

ORDINANCE NO. 559

VILLAGE OF MOUNT ORAB

INCOME TAX ORDINANCE

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ORDINANCE NO. 559

AN ORDINANCE TO ESTABLISH A MUNICIPAL INCOME TAX, AND DECLARING AN EMERGENCY, TO PROVIDE FUNDS FOR GENERAL OPERATIONS AND PERMANENT IMPROVEMENTS BY LEVYING A TAX ON ALL SALARIES, WAGES, COMMISSIONS, AND OTHER COMPENSATION EARNED BY RESIDENTS; ON ALL SALARIES, WAGES, COMMISSIONS, AND OTHER COMPENSATION EARNED BY NON-RESIDENTS FOR WORK DONE OR SERVICES PERFORMED IN THE VILLAGE OF MOUNT ORAB; ON THE NET PROFITS OF ALL UNINCORPORATED BUSINESSES, PROFESSIONS, OR OTHER ENTITIES FROM SALES MADE, WORK DONE AND SERVICES PERFORMED, OR BUSINESS AND OTHER ACTIVITIES CONDUCTED IN THE VILLAGE OF MOUNT ORAB, WHETHER OR NOT SUCH UNINCORPORATED BUSINESSES, PROFESSIONS, OR OTHER ENTITIES HAVE AN OFFICE OR PLACE OF BUSINESS IN THE VILLAGE OF MOUNT ORAB; ON A RESIDENT'S SHARE OF THE NET PROFITS OF AN UNINCORPORATED BUSINESS, PROFESSION, OR OTHER ENTITY, WHETHER LOCATED IN OR OUTSIDE THE VILLAGE OF MOUNT ORAB, NOT ATTRIBUTABLE TO MOUNT ORAB, AND ON THE NET PROFITS OF ALL CORPORATIONS FROM SALES MADE, WORK DONE, AND SERVICES PERFORMED, OR BUSINESS OR OTHER ACTIVITIES CONDUCTED IN THE VILLAGE OF MOUNT ORAB, WHETHER OR NOT SUCH CORPORATIONS HAVE AN OFFICE OR PLACE OF BUSINESS IN THE VILLAGE OF MOUNT ORAB REQUIRING THE FILING OF RETURNS AND FURNISHING OF INFORMATION BY EMPLOYERS AND ALL THOSE SUBJECT TO SAID TAX; IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING THE TAX AT THE SOURCE AND PAYING THE SAME TO THE VILLAGE OF MOUNT ORAB; PROVIDING FOR THE ADMINISTRATION, COLLECTION, AND ENFORCEMENT OF SAID TAX; DECLARING VIOLATIONS THEREFOR TO BE MISDEMEANORS, AND IMPOSING PENALTIES THEREFOR, AND DECLARING THE SAME TO BE AN EMERGENCY.

NOW THEREFORE BE IT RESOLVED, by the Council of the Village of Mount Orab, State of Ohio, Three-Quarters of the elected members thereto concurring:

MUNICIPAL INCOME TAX

SECTION 1. PURPOSE.

To provide funds for the purposes of general operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, and capital improvements of the Village of Mount Orab there shall be, and is hereby, levied a tax on salaries, wages, commissions, and other compensation, and on net profits as hereinafter provided.

SECTION 2. DEFINITIONS.

As used in this Ordinance, the following words shall have the meaning ascribed to them in this Section, except as and if the context clearly indicates or requires a different meaning.

ASSOCIATION. A partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons.

BOARD OF REVIEW. The Board created by and constituted as provided for in Section XIII of this Ordinance.

BUSINESS. An enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation, or any other entity.

CORPORATION. A corporation or joint association having ten or more shareholders organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.

EMPLOYEE. One who works for wages, salary, commissions, or other types of compensation in the services of any employer.

EMPLOYER. An individual, partnership, association, corporation, governmental body, unit, or agency, or any other entity, whether or not organized for profit, who or that employs one or more person on a salary, wage, commission, or other compensation basis.

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

GROSS RECEIPTS. Total income of taxpayers from whatever source derived.

MUNICIPALITY: The Village of Mount Orab, Ohio.

NET PROFITS. The net gain from all operations including those pertaining to capital gains and losses of a business, profession or enterprise after provision for all ordinary and necessary expense, except taxes imposed by this Ordinance, and federal and other taxes based on income, paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, and, in the case of an association, without deduction of salaries paid to partners or the owners.

