

# **Village of Fairfax Tax Rules and Regulations**

**Village of Fairfax**

**Tax Department**

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## **I. SCOPE**

Ordinance No. 10-2004 for the Village of Fairfax sets forth in detail the taxes levied by the Village of Fairfax upon salaries, wages, commissions and other compensation, and upon net profits. The purpose of the Village of Fairfax Tax Rules and Regulations (the "Tax Rules and Regulations") is to explain Ordinance No. 10-2004 and to provide guidance to taxpayers and other filers to assist in compliance with Ordinance No. 10-2004. Although taxpayers and other filers may rely upon the Tax Rules and Regulations as guidance, to the extent that any provision of the Tax Rules and Regulations conflicts with any provision within Ordinance No. 10-2004, the provisions within Ordinance No. 10-2004 will apply.

Words and phrases contained within the Tax Rules and Regulations shall have the same meaning ascribed to them in Section II of Ordinance No. 10-2004, except as the context so requires.

## **II. INDIVIDUAL RETURNS (RESIDENT AND NON- RESIDENT)**

### **Regulation 1: Due Dates For Individual Tax Returns**

All resident and non-resident individual tax returns are due on April 15 of each year. When April 15 falls on a Saturday or Sunday, returns are due on the Monday immediately following April 15.

### **Regulation 2: Who Must File Individual Tax Returns**

Filing is mandatory. All residents 18 years or older must file an individual tax return with the Village of Fairfax, even if no tax is due. This includes those who rent. Taxes are based on an individual's earned income.

“Non-resident individuals” who own rental property located within the Village of Fairfax, sole proprietors who operate a business, do work, or perform services in the Village of Fairfax, and all other taxpayers who are considered individuals, and are required to file a tax return under Ordinance No. 10-2004, Section III, Imposition of Tax, must file individual tax returns with the Village of Fairfax.

Individuals who receive 1099Misc. income for work or services performed within the Village of Fairfax must file an individual return with the Village of Fairfax. (See Regulation 21.)

### **Regulation 3: What Income To Include And Attachments**

Residents must report "qualifying wages" from W-2's. This total will not always be the same as the amount reported on your federal tax return.

Cafeteria plans are no longer taxed. Use the Medicare wages box 5 when adding the W-2 income. Deferred compensation, such as 401-K plans and pension plans, are still subject to Village of Fairfax Earnings Tax.

Taxpayers must include original W-2 forms from all employers.

Taxpayers must include "other taxable income" such as the following:

- (A) Include 1099 "Miscellaneous Income" forms issued by the taxpayer's employers.
- (B) Include federal Schedule C for profit or loss from a business. This applies if the taxpayer is self-employed or a sole proprietor.
- (C) Include federal Schedule E for any rental property located in the Village of Fairfax. Attach federal Schedule E even if no tax is due. Loss carry forward is four years, unless exhausted. (Changed beginning in 2001.)
- (D) Include federal Form 2106, Employee Business Expense, if the taxpayer takes this deduction on line 17A or line 2. (See also Regulation 5.)
- (E) Include Unemployment Compensation on line 16. Attach a copy of the taxpayer's statement received at the end of the year, or the front page of the taxpayer's federal tax return showing the amount of unemployment compensation reported to the IRS for the tax year.
- (F) Include lottery, bingo and gambling winnings.
- (G) Include commissions and other compensation such as, but not limited to, severance pay, third party sick pay and short term disability.

**DO NOT** include interest or dividends from the taxpayer's savings or investments on the Village of Fairfax tax return. Interest and dividends are not reported for municipal earnings tax.

**DO NOT** include "1099-R Income." This form reports a distribution from a pension, 401-K, or other deferred compensation plan when a taxpayer changes employers or makes a withdrawal from a retirement plan.

This regulation is not all-inclusive. Ordinance No. 10-2004, Section III, Imposition of Tax., further describes the income a taxpayer must include and attachments.

#### **Regulation 4: Credit For Tax Paid To Other Municipalities**

Credit for tax paid to other municipalities can only be up to 1.75% of any wages taxed by the other community.

