF DIRECTOR OF FINANCE

#### **SECTION 501**      **COLLECT AND RECEIVE TAX**

It shall be the duty of the Director of Finance to supervise the collection and receipt of the taxes imposed by Ordinance.

#### **SECTION 502**      **KEEP RECORD OF RECEIPTS**

In addition to records now required by statute or Ordinance, the Director of Finance shall keep a record showing the amount received by him from each taxpayer and withholding agent and the date of such receipt.

#### **SECTION 503**      **ENFORCEMENT -- RULES AND REGULATIONS**

The Director of Finance is charged with the enforcement of the provisions of the Ordinance and is authorized and empowered to proscribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of the Ordinance.

Any employer or taxpayer desiring a specific ruling should submit all of the facts involved, in writing, to the Director of Finance.

#### **SECTION 504**      **EXAMINATION OF BOOKS AND RECORDS OF TAXPAYERS**

- A. The Director of Finance, or his agent or employee authorized by him in writing, in situations where a reasonable basis exists to believe the tax is owed, is authorized and empowered to examine the books, papers and records, and copies of tax returns filed with other taxing authorities of any employer, or supposed employer, or of any taxpayer, or supposed taxpayer, in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax imposed by this Ordinance. Every employer or supposed employer, taxpayer, or supposed taxpayer, is directed and required to give to the Director of Finance or his duly authorized agent or employee the means, facilities, and opportunity for such examinations and investigations as are authorized in and by the Ordinance.
- B. Records to be kept by Taxpayer. Employers and others subject to the tax under the Ordinance are required to keep such records as will enable the filing of true and accurate returns, whether of taxes withheld at the source, or of taxes payable upon earnings or net profits, or both, and such records are to be preserved for a period of not less than six (6) years, to enable the Director or any agent or employee of the Director to verify the correctness of the returns filed.

**SECTION 505**                    **POWER TO SUBPOENA TAXPAYER AND RECORDS**

The Director of Finance, through the City Solicitor's Office is authorized and empowered to examine, under oath, any person concerning any income which was or should have been returned for taxation, and to this end may compel by subpoena the production of books, papers and records, and copies of tax returns filed with other taxing authorities and the attendance of all persons before him, whether as parties or witnesses, whom he believes to have knowledge of such income.

**SECTION 506**                    **COLLECT DEFICIENCIES AND AUTHORIZE REFUNDS**

- A.     Assessment and Collection of Underpayment of Tax. If, as a result of investigation conducted by the Director of Finance, a return is found to be incorrect, the Director is authorized to assess and collect any underpayment of tax withheld at the source, or any underpayment of tax owing by any taxpayer with respect to earnings or net profits, or both. If no return has been filed and a tax is found to be owing, the tax actually owing may be assessed and collected with or without the formality of obtaining a delinquent return from the employer or taxpayer.
  
- B.     Refunds. Should the taxpayer discover an overpayment of tax has been made, he may apply for a refund on a form furnished by the Department of Finance. The application must be filed within thirty-six (36) months immediately following the end of the calendar tax year starting with the 1990 tax year onward, unless an extension request has been filed by the taxpayer and granted by the Director of Finance as a result of communication within the period of limitation or the filing of an incomplete or inaccurate application. In no instance shall the extension exceed 90 days beyond the dead-line period.

Where an employer has erroneously withheld tax from his employee, the application for refund must be made by the employer for and on behalf of the employee.

In those cases in which excess amounts have been withheld by an employer from an employee turned over to the Director of Finance and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain an adjustment by application to the Director of Finance on a form furnished by or obtainable from the Department.

**SECTION 507**                    **INFORMATION OBTAINED BY DIRECTOR OF FINANCE**  
**CONFIDENTIAL**

- A.     Any amount of income information, or particulars obtained by the Director of Finance, or any other official or agent of the City as a result of any returns, investigations, hearings, or verifications required or authorized by the Ordinance, shall be confidential, except for official purposes, and except in accordance with proper judicial order, or as otherwise provided by law and any person or agent

divulging such information shall be subject to a fine or penalty of one hundred dollars (\$100.00) and costs for each offense or to undergo imprisonment for not more than thirty (30) days for the nonpayment of such fine or penalty and costs within ten (10) days from the imposition thereof.

- B. Nothing in this section shall be construed to prohibit the publication of statistics classified so as to avoid identification of specific taxpayers, or to prohibit the disclosure of the tax return or return information of any taxpayer to such person or persons as the taxpayer may designate in a written request or consent to such disclosure.
- C. For purposes of this section, the term "officer or employee" shall include present and former officers and employees, and any person or persons employed or retained by the City on an independent contractor basis. The term "return" or "report" shall include reports of the Internal Revenue Service or other competent federal authority containing tax return information.