NON-RESIDENT. A person, whether an individual, association, corporation, or other entity, domiciled outside the Village of Mount Orab.

PERSON. Every natural person, partnership, fiduciary, association,

PLACE OF BUSINESS. Any bona-fide office (other than a mere statutory office); factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity, individually or through one or more of his employees, regularly in attendance.

RESIDENT. A person, whether an individual, association, corporation, or other entity, domiciled in the Village of Mount Orab.

TAX YEAR. The calendar year, or the fiscal year upon the basis of which net profits are to be computed under this Ordinance and, the case of a return for a fractional part of a year, the period for which such return is required to be made.

TAX COMMISSIONER. the Tax Commissioner of the Village of Mount Orab or the person executing the duties of the aforesaid Commissioner.

TAX PAYER. A person, whether an individual, partnership, association, corporation, or other entity, required by this Ordinance to file a return or pay a tax.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

SECTION 3. IMPOSITION OF TAX.

(A) BASIS OF IMPOSITION.

Subject to provisions of Section 16 of this Ordinance, an annual tax for the purposes specified in Section 1 hereof, shall be, and is hereby levied on and after September 1, 1990, at the rate of one half (0.005%) percent per annum upon the following:

1. The aggregate amount of salaries, wages, commissions, and other compensation earned, and gross income from any business, profession, or other activity, less allowable expenses incurred in acquisition of such gross income and not disallowed by the provisions of any section or subsection of this ordinance earned during the preceding year and subject to said tax. For the year 1990 all tax shall be based on one-half (0.005) of the profit for the entire year.

2. On all salaries, wages, vacation pay, commission, and other compensation earned, during the effective period of this Ordinance, by nonresidents for work done or service performed in the Municipality.

3. (a) On the portion attributable to the Municipality of the net profits earned during the effective period of this Ordinance of all resident associations, unincorporated businesses, profession, or other entities, derived from sales made, work done, or services performed or rendered, or business or other activities conducted in the Municipality.

(b) On a resident partner's or owner's share of the net profits earned during the effective period of this Ordinance of a resident association or other unincorporated entity not attributable to the Municipality and not levied against such association or other unincorporated entity.

4. (a) On the portion attributable to the Municipality of the net profits, earned during the effective period of this Ordinance, of all non-resident associations, unincorporated businesses, professions, or other entities, derived from sales made, work done, or services performed or rendered or business or other activities conducted in the Municipality, whether or not such association or unincorporated entity that has an office or place of business in the Municipality.

(b) On a resident partner's or owner's share of the net profits earned during the effective period of this Ordinance of a non-resident association or other unincorporated entity not attributable to the Municipality, and not levied against such association or other unincorporated entity has an office or place of business in the Municipality.

5. On the net profits earned during the effective period of this Ordinance of all corporations derived from sales made, work done, or services performed or rendered, and business or other activities conducted in the Municipality whether or not such corporations have an office or place of business in the Municipality.

(B) ALLOCATION OF NET PROFITS.

Where a person conducts a business both within and outside the Municipality, the portion of the entire net profits of such business to be allocated as having been made within the Municipality may be determined from the records of such business, if such business has bonafide records which disclose with reasonable accuracy what portion of its net profits is attributable to that part of its activities conducted within the Municipality or at the option of the taxpayer may be determined by the following formula, which shall be used if taxpayer has no bonafide records showing net profits from Mount Orab business activities, subject, however, to the provisions of sub-paragraph 2 hereof.

1. Multiply the entire net profits of the business by a

business allocation percentage to be determined by:

(a) Ascertaining the percentage with the average net book value of the real and tangible personal property owned or used in the business and situated within the Municipality, during the period covered by the return is of the average net book value of all the real and tangible personal property owned or used in the business, wherever situated, during such period.

(b) ascertaining the percentage which the gross receipts of the business from sales made and services performed in the Municipality, during the period covered by the return, are of the total gross receipts from all sales and services, wherever made or performed, during such period.

(c) ascertaining the percentage which the total wages, salaries, commissions, and other compensation paid, during the period covered by the return, to employees for services performed in the Municipality is of the total wages, salaries, commissions, and other compensation paid during such period to all employees within and outside the Municipality.