- (A) The taxpayer's W-2 should show the amount of wages taxed by each city, how much local tax was paid, and to which city the tax was paid.
- (B) If tax is paid to the other city at a lower rate than 1.75%, the difference is due to the Village of Fairfax.
- (C) For local taxes paid directly to another municipality (not shown on the taxpayer's W-2), the taxpayer must provide a copy of his or her tax return filed with the other municipality. No credit can be given without this or other verification.
- (D) No credit is given for "county tax."
- (E) More detailed instructions and examples are on the back of each individual's tax return.

This regulation is not all-inclusive. Ordinance No. 10-2004, Section XV, Credit for Tax Paid to Another Municipality, further describes credit for tax paid to other municipalities.

#### **Regulation 5: 2106 Expense Deduction**

An employee who receives wages, salary or other compensation and who pays business expenses without reimbursement from his employer, is entitled to a deduction to the same extent that such expenses are properly includable in the computations to determine deductions for federal income tax purposes, but only to the extent considered by the Tax Commissioner to be ordinary and reasonable and incurred in earning the specific wage subject to the tax imposed by Ordinance No. 10-2004.

If only a portion of the wages earned by a resident is subject to taxation, then the 2106 Expense Deduction will be allocated in the same proportion as the wages reported on the Village of Fairfax tax return, except that meals and travel expenses are excluded when they apply entirely to the wages earned outside of the Village of Fairfax.

In the case of "refunds based on time worked outside the Village of Fairfax," the 2106 Expenses for meals and travel would apply only to the wages earned outside the Village of Fairfax.

If all earnings tax is due to the Village of Fairfax, then the entire 2106 Expense is deducted on the Village of Fairfax return.

### **Regulation 6: Federal Schedule C**

Losses on federal Schedule C cannot offset W-2 income, nor can losses offset income on Schedule E or other income reports. Self-employment, sole-proprietor, LLC or the like are considered to be separate entities whether a resident or non-resident.

A resident can report Schedule C income/loss on the same individual return as his or her W-2 income, by using the “other income” line. The resident must attach the federal Schedule C.

A non-resident must report Schedule C income from each entity on a separate individual return. This includes LLC’s and other disregarded entities. The non-resident must attach the federal Schedule C, and give the d/b/a and local address for each entity.

When only a portion of the Schedule C income was earned in the Village of Fairfax, an allocation must be made. Divide the income earned in the Village of Fairfax by the total income on line 1 of Schedule C to determine percentage of allocation. The profit or loss on Schedule C is multiplied by the resulting percentage. This gives the income to be taxed by the Village of Fairfax or loss to be carried forward.

### **Regulation 7: Federal Schedule E**

Losses on federal Schedule E cannot offset W-2 income, nor can losses offset income on Schedule C or other income reports. Rental properties are considered to be separate entities whether the owner is a resident or non-resident.

A resident can report Schedule E income/loss on the same individual return as his or her W-2 income, by using the “other income” line. The resident must attach the federal Schedule E.

A non-resident must report Schedule E income from each entity on a separate individual return. This includes LLC’s. The non-resident must attach the federal Schedule E and give the address and zip code for each rental property.

## **III. BUSINESS RETURNS (RESIDENT AND NON-RESIDENT)**

### **Regulation 8: Due Dates For Business Returns**

Calendar year returns are due on April 15 of each year. When April 15 falls on a Saturday or Sunday, returns are due on the Monday immediately following April 15.

Fiscal year returns are due on the fifteenth day of the fourth month after the close of a fiscal year.

**Regulation 9: Who Must File Business Returns**

All resident associations, unincorporated businesses, pass through entities, professions, or other entities, who have net profits derived from sales made, work done or services performed or rendered, or business or other activities conducted in the Village of Fairfax must file business returns, whether or not such association or other unincorporated entity has an office or place of business in the Village of Fairfax.

All non-resident associations, unincorporated businesses, pass through entities, professions, or other entities, who have net profits derived from sales made, work done or services performed or rendered, or business or other activities conducted in the Village of Fairfax must file business returns, whether or not such association or other unincorporated entity has an office or place of business in the Village of Fairfax.

All corporations who have net profits derived from sales made, work done or services performed or rendered, or business or other activities conducted in the Village of Fairfax must file business returns, whether or not such corporations have an office or place of business in the Village of Fairfax.

This regulation is not all-inclusive. Ordinance No. 10-2004, Section III, Imposition of Tax, further describes who must file business returns.