## ARTICLE VI

### INTEREST AND PENALTY

#### **SECTION 601**      **INTEREST AND PENALTY**

- A. All taxes imposed by the Ordinance, if not paid by the due date, shall accrue a one-time five percent (5%) penalty (minimum \$5.00) plus one and one half percent (1.5%) per month on the unpaid tax balance.
- B. Failure or refusal to file any report or return by the due date shall accrue a five percent (5%) penalty per month, on the first of each month, on the unpaid tax balance during the period which the report or return shall remain unfiled. After the filing, penalty and interest shall be assessed as prescribed in Section 601A.

#### **SECTION 602**      **WAIVER OF INTEREST AND/OR PENALTY**

The Director of Finance or his authorized agent may recommend waiver of interest and/or penalty under the following circumstances:

- A. If a taxpayer required to file an information return showing changes in business income and/or business expense as required in section 303 (b) (9) of these regulations has reported to the City within thirty (30) days of the final notice of an additional income tax assessment by the Internal Revenue Service, a penalty may be waived by the Director provided payment of any additional tax due the City is made by the taxpayer of the additional tax assessment resulting from any Federal Income Tax change.
- B. Where litigation over the amount of taxes due is pending or threatened and waiver of interest and/or penalty on past amounts owed is proposed as part of the overall settlement of the litigation.
- C. Where the assessment of penalty and/or interest is based on tax which was assessed in error by the Department of Finance.

## ARTICLE VII

### COLLECTION OF UNPAID TAXES

#### **SECTION 701**      **IN GENERAL**

All taxes imposed by the Ordinance and its amendments, together with all interest and penalties, shall be recoverable by the City Solicitor by appropriate means.

#### **SECTION 702**      **LIMITATIONS ON ACTIONS FOR TAX**

Any suit to recover such taxes, interest and penalties, must be begun within six (6) years after such taxes are due or within six (6) years after a return has been filed, whichever date is later. This limitation shall not prevent the collection of any tax due or determined to be due in the following instances:

- A. Where no return was filed by the taxpayer although a return was required to be filed by him under the provisions of the Ordinance. Thus, where the taxpayer has failed to file a return on the net profits of his business for the year 1969, suit for the tax would not be barred by the six-year limitation.
- B. Where an examination of a return filed by the taxpayer, and of other evidence relating to such return in the possession of the Director of Finance, reveals a fraudulent evasion of taxes, including, but not limited to, substantial understatement of gross income or net profit in any such return.

A return shall be deemed a "substantial understatement" of gross income or net profits, if it is twenty-five percent (25%) below the correct statement of such income or net profits, i.e., where a taxpayer reported his gross income for 1969 to be \$70,000, when, in fact, it was actually \$100,000, the right of action by the City would not be barred.

- C. Where the taxpayer has collected or withheld tax under the provisions of the Ordinance as agent of the City, and has failed or refused to pay the amounts so collected or so withheld, due the City.

#### **SECTION 703**      **CLAIMS AGAINST BANKRUPT TAXPAYERS**

A claim for taxes imposed by the Ordinance against a bankrupt taxpayer is entitled to a priority by virtue of Section 64 of the U.S. Bankruptcy Act.

A discharge in bankruptcy shall not release the bankrupt taxpayer from payment of taxes due by him under the Ordinance.

**SECTION 704**      **DISHONORED CHECKS**

If any check received in payment of taxes is returned unpaid by the bank, there shall be added to the tax due the sum of five (\$5.00) dollars to cover the additional cost to the City.

## **ARTICLE VIII**

### **VIOLATIONS--FINES AND PENALTIES**

#### **SECTION 801      VIOLATIONS OF ORDINANCE**

The following violations of the Ordinance are subject to the fine and penalties prescribed in Section 802 of the regulations, and any other sanction or remedial procedure provided in the Ordinance or elsewhere in the Wilmington City Code:

- A. Failure, neglect, or refusal to file any return required by the Ordinance.
- B. Failure, neglect, or refusal to pay the tax, penalties, and interest imposed by the Ordinance.
- C. Refusal to permit the Director of Finance, or any agent or employee appointed by him in writing, to examine the books, records, and papers of any person subject to the Ordinance.
- D. Knowingly make any incomplete, false, or fraudulent return.
- E. Attempt to do anything whatever to avoid the full disclosure of the amount of earnings or profits to avoid the payment of all or any part of the tax.

#### **SECTION 802      FINES AND PENALTIES**

Any person or taxpayer, who violates the provisions of the Earned Income Tax Ordinance, or these regulations, shall be subject to a fine or penalty of \$300 and costs for each offense, or to undergo imprisonment for not more than ninety (90) days or both.

Such fine or penalty shall be in addition to any other penalty imposed by any other section of the Wilmington City Code.

## **ARTICLE IX**

### **SECTION 901      CONSTRUCTION**

If any sentence, clause, or section or part of these regulations is, for any reason, found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections or parts of these regulations. It is hereby declared that these regulations would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.