(d) adding together the percentages determined in accordance with subparagraphs (a), (b), and (c) above, or such of the aforesaid percentages as are applicable to the particular taxpayer, and dividing the total so obtained by the number of percentages used in deriving said total.

(1) A factor is applicable even though it may be allocable entirely in or outside the Municipality.

(2) Provided, however, that in the event a just and equitable result cannot be obtained under the formulas provided for herein, the Board of Review, upon application of the taxpayer or the Tax commissioner, shall, under uniform regulations adopted by the Board, have the authority to substitute other factors or methods calculated to effect a fair and proper allocation.

(C.) OPERATING LOSS CARRY-FORWARD.

1. The portion of a net operating loss sustained in any taxable year, beginning with September 1, 1990, allocable to the Municipality, may be applied against the portion of the profit of succeeding tax years, allocable to the Municipality, until exhausted, but in no event for more than five (5) taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

2. The portion of a net operation loss sustained shall be allocated to the Municipality in the same manner as provided herein for allocating net profits to the Municipality.

3. the tax Commissioner shall provide by Rules and regulations the manner in which such net operating loss carry-forward shall be determined.

(D.) CONSOLIDATED RETURNS.

1. Filing of consolidated returns may be permitted or required in accordance with Rules and Regulations prescribed by the Tax Commissioner.

2. In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, the Tax Commissioner shall require such information, in addition to the return hereinafter provided for, as he may deem necessary to ascertain whether net profits are properly allocated to the Municipality. If the Tax Commissioner finds net profits are not properly allocated to the municipality by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, he may require the filing of a consolidated return or adjust such transactions so as to produce a fair and proper allocation of net profits to the Municipality.

(E.) EXCEPTION.

the tax provided for herein shall not be levied upon the military pay or allowances of members of the Armed Forces of the United States, or upon the net profits of any civic, charitable, religious, fraternal, or other organization specified in 718 of the Revised Code of Ohio to the extent that such net profits are exempted from municipal income taxes under said Section.

SECTION 4. EFFECTIVE PERIOD.

The tax imposed by this Ordinance shall be levied, collected, and paid with respect to all income and net profits, subject to the tax, earned on or after September 1, 1990.

SECTION 5. RETURN AND PAYMENT OF TAX.

(A.) DATES AND EXEMPTIONS.

Each person who, engaged in business, or whose salary, wages, commission, or other compensation are subject to the tax imposed by this Ordinance shall, whether or not a tax be due thereon, make and file, on or before April 30th in each year, beginning with the year 1991, a return with the Tax Commissioner. A tax payer on a fiscal year accounting basis for federal income tax proposes shall, beginning with his first fiscal year, any part of which falls within the effective period of this Ordinance, file his return within four (4) months from the end of such fiscal year or period. The Tax Commissioner is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by said employer or employers from the salaries, wages, commissions, or other compensation of an employee, and paid by him or them to the Tax Commissioner shall be accepted as the return required of any employee whose sole income, subject to tax under this Ordinance, is such salary, wages, commissions, or other compensation.

(B.) RETURNS AND CONTENTS THEREOF.

The return shall be filed with the tax commissioner on a form or forms furnished by or obtainable upon request from the tax Commissioner setting forth:

1. The aggregate amount of salaries, wages, commissions, and other compensation earned, and gross income from any business, profession, or other activity, less allowable expenses incurred in the acquisition of such gross income, earned during the preceding year and subject to said tax. For the year 1990 the tax shall be based on one-half (0.005) of the profit for the entire year. Monies set aside for pensions of shareholders in corporations that have been excused for filing the Division of Securities of the Ohio Department of Commerce shall not be considered an allowable expense.

2. The amount of the tax imposed by this Ordinance on such earnings and profits; and

3. Such other pertinent statements, information returns, or other information as the Tax Commissioner may require, including a statement that the figures used in the return for federal income tax, adjusted to set forth only such income as is taxable under the provisions of this Ordinance.

(C.) EXTENSIONS.

The Tax Commissioner may extend the time for filing of the annual return upon the request of the taxpayer for a period of not to exceed six (6) months, or one (1) month beyond any extension requested of or granted by the Internal Revenue Service for filing of the Federal Income Tax Return. The Tax Commissioner may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

(D.) PAYMENT WITH RETURNS.