A more detailed explanation of the filing of business returns is listed below.

(A) Imposition of Tax on Net Profits of Resident Unincorporated Businesses

- (1) The tax imposed on resident associations or other unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof, but the tax imposed on an unincorporated resident entity owned by one person is upon the individual owner.
- (2) The tax imposed by Ordinance No. 10-2004, Section III(A)(3), is imposed on all resident unincorporated entities having net profits attributable to the Village of Fairfax under the business apportionment percentage formula provided for in Section III(B), regardless of where the owner or owners of such resident unincorporated business entities reside.

- (3) The tax imposed shall not apply to income derived within the Village of Fairfax by any person from interstate commerce if the only business activities within the State of Ohio by or on behalf of such person are either or both of the following:
- (a) Solicitation of orders by such person, or his representative, in the State of Ohio for sales of tangible personal property, which orders are sent outside the State of Ohio for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State of Ohio; and
  - (b) The solicitation of orders by such person, or his representative in the State of Ohio, in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitations are orders described in subsection (a) above; provided, however, that the provisions of this subsection shall not apply to any corporation which is incorporated under the laws of the State of Ohio or any individual who is domiciled in or a resident of the State of Ohio. For the purposes of this subsection a person shall not be considered to have engaged in a business activity within the State of Ohio during any taxable year merely by reason of sales in the State of Ohio, or the solicitation of orders for sales within the State of Ohio, of tangible personal property on behalf of such person by one or more independent contractors or by reason of the maintenance of an office within the State of Ohio by one or more independent contractors whose activities on behalf of such person in the State of Ohio consist solely of making sales or soliciting orders for sales of tangible personal property. For the purpose of this subsection, the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling or soliciting orders for sales of tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities. For the purpose of this subsection, the term "representative" does not include an independent contractor.

(B) Imposition of Tax on Resident's Distributive Share of Profits of a Resident Unincorporated Business Entity Not Attributable to the Village of Fairfax.

- (1) A resident individual who is an owner of a resident unincorporated entity must pay the tax on his entire share of net profits of the resident unincorporated business entity unless allocation to another municipality exists. Ordinance No. 10-2004, Section XV sets forth credits for tax paid to another municipality.
- (2) In the case of a resident individual partner or part owner of a resident unincorporated entity, the tax is imposed on such individual's distributive share of net profits not attributable to the Village of Fairfax under the business apportionment percentage formula provided for in Section III(B) of Ordinance 10-2004, and not taxed against the entity.

(C) Imposition of Tax on Net Profits of Nonresident Unincorporated Businesses.

- (1) In the case of nonresident associations or other unincorporated entities, whether or not they have an office or any place of business in the Village of Fairfax, the tax is imposed on net profits attributable to the Village of Fairfax under the business apportionment percentage formula provided for in Section III(B) of Ordinance 10-2004.
- (2) The tax imposed on nonresident associations or other unincorporated entities is upon the entities rather than the individual members or owners thereof.
- (3) The tax imposed by Section III(B) of Ordinance 10-2004 is imposed on all nonresident associations and other unincorporated entities having net profits attributable to the Village of Fairfax under the business apportionment percentage formula provided for in Section III(B) of Ordinance 10-2004, regardless of where the owner or owners of such nonresident associations or unincorporated entities reside.
- (4) Nonresident unincorporated entities owned exclusively by residents of the Village of Fairfax may elect to disregard the business apportionment percentage formula provided for in Section III(B) of Ordinance 10-2004 and pay the tax

on their entire net profits if no apportionment by the entity to another municipality exists. In such case, the tax paid by the entity will constitute all tax due from the owners or members of the entity for their distributive share of the net profits; however, a return will be required from such owner or member having taxable income other than the distributive share of the net profits from the entity.

(D) Imposition of Tax on Resident's Share of Net Profits of a Nonresident Unincorporated Business Entity Not Attributable to the Village of Fairfax.

- (1) A resident individual who is an owner of a nonresident unincorporated business entity must pay the tax on his entire share of net profits of the unincorporated entity. If allocation to another municipality exists, the taxpayer may qualify for credit for tax paid to another municipality under Section XV of Ordinance 10-2004.
- (2) In the case of a resident individual partner or part owner of a nonresident unincorporated entity, the tax is imposed on such individual's distributive share of net profits not attributable to the Village of Fairfax under the business apportionment percentage formula provided for in Section III(B) of Ordinance 10-2004 and not taxed against the entity.

