

ORDINANCE NO. 847

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 MT. 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 MT. ORAB, WHETHER OR NOT SUCH UNINCORPORATED BUSINESSES, PROFESSIONS, OR OTHER ENTITIES HAVE AN OFFICE OR PLACE OF BUSINESS IN THE VILLAGE OF MT. 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 MT. ORAB, NOT ATTRIBUTABLE TO MT. 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 MT. ORAB, WHETHER OR NOT SUCH CORPORATIONS HAVE AN OFFICE OR PLACE OF BUSINESS IN THE VILLAGE OF MT. 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 MT. 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 ORDAINED**, by the Council of the Village of MT. 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 Mt. 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.

**DOMICILE.** means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence

**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.

**FORM 2106.** means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Service Code.

**GAMBLING WINNINGS.** means any game of chance, sweepstakes or similar sources where the proceeds are at least 300 times the amount of the bet or fee if any.

**GENERIC FORM.** means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income

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

**INTANGIBLE INCOME.** means income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other

disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code.

**INTERNAL REVENUE CODE.** means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

**INTERNET.** means the international computer network of both federal and non-federal interoperable packet switched data networks, including the graphical sub network known as the world wide web.

**MUNICIPALITY.** The Village of Mt. 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, which is domiciled outside the Village of Mt. Orab.

**OHIO BUSINESS GATEWAY.** An internet based electronic filing system maintained by the State of Ohio and in use for certain state level taxes.

**OTHER PAYER.** means any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent.

**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.

**RECAPTURE OF DEPRECIATION.** includes the disposal of depreciated or amortized property for a gain -taxable as ordinary income.

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

**RETURN PREPARER.** means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.

**SCHEDULE C.** means Internal Revenue Service Schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

**STOCK OPTIONS.** include the sale or disposal of assets, stocks, bonds or other negotiable instruments which were obtained in part or in whole through various employer provided

means to employees as a additional, alternative or other means of employee compensation or fringe benefit.

**TAXABLE INCOME FOR NET PROFITS TAX RETURNS.** Begins with Federal Taxable Income (FTI), before net operating losses and special deductions, (currently line 28 of the federal 1120) and then makes the following adjustments:

- i. Deduct intangible income to the extent it is included in FTI;
- ii. Add 5% of the amount deducted as intangible income, but not the portion of the intangible income related to the sale, exchange or disposition of property described in section 1221 of the Internal Revenue Code (IRC);
- iii. Add any losses allowed in the computation of FTI if the losses relate to the sale, exchange, or disposition of property described in section 1221 or 1231 of IRC;
- iv. Except for depreciation recapture described in section 1245 or 1250 of IRC, deduct income and gain included in FTI to the extent the income and gain relate to the sale, exchange or disposition of an asset described in section 1221 or 1231 of IRC;
- v. Add taxes on or measured by net income allowed as a deduction in the computation of FTI;
- vi. In the case of a real estate investment trust or regulated investment company, add all dividends, distributions, or amounts set aside for the benefit of investors and allowed as a deduction in the computation of FTI;
- vii. In the case of a taxpayer that is not a C corporation and is not an individual, the taxpayer shall compute FTI as if the taxpayer were a C corporation and, in addition to the above adjustments, shall not be allowed a deduction for guaranteed payments, payments to a qualified self-employed retirement plan, payments for health or life insurance for an owner or owner-employee, or federal self-employment tax;
- viii. Uses apportionment formula to apportion profit to each municipality using an equally weighted formula of property, payroll, and sales (the property factor uses original cost instead of net book value). If the apportionment formula does not produce an equitable result, another basis may be substituted, under uniform regulations.

**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 individual designated by this Ordinance, employed by this Municipality, who shall be responsible for the administration and enforcement of this Ordinance.

**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.

**UNIFORM WITHHOLDING BASE / EMPLOYEE COMPENSATION TAX BASE.** The tax and withholding base begins with the Medicare wage base (Box 5) and makes the following mandatory adjustments

- i. Add supplemental unemployment compensation benefits described in section 3402 (o)(2) of IRC;
- ii. Add compensation of pre-1986 employees exempt from Medicare that is not in the Medicare wage base solely because of the Medicare grandfathering provision;
- iii. Employee contribution to a IRC Section 125 cafeteria plan(s) are not taxable.

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 January 1, 2005, at the rate of one percent (0.01) per annum upon, the following:

- I. 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.
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.

6. BUSINESS LOSSES NOT ALLOWABLE AGAINST W-2 INCOME.

(a) The net operating loss sustained by a business or profession is not deductible from employee earnings, but may be carried forward as provided in the rules and regulations.

7. RENTAL PROPERTY.

(a) As a general rule, rental of real estate for purposes of the Village of Mt. Orab Income Tax Ordinance constitutes the operation of a business, and net profits earned are subject to taxation hereunder.

8. STOCK OPTIONS.

The following are items, which are subject to the tax imposed by Section 3 of the Ordinance.

(a) Stock Options or other compensation received in the form of property are taxable when included on Form W-2 or Form 1099 for federal purposes.