1. The taxpayer making a return shall at the time of the filing thereof pay to the Tax Commissioner the amount of taxes shown as due thereon; provided, however, that where the source, pursuant to the provision of Section 6 of this Ordinance; or where any portion of said tax shall have Ordinance; or where an income tax, creditable against the Mount Orab tax pursuant to Section 15 hereof has been paid to another municipality, credit for the amount so paid shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.

2. For the year 1990 the tax liability shall be based on sixth (1/6) of the taxpayers entire income for said year.

3. A taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this Ordinance may have such overpayment applied against any subsequent liability hereunder or as his election indicated on the return, such overpayment, or part thereof, shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

(E.) AMENDED RETURNS.

1. Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and limitations contained in Section 11 and 15, such Amended Returns shall be on a form obtainable on request from the Tax Commissioner.

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

municipality tax based upon such final determination of federal tax liability, and pay any additional tax shown thereon, or make claim for refund of any overpayment.

SECTION 6. COLLECTION AT SOURCE.

(A.) WITHHOLDING BY EMPLOYER.

Each employer within, or doing business with, the Municipality, who employs one or more persons on a salary, wage, commission, or other compensation basis shall deduct at the time of the payment of such salaries, wages, commissions, or other compensations, or other compensation due by said employer to each said employees, and shall, on or before the last of said employer to each said employees, and shall, beginning with the year 1990, on or before the last day of each month make a return and pay to the Tax Commissioner the amount of taxes so deducted during the preceding month. Said return shall be on a form or forms prescribed by or acceptable to the Tax Commissioner and shall be subject to the rules and regulations prescribed therefor by the Tax Commissioner.

(B.) EMPLOYER CONSIDERED AS TRUSTEE.

Each employer in collecting said tax shall be deemed to hold the same, until payment is made by such employer to the Municipality, as a Trustee for the benefit of the Municipality, and any such tax collected by such employer from his employees shall, until the same is paid to the Municipality, be deemed a trust fund in the hands of such employer. Each employee has be liable for the payment of the tax required to be deducted and withheld, whether or not such tax, in fact, has been withheld.

(C.) CORPORATE OFFICERS PERSONAL LIABILITY.

It shall be the responsibility, jointly and severally, of the officers of each corporation required to withhold the tax from wages of its employees under this section to see that all such taxes so withheld are paid to the Municipality in accordance with the provisions of this section. In the event taxes withheld by a corporation from the salaries of its employees are not paid to the Municipality in accordance with the provisions of this section, the officers of said corporation shall each be criminally liable under the provisions of Section 12 hereof.

(D.) EMPLOYEES' LISTINGS.

On or before April 30th of each year, beginning with the year 1991, each employer shall file a withholding return, on a form or forms prescribed by and obtainable from the tax

Commissioner, setting forth the tax which was withheld during the preceding calendar year and such other information as may be required by the rules and regulations adopted by the Tax Commissioner.

(E.) DOMESTIC SERVANTS.

Provided, however, that no person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed exclusively in or about such person's residence. However, such domestic servants shall be responsible for filing and paying their own returns and taxes.

SECTION 7. DECLARATIONS.

(A.) REQUIREMENT FOR FILING.

Every person who anticipates any taxable income which is not subject to Section 6 hereof, or engages in any business, profession, enterprise, or activity, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity, together with the estimated tax due thereon, if any.

(B.) DATES FOR FILING.

1. Such declaration, beginning with the year 1991, and thereafter during the life of this ordinance, shall be filed, and thereafter during the life of this ordinance, on or before April 30, or within four (4) months of the date of taxpayer first becomes subject to the provision of this section.

2. Those taxpayers reporting on a fiscal year basis shall file a declaration within four (4) months after the start of each year or period.

(C.) FORMS - PAYMENT DATES.

1. Such declaration shall be filed upon a form furnished by or obtainable from the tax Commissioner. Credit shall be taken in said declaration for Mount Orab tax to be withheld from any portion of such income and for income taxes to be paid to another taxing municipality for which credit is allowed against the Mount Orab tax Section 15 hereof.

2. No declarations need to be filed for the year 1990. However, a final return for such year must be filed by every person having taxable income regardless whether or not any tax is due the village.

3. A declaration of estimated tax to be paid the

municipality shall be accompanied by a payment of at least one-fourth (1/4) of the estimated tax, less credit for taxes withheld or paid to another municipality, and at least a similar amount shall be paid on or before the last day of the seventh, tenth, and thirteenth, months after the beginning of the tax year.