(E) Imposition of Tax on Net Profits of Corporations

- (1) In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the Village of Fairfax, the tax is imposed on the net profits attributable to the Village of Fairfax under the business apportionment percentage formula provided for in Section III(B) of Ordinance No. 10-2004.
- (2) In determining whether a corporation is conducting a business or other activity in the Village of Fairfax, the provisions of these Regulations are applicable.
- (3) Corporations which are required by the provisions of Ohio Revised Code 5727.38 to 5727.41, inclusive, to pay an excise tax in any taxable year, may exclude that part of their gross receipts upon which the excise tax is paid. In such case, expenses incurred in the production of such

gross receipts must not be deducted in computing net profits subject to the tax imposed by Section XV of Ordinance 10-2004.

(F) Amplification

In amplification of the definitions contained in Section II of Ordinance 10-2004, but not in limitation thereof, the following additional information regarding net business profits is furnished.

(1) Net Profits

(a) "Net profit" for a taxpayer other than an individual means adjusted federal taxable income. "Net profit" for a taxpayer who is an individual means the individual's profits required to be reported on Schedule C, Schedule E, or Schedule F, except for amounts described under Ohio Revised Code section 718.01(F).

(b) "Adjusted federal taxable income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(i) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether intangible income relates to assets used in a trade or business or assets held for the production of income.

(ii) Add an amount equal to five percent (5%) of intangible income deducted under Section F(1)(b)(i), but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in Section 1221 of the Internal Revenue Code;

(iii) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in

Section 1221 or 1231 of the Internal Revenue Code.

- (iv) (iv.1) Except as provided in Section F(1)(b)(iv.2), deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in Sections 1221 or 1231 of the Internal Revenue Code.

(iv.2) Section F(1)(b)(iv.1) does not apply to the extent the income or gain is income or gain described in Sections 1245 or 1250 of the Internal Revenue Code.

- (v) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.
- (vi) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.
- (vii) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except (1) guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and (2) amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in Section F shall be construed as allowing a taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

Nothing in this chapter shall be construed as limiting or removing the ability of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

(2) Gross Receipts

- (a) Gross receipts include, but are not limited to, income in the form of commissions, fees, directors' fees, subpay, profit sharing from nonqualified plans, rentals from real and tangible personal property and other compensation for work or services performed or rendered, as well as any that comes from stock in trade.
- (b) Gross receipts include ordinary income from Form 4797.

(3) Expenses

- (a) All ordinary and necessary expenses of doing business, including reasonable compensation paid employees, will be allowed but no deduction may be claimed for salary or withdrawal of a proprietor or of the partners, members or other owners of an unincorporated business or other enterprise.
- (b) If not claimed as part of a cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated for by insurance or otherwise of property used on the trade or business, but the amount may not exceed that recognized for the purpose of the federal income tax. Provided however, that loss on the sale, exchange or other disposition of depreciable property or real estate, used in the taxpayer's business must not exceed that recognized for the purpose of the federal income tax.
- (c) Where depreciable property is voluntarily destroyed, the cost of demolition of the building, less any increase in the value of the land caused by such demolition, will be allowed as an expense and may be completely taken in the year of the demolition or over a period of not to exceed five (5) years.

- (d) Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax, then taxes on and other expenses of such property are not deductible. In any event, the following taxes are not deductible from income: (1) the tax under Chapter 171; (2) federal or other taxes based upon income; (3) gift, estate, or inheritance taxes; (4) taxes for local benefit or improvements to property which tend to appreciate the value thereof; and (5) self-employment taxes for unincorporated businesses or other entities, including credit for employment taxes as allowed for federal tax purposes.
- (e) If the taxpayer reports income that is non-taxable under Chapter 171 and such amounts are deducted in order to reconcile the municipal return with the taxpayer's federal return, expenses attributed to this non-taxable income shall not be allowed as a deduction from the remaining taxable income. The expenses attributed to such non-taxable income shall be five percent (5%) of the non-taxable income. Non-taxable income given capital gain treatment on the federal return, from which attributable expenses were already deducted, is not subject to the foregoing.
- (f) An employee who is paid on a commission or other compensation basis and who pays his business expense from his commissions or other compensation, without reimbursement from his employer, may deduct from his gross commissions or other compensations, business expenses allowed by the Internal Revenue Service for federal income tax purposes, but only to the extent such expenses are incurred in earning commissions or other compensations subject to the tax imposed by Chapter 171. Business expenses allowed shall be those expenses allowed to be claimed on the federal Form 2106 and upon the request of the Tax Commissioner, verifiable with supporting schedules and/or receipts. No expenses claimed on federal Form Schedule A, Itemized Deductions, will be allowed, and failure to produce the supporting schedules and/or receipts upon request by the Tax Commissioner will result in disallowance of the expenses in question.
- (g) Expenses incurred while attending educational courses may not be deducted from wages.