(b) Nonqualified pension plans. Contributions of (or premiums paid by) the employer in the case of nonqualified plans are taxable when made and reported on IRS form W-2 or Form 1099.

9. RECAPTURE OF DEPRECIATION.

Capital gains and losses from sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned. However, any amounts of value realized on a sale, exchange or other disposition of tangible personal property or real property used in business in excess of book value shall be treated as taxable income under the Chapter to the extent of depreciation allowed or allowable.

10. GAMBLING WINNINGS.

(a) Amount received as gambling winnings and reported on IRS Form W-2G or Form 5754 and or any other form from the Internal Revenue Service that reports winnings from gambling. Gambling includes but is not limited to bingo, keno, slot machines, casino games, horse racing, dog racing, jai alai, sweepstakes, wagering pools, lotteries, prizes and any other wagering transactions.

11. 12-DAY OCCASIONAL ENTRY RULE.

A. The Village of Mt. Orab shall not tax the compensation of an individual if all of the following apply

(1) the individual does not reside in the Village of Mt. Orab,

(2) the compensation is paid for personal services performed by the individual in the Village of Mt. Orab on any part of twelve or fewer days during the calendar year.

- (3) in the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the Village of Mt. Orab and the individual pays tax on compensation described in division (A) of this section to the City, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual.
- (4) the individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the Village of Mt. Orab.

**(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 bona fide 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 bona fide records showing net profits from Mt. 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 January 1, 2005, 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 three (3) 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 allocation 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 payor 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 January 1, 2005.



## 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 15th in each year, beginning with the year 2005, 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 by the fifteenth (15) day of the fourth month 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. 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.
4. **GENERIC FORM** The Village of Mt. Orab shall accept a generic form of any return, report, or document required to be filed if the generic form, once completed and filed, contains all of the information required to be submitted with the Village of Mt. Orab's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the Village of Mt. Orab governing the filing of returns, reports or documents.
5. **2106 EXPENSE.** {Return and payment tax}
  - (a) The municipal corporation shall deduct from the taxpayer's taxable income the amount shown as a deduction on Federal Form 2106, as filed with the Internal Revenue Service. (H.B. #65, 2- 11-82). Such amounts must be property reported on Form 2106 and must

be verifiable. An employee who is permitted to deduct business expenses from gross wages, salaries, or commissions must file a return in order to claim such deductions even though all or part of such wages, salaries, or commissions are subject to withholding.

### **(C.) EXTENSIONS**

#### ACCEPTANCE OF FEDERAL EXTENSIONS.

- (a) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a Village of Mt. Orab tax return. The taxpayer shall make the request by filing a copy of the taxpayer's request for a federal filing extension with the Tax Commissioner by the original due date of the Mt. Orab tax return.
- (b) Any taxpayer not required to file a federal income tax return may request an extension for filing a Village of Mt. Orab tax return in writing.
- (c) The request for extension shall be filed no later than the last day for filing the Village of Mt. Orab income tax as prescribed by ordinance.
- (d) A valid extension request extends the due date for filing a return to the last day of the month following the month to which the due date of the federal return has been extended.
- (e) The Village of Mt. Orab may deny a taxpayer's request for extension if the taxpayer:
  - (1) fails to timely file the request;
  - (2) fails to file a copy of the federal extension request
  - (3) owes the Village of Mt. Orab any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or non-payment of income tax;
  - (4) has failed to file any required income tax return, report or other related document for a prior tax period.
- (f) The granting of an extension for filing a Village of Mt. Orab income tax return does not extend the last date for payment of the tax; hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by Section 10 as amended by this ordinance. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the extension period provided all other filing and payment requirements of the Tax Code have been met. Any extension by the Tax Commissioner shall be granted with the understanding that declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that declaration filing and payment requirements have not been fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.
- (g) Beginning January 1, 2005, a net profit taxpayer who files notice of a federal tax extension through the Ohio Business Gateway will be granted an extension to the last day of the month to which the federal return has been extended and no additional notification or filing with the Village of Mt. Orab for the extension shall be required.

### **(D.) PAYMENT WITH RETURNS.**

- I. 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 Mt. 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. 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 five dollars (\$5.00) shall be collected or refunded.

**(E.) AMENDED RETURNS.**

- I. 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 3 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 Mt. Orab tax liability, such taxpayer shall make and file an amended Mt. 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 2005 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 therefore by the Tax Commissioner.

**EMPLOYEE WITHHOLDING**

In accordance with rules and regulations prescribed by the Tax Commissioner, each employer within or doing business within the Village of Mt. Orab shall deduct at the time of payment of such salary, wage, commission or other compensation, a tax at the rate provided in Section 3 hereof on the gross salaries, wages, commissions or other compensation due by the employer to the employee and shall, on or before the fifteenth (15th) day of the month following such withholding, make a return and pay to the Tax Commissioner the amount of taxes so deducted. The 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 by the Tax Commissioner. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

- (a) so long as the taxes withheld by an employer for the Village of Mt. Orab during the measurement period are less than one hundred dollars (\$100) per quarter, payments may be made quarterly on or before the last day of the month following the end of the quarter, subject to the approval of the Tax Commissioner. The Tax Commissioner may revoke the approval of quarterly filing and payments whenever he has reason to believe that the conditions for granting such authorization have changed, were judged incorrectly, were not met, or when it is in the best interest of the City to do so. Notice of withdrawal shall be made in writing and, in such case the employer must begin to file in accordance with this Section.