4. A declaration may be amended at any time, provided, however, that in case an amended declaration is filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(D.) AMENDED DECLARATION.

An amended declaration may be filed with the filing of any quarterly return. If it appears that the original declaration and payments made for such year underestimated the tax-payer's income by thirty percent (30%) or more the difference between seventy percent (70%) of said taxpayer's tax liability and the amount of estimated tax he actually paid on or before January 31st, for the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Section 10 hereof.

(E.) ANNUAL RETURN REQUIRED.

On or before the last day of the fourth month of the calendar or fiscal year following that for which the declaration was filed, an annual return shall be filed and any balance which may be due the Municipality shall be paid therewith in accordance with the provision of Section 5 hereof.

SECTION 8. DUTIES OF THE TAX COMMISSIONER.

(A.) COLLECTION AND MAINTENANCE RESPONSIBILITY.

1. There is hereby created an independent department to be titled the Mount Orab Income Tax Bureau for the administration of the provisions of this Ordinance. Such Bureau shall consist of a tax Commissioner, Deputy Tax Commissioner and such clerical and secretarial personnel as may be determined to be necessary for the administration of this Ordinance. All such personnel shall be appointed by the Mayor with the consent of Council. The Tax Commissioner and Deputy Tax Commissioner shall also be Deputy Village Treasurer, without additional compensation, for the purpose of collecting and depositing all income tax revenue.

2. It shall be the duty of the Tax Commissioner to

collect and receive the tax imposed by this Ordinance in the manner prescribed therein, and to keep an accurate record thereof, and to report all moneys so received.

3. It shall be the duty of the tax Commissioner to enforce payment of all income taxes owing the Municipality, to keep accurate records for a minimum of five years (5), showing the amount due from each taxpayer required to file a declaration or make any return including a return of taxes withheld, and to show the dates and amounts of payments thereof.

(B.) ENFORCEMENT AUTHORITY.

Said tax Commissioner is hereby charged with the enforcement of the provisions of this Ordinance, and is hereby empowered, subject to the approval of Board of Review, to adopt and promulgate and to enforce rules and regulations authorized or required by this Ordinance, relating to any matter or thing pertaining to the collection and payment of taxes and the administration and enforcement of the provisions of this Ordinance, including provisions for the re-examination and correction of returns.

(C.) DETERMINATION OF TAXES.

In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Commissioner may determine the amount of tax appearing to be due the Municipality from the taxpayer and will send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(D.) COMPROMISE AUTHORITY.

Subject to the consent of the Board of Review or pursuant to regulation approved by the Board of Review, the Tax Commissioner shall have the power to compromise any liability imposed by this Ordinance.

SECTION 9. INVESTIGATE POWERS OF THE TAX COMMISSIONER -
PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

(A.) EXAMINATION OF TAXPAYERS RECORDS.

The Tax Commissioner, or any of his authorized agents, is hereby authorized to examine the books, papers, records, and federal income tax returns of any employer, or taxpayer, or any person subject to, or whom the Tax Commissioner believes subject to, the provisions of this Ordinance, for the

purpose of verifying the accuracy of any withholdings due under this Ordinance. Every such employer, supposed employer, taxpayer, or supposed taxpayer, is hereby directed and required to furnish, upon written request of the tax Commissioner, or his duly authorized agent or employees, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

(B.) APPEARANCE ORDERS TO TAXPAYERS.

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

(C.) RESULT OF REFUSAL TO SUBMIT INFORMATION.

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

(D.) RETENTION OF RECORDS BY TAXPAYER.

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

(E.) CONFIDENTIAL NATURE OF INFORMATION.

Any information gained as a result of any returns, investigations, hearings or verifications required or authorized by this Ordinance shall be confidential, and no disclosure thereof shall be made except to municipal, county, state or federal taxing agencies, or except for official purposes as the Village Solicitor shall determine, or except in accordance with proper judicial order. Any person divulging such information in violation of the section shall

be guilty of a misdemeanor in the third degree and shall be fined not more than Five Hundred (\$500.00) Dollars and imprisoned not more than sixty (60) days, or both for each offense. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the Municipality who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

SECTION 10. INTEREST AND PENALTIES.