- (h) Moving expenses included in gross earnings are allowed as a deductible expense. No deduction will be allowed if the taxpayer does not provide the federal Form 3903, "Employee Moving Expenses Information," for his moving deductions. Only moving expenses incurred, as part of income included in gross earnings, will be allowed.
- (i) Funds allocated by an employer to an employee's qualified profit sharing, pension, or retirement fund are not taxable to the employee.
- (j) No deduction shall be allowed for self-employed health insurance against income as allowed for federal and state tax purposes for unincorporated entities or the like.

**Regulation 10: Apportionment Of Net Profits**

A request to change the method of allocation shall be made in writing to the Tax Commissioner before the end of the taxable year.

(A) Business Apportionment Percentage Formula

- (1) STEP 1. Ascertain the percentage which the original cost of real and intangible personal property, including leasehold improvements, owned or used in the business and situated within the Village of Fairfax is of the original cost of all real and tangible personal property including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.
  - (a) The percentage of the taxpayer's real and tangible personal property within the Village of Fairfax is determined by dividing the average original cost of such property within the Village of Fairfax (without deduction of any encumbrances) by the average original cost of all such property within and without the Village of Fairfax. In determining such percentage, property rented to the taxpayer as well as real and tangible personal property owned by the taxpayer must be considered.
  - (b) The original cost of real and tangible personal property rented by the taxpayer must be determined by multiplying gross annual rents by eight (8).

- (c) Gross rents means the actual sum of money or other compensation payable, directly or indirectly by the taxpayer, for the use or possession of property and includes:
    - (i) Any amount payable for the use or possession of real and tangible personal property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales or profits or otherwise.
    - (ii) Any amount payable as an additional rent or in lieu of rent such as interest, taxes, insurance, repairs, or other amounts required to be paid by the terms of a lease or other arrangement.
  - (d) A residence may not be considered an office unless a portion thereof is used exclusively for business purposes and is reached by a separate entrance in an exterior wall, which does not serve as the entrance to the balance of the building.
- (2) STEP 2. Ascertain the percentage which the gross receipts of the taxpayer derived from sales made and services rendered in the Village of Fairfax is of the total gross receipts wherever derived during the period covered by the return. All resident corporations, unincorporated businesses, or other entities whose principal place of business is within the Village of Fairfax, must be considered a resident municipal business and are subject to the following provision:
- (a) The following sales are considered Village of Fairfax sales:
    - (i) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation;
    - (ii) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes even though transported from a point outside such

municipal corporation if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion;

- (iii) All sales of tangible personal property shipped from a place within such municipal corporation to purchasers outside such municipal corporation regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(3) STEP 3. Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within the Village of Fairfax is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without the Village of Fairfax during the period covered by the return.

- (a) Salaries and reasonable compensation paid owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purpose of this computation.
- (b) Wages, salaries and other compensation must be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.
- (c) In the case of an employee who performs services both within and without the Village of Fairfax the amount treated as compensation for services performed within the Village of Fairfax shall be deemed to be:
  - (i) In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him from the business

attributable to his efforts within the Village of Fairfax.