**(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. Notwithstanding the forgoing, each employee shall 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 February 28th of each year, beginning with the year 2005, 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.**

- I. Such declaration, beginning with the year 2005, and thereafter during the life of this ordinance, shall be filed, on or before April 15, or on the fifteenth day of the fourth month 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 on the fifteenth day of the fourth month after the start of each year or period.

**(C) FORMS- PAYMENT DATES.**

- I. Such declaration shall be filed upon a form furnished by or obtainable from the tax Commissioner. Credit shall be taken in said declaration for Mt. 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 Mt. Orab tax Section 15 hereof.
2. 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.
3. 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.
4. Taxpayers, at their option, may use the Ohio Business Gateway to file certain tax documents listed below and not need to file the form with the Village of Mt. Orab Income Tax Bureau.
  - (a) Business estimated extension requests – beginning in January 2005
  - (b) Estimated net profit payments – beginning in January 2005.
  - (c) Net profit tax returns – beginning in January 2006.
  - (d) Employer withholding returns – beginning in January 2007.

**(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 taxpayer'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 15th, 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.**

- I. There is hereby created an independent department to be titled the Mt. 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 requiring 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). INFORMATION BY LANDLORDS.**

- A. Within thirty (30) days after a new tenant occupies rental property of any kind within the Municipality, all owners of rental property who rent to tenants of apartments, room and other rental accommodations shall file with the Tax Commissioner a report showing the name, address and telephone number, if available, of each such tenant who occupies an apartment, room or other rental property with the Municipality.
- B. Within thirty (30) days after a tenant vacates an apartment, room or other rental property located within the Municipality, the owner of such vacated rental property shall file with the Tax Commissioner a report showing the date of vacation from the rental property and a forwarding address.

**(B) 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, 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.

**(C) 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.

**SUPOENA POWER OF TAX COMMISSIONER.**

In order to carry out the provisions of this ordinance, the Tax Commissioner shall have the power to issue subpoenas to compel the attendance of witnesses and to compel the production of documents at any hearing or examination permitted under this ordinance.

- (A) The Tax Commissioner is authorized to utilize the services of the Mt. Orab Police Department for the service of any subpoenas, notices and orders of the Tax Commissioner.

(B) The Tax Commissioner may, in his discretion and in lieu of the Mt. Orab Police Department, appoint one or more special process servers for the service of subpoenas, notices or orders if he deems that such would better preserve confidentiality, avoid conflicts of interest or is such would be in the best interest of the Municipality or any individual taxpayer.

**(D) 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 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.

**(E) 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.

**(F) 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 exception 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 upon individuals and all monies withheld or required to be withheld under the provisions of this ordinance and remaining unpaid after they become due shall bear interest at the same rate which Section 718.06 of the Ohio Revised Code requires be paid, i.e. the federal short-term rate as defined in Section 5706.47 of the Revised Code, plus three percent (3%) per year.



**(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,

- I. 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 or 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 ½ %) 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 ½%) 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 (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' 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.**

A. Whenever the Tax Commissioner issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the Village of Mt. Orab, the Tax Commissioner shall notify the taxpayer at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

- B. Any person who is aggrieved by a decision by the Tax Commissioner and who has filed with the Village of Mt. Orab the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Review by filing a request with the Tax Commissioner. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Tax Commissioner has issued the decision.
- C. The imposition of penalty and interest as prescribed in the codified ordinance of the Village of Mt. Orab is not a sole basis for an appeal.
- D. The Board of Review shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing.
- E. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative.
- F. The Board may affirm, reverse, or modify the Tax Commissioner's decision or any part of that decision. The Board shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send notice of its decision by ordinary mail to the petitioner within fifteen (15) days after issuing the decision.
- G. Following an appeal to the local board of appeal, a municipal income taxpayer may appeal the decision issued by the local board of review to either the common pleas court of Brown County, Ohio, or to the Ohio Board of Tax Appeals.
- H. Each Board of Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Section 149.43 of the Ohio Revised Code. Hearings requested by a taxpayer before a Board of Review created pursuant to this section are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code.

#### **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.
- 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) CREDIT FOR OTHER MUNICIPAL TAXES.**

1. The taxpayer making a return shall, at the time of filing hereof, pay to the Tax Commissioner the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Chapter of the Ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Chapter of the Ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid is limited to the tax rate of the Village of Mt. Orab, in accordance with Chapter hereof, 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.

**(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 January 1, 2005, and thereafter.

Passed this 30<sup>th</sup> day of December 2004.



\_\_\_\_\_  
Mayor



\_\_\_\_\_  
Clerk