(A.) INTEREST

All taxes imposed and money withheld or required to be withheld by employers under the provisions of this Ordinance, remaining unpaid after they become due, shall bear interest at the rate on one-half of one percent (0.005%) per month.

(B.) PENALTIES.

In addition to interest as provided in Paragraph A hereof, penalties for failure to pay taxes and to withhold and remit taxes pursuant to the provisions of this Ordinance are hereby imposed as follows:

1. In the case of taxpayers failing to pay the full amount of tax due, a penalty of the higher of (a) Fifty (\$50.00) Dollars or (b) one and one-half (1-1/2%) percent per month of fraction thereof, of the amount of the unpaid tax, if the tax is paid during the first three months after said tax became due; a penalty of two and one-half (2-1/2%) percent per month or fraction thereof, of the unpaid tax, if said tax became due; and a penalty of four and one-half (4-1/2%) percent per month, or fraction thereof, of the amount of the unpaid tax, if said tax is paid later than six (6) months after it became due. The percentages herein specified, when used, shall apply from the first month of delinquency.

2. In the case of employers who fail to withhold and remit to the Tax Commissioner the taxes to be withheld from employees, a penalty of the higher of (a) One Hundred (\$100.00) Dollars or (b) two and one-half (2-1/2%) percent per month or fraction thereof, of the unpaid withholding, if paid during the first three (3) months after it was due; a penalty of four and one-half (4-1/2%) percent per month or fraction thereof, of the unpaid withholding, if paid during the fourth to sixth month, inclusive, after it was due; and a penalty of five and one-half percent (5.5%) per month or fraction thereof, of the unpaid withholding, if paid later than six (6) months after it was due. the percentage herein specified, when used, shall apply from the first month of delinquency.

(C.) EXCEPTIONS.

A penalty shall not be assessed or an additional tax assessment made by the Tax Commissioner when a return has been filed in good faith and the tax paid thereon within the time prescribed by the tax Commissioner; and provided further that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after final determination of the federal tax liability.

(D.) ABATEMENT BY BOARD OF REVIEW.

Upon an appeal from the refusal of the tax Commissioner to recommend abatement of penalty and interest, the Board of Review may abate such penalty or interest, or both.

SECTION 11. COLLECTION OF UNPAID TAXES
AND REFUNDS OF OVER-PAYMENTS.

(A.) TIME LIMITATION ON SUITS.

All taxes imposed by this Ordinance shall be collectible, together with any interest and penalties thereon, by suit as other debts of like amount are recoverable. No additional assessment shall be made after three (3) years from the time of payment of any tax due hereunder; provided, however, there shall be no period of limitation on an additional assessment in a case of a return that omits gross income in excess of twenty-five percent (25%) of that required to be reported or in the case of filing a false or fraudulent return with intent to evade the tax, or in the case of a failure to file a return. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations the period within which an additional assessment may be made by the Tax Commissioner shall be extended on (1) year from the time of the final determination of the federal tax liability.

(B.) TIME LIMITATION ON REFUNDS.

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made or the return was due, or the return was due, or within three (3) months after final determination of the federal tax liability, whichever is later.

SECTION 12. VIOLATION - PENALTIES.

(A.) ENUMERATION OF AND PENALTIES.

Any person who shall:

1. fail, neglect, or refuse to make any return or declaration required by this ordinance; or
2. make an incomplete, false, or fraudulent return; or
3. fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this Ordinance; or
4. fail, neglect, or refuse to withhold tax from his employees and remit such withholding tax to the Tax Commissioner; or
5. refuse to permit the Tax Commissioner or any duly authorized agent or employee to examine his or his employer's books, records, papers, and federal income tax returns; or
6. fail to appear before the Tax Commissioner and to produce his or her employer's books, records, papers, or federal income tax returns upon order or subpoena of the Tax Commissioner; or
7. refuse to disclose to the Tax Commissioner any information with respect to such person's or such person's employer's income or net profits; or
8. fail to comply with the provisions of this Ordinance or any order or subpoena of the Tax Commissioner; or
9. fail, neglect, or refuse to make any payment on the estimated tax for any year as required by Section 7; or
10. fail, as an officer or resident manager of a corporation pursuant to this Ordinance to be paid to the Municipality in accordance with the provisions of Section 6 hereof; or
11. attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties, or interest imposed by this Ordinance, shall be guilty of a misdemeanor in the third degree, and shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned not more than sixty (60) days or both, for each offense.