- (ii) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services within the Village of Fairfax bears to the value of all his services; and
  - (iii) In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the Village of Fairfax is of his total working time.
  - (iv) Nonresident professional persons shall use the factor of days spent within the Village of Fairfax to total working days.
- (4) STEP 4. Add the percentages determined in accordance with Steps 1, 2, and 3, or such of the aforesaid percentages as may be applicable to the particular taxpayer's business, and divide the total so obtained by the number of percentages used in ascertaining such total. The result so obtained is the business apportionment percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because such factor is found to be apportioned entirely in or outside the Village of Fairfax. A factor is excluded only when it does not exist anywhere.
- (5) STEP 5. The business apportionment percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits apportioned to the Village of Fairfax.
- (B) Substitute Method.
- (1) In the event a just and equitable result cannot be obtained under the business apportionment percentage formula, the Tax Commissioner, upon application of the taxpayer, may substitute other factors in the business apportionment percentage formula or prescribe other methods of

apportioning net income calculated to effect a fair and proper apportionment.

- (2) Application to the Tax Commissioner to substitute other factors in the business apportionment percentage formula or to use a different method to apportion net profits shall be made in writing before the end of the taxable year and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. A copy thereof shall be served at the time of filing upon the taxpayer or the Tax Commissioner as the case may be. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method he must continue to so file until given permission to change by the Tax Commissioner.
  - (3) The decision of the Tax Commissioner on subsections (B)(1) and (2) hereof may be appealed by the taxpayer to the Board of Review, which shall have the power to adjust, modify or overrule such decision of the Tax Commissioner.
- (C) In the case of professional people and others furnishing personal services, if their only place of business is within the Village of Fairfax all their net profits shall prima facie be attributable to the Village of Fairfax.

### **Regulation 11: Operating Loss Carry Forward**

Losses are carried forward for four (4) years unless exhausted. A taxpayer should use the beginning of fiscal year to determine the four (4) year carry forward period.

- (A) The portion of a net operating loss to be carried forward shall be determined in the year the net operating loss is sustained, on the basis of the apportionment factors applicable to that year.

The same method of accounting and apportionment must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained.

- (B) A short fiscal year [a fiscal year of less than twelve (12) months] brought about by a change in accounting period, a new taxpayer selecting a short fiscal year, or a taxpayer operating in the Village of Fairfax for less than his or her full accounting period, shall be

considered as a full taxable fiscal year for purposes of loss carry forward.

- (C) In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:
  - (1) The year in which the net operating loss was sustained.
  - (2) The method of accounting and apportionment used to determine the portion of net operating loss apportioned to the Village of Fairfax.
  - (3) The amount of net operating loss used as a deduction in the prior years.
  - (4) The amount of net operating loss claimed as a deduction in the current year.
- (D) The net operating loss of a taxpayer which loses its identity through merger, consolidation, or the like, shall not be allowed as a carry forward loss deduction to the surviving or new taxpayer.

#### **Regulation 12: Consolidated Returns**

- (A) A consolidated return may be filed by a group of corporations who are affiliated through stock ownership if that affiliated group filed for the same tax period a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code. A consolidated return must include all companies which are so affiliated.
- (B) Once a consolidated return has been filed for any taxable year the consolidated group must continue to file consolidated returns in subsequent years unless:
  - (1) Permission in writing is granted by the Tax Commissioner to file separate returns.
  - (2) A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year.
  - (3) A corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.

**Regulation 13: S-Corporations, Partnerships And Other “Flow Through” Entities**

S Corporations, partnerships and other “flow through” entities are taxed at the source.

The Village of Fairfax tax return for S-corporations, partnerships and other “flow through” entities must report “net profits” as though the entity were a C corporation. Also, S-corporations, partnerships and other "flow through" entities must use the Business Apportionment Percentage Formula. (See Regulations 9 and 10.)

**Regulation 14: Attachments Required When Filing A “Net Profits” Business Return**

A copy of the federal return is required for all net profit returns. In addition copies of federal schedules and statements are required to verify income reported on the Village of Fairfax tax return. Also, supporting documents are needed to verify the additions and subtraction on Fairfax Schedule X.

If a taxpayer does not use the Fairfax Schedule X in his or her calculation of “net profits” on the Village of Fairfax tax return, he or she must include a thorough explanation of the calculation of “net profits” and attach all supporting schedules and statements for verification.

**IV. WITHHOLDING REQUIREMENTS (RESIDENT AND NON-RESIDENT)**

**Regulation 15: Collection At The Source (Including Courtesy Withholding)**

Each employer within or doing business within the Village of Fairfax who employs one or more persons on a salary, wage, commission or other compensation basis must deduct at the time of the payment of such salaries, wages, commissions or other compensation, the tax of one and three fourths percent (1.75%) of the gross salaries, qualifying wages, commissions or other compensation due by said employer to each said employee and must, on or before the last day of April, July, October, and January of each year, make a return and pay to the Tax Commissioner the amount of taxes so deducted during the proceeding calendar quarter. Said return shall be on a form prescribed by or acceptable to the Tax Commissioner, or on a generic form as provided in Section V(C) of Ordinance No. 10-2004. Nothing in this regulation prohibits an employer from withholding tax on a basis greater than qualifying wages.

An employer is liable for the payment of the tax required to be deducted and withheld, whether or not such tax in fact has been withheld.

An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by the Village of Fairfax or by the employer's exemption from the requirement to withhold the tax.

"Courtesy withholding" by an employer for residents of the Village of Fairfax is subject to the same regulations as any other employer except that the rate of tax paid may be the difference between the Village of Fairfax tax rate of 1.75% and the tax rate withheld for the municipality where the resident is employed, and in a case where an employer fails to remit the courtesy withholding to the Village of Fairfax, the employee is responsible for full payment of tax due to the Village of Fairfax on the gross salaries, qualifying wages, commissions or other compensation earned.

Any employer willing to deduct "courtesy withholding" must contact the tax department to set up an account for payment of Withholding tax prior to making the first payment.

#### **Regulation 16: Annual "Reconciliation Of Employee Withholding"**

On or before February 28 of each year, each employer must file a withholding return, on a form or forms prescribed by and obtainable from the Tax Commissioner or on a generic form as permitted herein, setting forth the names, addresses, zip code and social security number of all employees from whose compensation the tax was withheld during the proceeding calendar year, the total amount of compensation paid during the year, the amount of tax withheld for the Village of Fairfax from the listed employees, and such other information as may be required by the Tax Commissioner.

Each withholding return submitted as above must include a summary page or adding machine tape listing each employee's Village of Fairfax "gross taxable compensation for the year" and the grand total for all employees. Also, each withholding return submitted as above must include a summary page or adding machine tape listing "the amount deducted from each employee's compensation for the Village of Fairfax earnings tax" and the grand total for all employee tax withheld for the Village of Fairfax for the year.

In addition to the wage reporting requirements of Section (VI)(H) of Ordinance No. 10-2004, "any person who reports on Form 1099Misc. payments to individuals not treated as employees for services performed shall also report such payments to the Village of Fairfax when the services were performed in the Village of Fairfax." Federal Form(s) 1099Misc. must be submitted annually as an attachment to the annual reconciliation of employee withholding on or before February 28 of each year.

## V. GENERAL ITEMS

### **Regulation 17: Registration (Residents And Businesses)**

New businesses, new residents and those moving since they last filed a tax return must register with the Village of Fairfax Tax Department. Resident individual registrations can be taken by telephone. Most businesses will need to complete a detailed Business Registration/Census form.

### **Regulation 18: Contractors And Subcontractors**

All contractors and subcontractors must register and pay earnings tax for the work or services performed within the Village of Fairfax.

Registration forms are attached to work permit applications and must be submitted to the Tax Commissioner within thirty (30) days of applying for a permit to perform work or provide services within the Village of Fairfax, or within ten (10) days after they become taxable under the provisions of Ordinance No. 10-2004, depending on whichever date is earliest. The appropriate tax forms will be mailed after the completed registration form is received.

All employers, contractors, and subcontractors who perform work or provide services in the Village of Fairfax must also submit a complete list of all subcontractors or other entities that perform work or provide services for them within the Village of Fairfax.

The list must provide the full business name, address, zip code, telephone number and name of a contact person for each subcontractor listed. The subcontractor listing must be provided to the Tax Commissioner within thirty (30) days of the first such work performed or services provided. Subcontractor listing forms may be obtained from the tax department.

### **Regulation 19: Rentals (Residential And Commercial)**

The rental of real estate is ordinarily a business activity, and the income from such rentals is taxable.