(B.) TIME LIMITATIONS ON PROSECUTIONS.

All criminal prosecutions under this section must be commenced within three (3) years, and all civil actions within five (5) years following the date on which the final return for a taxable year was due, or five (5) years from the time of any other offense complained of.

(C.) FAILURE TO OBTAIN FORMS NOT A DEFENSE.

The failure of any employer, taxpayer, or person to receive or procure a return, declaration, or other required form shall not excuse him from making any information return, or declaration, from filing such form, or from paying the tax.

(D.) RESPONSIBILITY OF CORPORATION EMPLOYEES.

The term "person" as used in this section shall, in addition to the meaning prescribed in Section 2 of this Ordinance, include in the case of an association or corporation not having any partner, member, or officer within the Municipality, any employee or agent of such association or corporation who can be found within the corporate limits of the Municipality.

SECTION 13. BOARD OF REVIEW.

(A.) COMPOSITION.

A Board of Review shall consist of three persons, who shall be appointed by the Mayor with the consent of Council, is hereby created. The individual acting as the local administrator of the tax shall act as secretary of the Board. Board members shall receive such compensation as Council may determine.

(B.) PROCEDURE.

A majority of the members of the Board shall constitute a quorum. the Board shall adopt its own procedural rules and shall keep a record of its transactions. All hearings by the Board shall be conducted privately unless the taxpayer requests a public hearing, and the provisions of Section 9 hereof with reference to the confidential character of information required to be disclosed by the Ordinance shall apply to such matters as may be heard before the Board on appeal.

(C.) APPEALS.

Any person dissatisfied with any ruling or decision of the Tax Commissioner which is made under the authority conferred by this Ordinance may appeal therefrom to the Board

of Review within thirty (30) days from the announcement of such ruling or decision by the tax Commissioner, and the Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any such ruling or decision, or any part thereof.

SECTION 14. ALLOCATION OF FUNDS.

A. The funds collected under the provisions of this ordinance shall be deposited in the General Fund and said funds collected from the imposition date of the tax under this ordinance shall be disbursed for the following, to wit:

1. Such part thereof as shall be necessary to defray all cost of collection the taxes and the cost of administering and enforcing the provisions thereof.
2. The balance of any monies collected under the provisions of this Ordinance shall be allocated as follows:
 - a. At least fifty (50%) percent to the general fund for the purpose of general municipal operations.
 - b. Not to exceed twenty-five (25%) percent to the financing of capital improvements.
 - c. Not to exceed twenty-five (25%) percent for the purpose of retiring any indebtedness of the Village.

SECTION 15. CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

(A.) LIMITATION ON AMOUNT PAID

Every individual taxpayer who resides in the Municipality and who receives salaries, wages, commissions, or services performed or rendered outside of the Municipality, if it be made to appear that he has paid a municipal income tax on such income, taxable under this Ordinance, to another municipality, shall be allowed a credit for such tax paid, against the tax imposed by this Ordinance in an amount not to exceed the tax due the Village of Mount Orab.

(B.) CREDITS AND LIMITATIONS THEREOF.

Notwithstanding the provisions contained in Section 11 hereof, or any other provisions inconsistent herewith, a claim for refund or credit under this section shall be made in such manner as the Tax Commissioner may by regulation provide. No such claim for refund or credit shall be allowed unless made on or before the date of filing the taxpayer's final return and unless such taxpayer's employer files with the Tax

Commissioner a list showing the tax withheld from taxpayer's wages, salaries, or commissions for other municipalities.

SECTION 16. SAVING CLAUSE.

This Ordinance shall not apply to any person, firm, or corporation, or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. Any sentence, clause, section, or part of this Ordinance or any tax against or exception granted any individual or any of the several groups of persons, or forms of income specified herein if found to be unconstitutional or illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this Ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this Ordinance. It is hereby declared to be the intention of Council of the Municipality that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, or part hereof, not been included therein.

SECTION 17. EMERGENCY CLAUSE.

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety and it shall go into effect forthwith. The reason for the said emergency is the immediate necessity of levying the tax provided for herein in order to obtain revenue for the operation of the Municipal Government during the period from September 1, 1990, and thereafter.

Passed this 16th day of August, 1990.



Michael Boyd
Clerk-Treasurer



Bruce Lunsford
Mayor