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

- (B) Real property, as the term is used in these Rules and Regulations, shall include commercial property, residential property, farm property and any and all other types of real estate.
- (C) In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for federal income tax purposes.
- (D) Nonresidents of the Village of Fairfax are subject to such taxation only if the real property is situated within the Village of Fairfax.
- (E) Businesses owning or managing real estate are taxed only on that portion of income derived from property located in the Village of Fairfax.
- (F) Residents of the Village of Fairfax are subject to taxation upon the net income from rentals only when the real property is located in the Village of Fairfax.

**Regulation 20: Recapture Of Depreciation**

Capital gains from the sale of depreciable property shall be taxable to the extent of the aggregate amount of the depreciation taken on such property for the Village of Fairfax.

Rental property owned by individuals and businesses is subject to recapture of depreciation.

**Regulation 21: Reporting 1099Misc. Income**

Residents who receive 1099Misc. income forms must report this income as “other income” on their Village of Fairfax tax return and pay the tax due, unless they can show that the income was earned in another municipality and tax was paid to the other municipality on the same 1099Misc. income.

Non-residents who receive 1099Misc. income forms for work or services performed within the Village of Fairfax must file a Village of Fairfax individual tax return to report this income as “other income” and pay the tax due to the Village of Fairfax.

Exception, if the 1099Misc. income is reported on federal Schedule C, then the taxpayer should follow Regulation 6 above, and attach a copy of the 1099Misc. income form and federal Schedule C to the Village of Fairfax Return when filing.

## **Regulation 22: Extensions**

A request for extension shall be filed no later than the last day for filing the annual tax return as prescribed by Section V of Ordinance No. 10-2004.

Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for filing of the Village of Fairfax income tax return by filing a copy of the taxpayer's federal extension request with the Village of Fairfax.

Any taxpayer not filing an extension for their federal income tax return may file an extension with the Village of Fairfax in writing. The extension request should include the taxpayer's full name, Social Security/Federal ID number, current address, Fairfax address if moved or a business with more than one location, tax year or fiscal period that extension applies to, original due date of return, and date to which filing is extended.

The maximum extension is six (6) months after the original due date of the return.

Payment of estimated tax is required with your extension request to avoid interest. Extension is for filing the return, not for payment of taxes due.

## **Regulation 23: Declaration Of Estimated Tax**

First quarter estimated tax is also due with a taxpayer's Village of Fairfax tax return on April 15 or, for fiscal years, four months after the close of the tax year.

Estimated tax is calculated based on the prior year's tax liability. If no prior return was filed, then the estimated tax is calculated on the taxpayer's current earnings, less credit for earnings tax deducted by employers.

Estimated tax is due quarterly on any estimated liability of \$100.00 or more. Failure to pay estimated tax may result in an interest charge.

## **Regulation 24: Amended Returns**

There is no special form for amended returns. When an amended return is necessary, boldly write the word "Amended" on the right side of the heading on the top of the return. In the credits, clearly indicate any amounts paid with the original return. Attach any W-2, "other income" statements or schedules needed to verify amounts that are different from those listed on the original return. Also, attach a copy of the original Village of Fairfax tax return as originally filed.

If amendment is due to a change in the federal return, attach a copy of the amended federal return. Also, attach any schedules needed to verify amounts that are different from those listed on the original return.

### **Regulation 25: Joint Returns**

A husband and wife may file a joint return even if they filed separately on their state and federal returns.

### **Regulation 26: Refunds**

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made or the return was due, or within three months after the final determination of the federal tax liability, whichever is later.

There is no special form for refund requests. Use the appropriate individual or business return for the Village of Fairfax to calculate the tax due to the Village of Fairfax. Indicate on line 7 the amount of your refund request.

If over-payment is the result of time worked outside of the Village of Fairfax, you must submit a letter from your employer stating the percent of time worked in the Village of Fairfax. Vacation, sick days and holidays are counted as days “worked” in the calculation of allocation of time worked in the Village of Fairfax.

If overpayment is due to other reasons, appropriate verification needs to be attached, such as federal Form 2106. If seventy-five percent (75%) or more of a taxpayer's time is worked outside of the Village of Fairfax, then deduction of 2106 expense for meals and travel will not be allowed.

## **VI. DEFINITIONS**

Words and phrases used in the Tax Rules and Regulations shall have the meaning ascribed to them in Section II of Ordinance No. 10-2004, except as the context so requires.