

# ORDINANCE NO. 2004-18

## **AN EMERGENCY ORDINANCE RENUMBERING AND REVISING CHAPTER 181, THE INCOME TAX CODE OF THE CODIFIED ORDINANCES OF THE VILLAGE OF CAREY.**

**WHEREAS**, The Income Tax Code as codified in Chapter 181 of the Codified Ordinances of the Village of Carey, has existed since 1976, and

**WHEREAS**, The Ohio Revised Code has mandated that certain revisions take place among Ohio municipalities in order to adopt uniform changes in municipal income taxes,

### **NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COUNCIL OF THE VILLAGE OF CAREY THAT:**

That Chapter 181 (Income Tax) of the Codified Ordinances of the Village of Carey is hereby repealed in its entirety, and the following new [ renumbered ] section(s) commencing at 171.01, are hereby enacted:

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#### CHAPTER 171 Income Tax

171.01 Purpose	171.10 Interest and penalties
171.02 Definitions	171.11 Collection of unpaid taxes and refunds of overpayments
171.03 Imposition of tax	171.12 Violations; Penalties
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171.06 Collection of tax at the source	171.15 Tax Department Confidentiality
171.07 Declarations	171.16 Severability
171.08 Duties of Tax Commissioner	171.17 Savings Clause
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#### CROSS REFERENCES

Power to levy income tax – see Ohio Const., Art. XII, Sec. 8

Payroll deductions – see Ohio R.C. 9.42

Municipal income taxes – see Ohio R.C. Ch. 718

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#### 171.01 PURPOSE.

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, and capital improvements of the Village, there shall be, and is hereby levied, a tax on qualifying wages,

including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan and other compensation, on gambling winnings, on net profits and other taxable income as hereinafter provided.

#### 171.02 DEFINITIONS.

A. 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.

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

- a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income;
- b) Add an amount equal to five percent (5%) of intangible income deducted under division (A)(1)(a) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;
- c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;
- d) .1 Except as provided in division (A)(1)(d)(.2) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;  
.2 Division (A)(1)(d)(.1) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.
- e) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
- f) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;
- g) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except:
  - .1 Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and
  - .2 Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.
- h) Nothing in division (A)(1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

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

2. "Association" means a partnership, limited partnership, S corporation or any other form of unincorporated enterprise owned by one or more persons.
3. "Board of Review" means the Board created by and constituted as provided for in section 171.13 of this Ordinance.
4. "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity including but not limited to the renting or leasing of property, real, personal, or mixed. The ordinary administration of a decedent's estate by the executor or administrator, and the mere custody, supervision and management of trust property under passive trust, whether interviews or testimony, unaccompanied by the actual operation of a business as herein defined shall not be construed as the operation of a business.
5. "Business apportionment" means the portion of net profits to be apportioned to the Village as having been made in the Village, either under separate accounting method, or under the three factor formula of property, payroll, and sales, provided for in section 171.03(B).
6. "Capital gains" means the net profits from the sale of any real or personal property if such property has been owned by the taxpayer for more than one year, and if the taxpayer is not regularly engaged in the business of selling such kind or character of property.
7. "Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory, or foreign country or dependency.
8. "Domicile" means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A taxpayer has only one domicile even though the taxpayer may have more than one residence. A domicile once acquired is presumed to continue until it is shown to have been changed. Intention to change domicile will not effect such a change unless accompanied by actual removal. Where a change of domicile is alleged, the burden of proving it rests upon the person making the allegation.
9. "Employee" means one who works for salaries, wages, commissions or other types of compensation in the services of an employer. Any person upon whom an employer is required to withhold for either federal income or social security or on whose account payments are made under the Ohio Workman's Compensation law shall prima facie be an employee.
10. "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, and including the officers and resident managers, who or that employs one or more persons on a salary, wage, commission or other compensation basis whether or not such employer is engaged in business. It does not include a person who employs only domestic help for such person's private residence.
11. "Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31. Only fiscal years accepted by the Internal Revenue Service for federal income tax purposes may be used for municipal tax purposes.
12. "Floater" means an employee who does not work at a place of business of his employer and/or who regularly works in two or more taxing municipalities during a year.
13. "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
14. "Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a refund claim that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income. Any municipality that requires taxpayers to file income tax returns, reports, or other documents shall accept for filing a generic form of

such a return, report, or document if the generic form, once completed and filed, contains all of the information required to be submitted with the municipality's prescribed returns, reports, or documents.

15. "Gross receipts" means the total income of taxpayers from whatever source derived.
16. "Income from a pass-through entity" means partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of other pass-through entities.
17. "Income Tax Department" means the office administering the Income Tax Ordinance.
18. "Intangible income" means income of any of the following types: income yield, interest, capital gains, 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, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.
19. "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
20. "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.
21. "Joint Economic Development Zone or District" means a zone or district created under Ohio Revised Code sections 715.69 through 715.83 as amended from time to time.
22. "Limited liability company" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
23. "Municipality" or "Village" means the **The Village of Carey, OH**.
24. "Net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts described in division (E) of section 171.03, required to be reported on schedule C, schedule E, or schedule F.
25. "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.
26. "Nonresident" means an individual domiciled outside of the Village.
27. "Nonresident incorporated business entity" means an incorporated business entity not having an office or place of business within the Village.
28. "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Village.
29. "Ordinance" means the Income Tax Ordinance (Chapter 171) of the Village of Carey Codified Ordinances.
30. "Other payer" means any person, other than an individual's employer or the employer's agent, which pays an individual any amount included in the federal gross income of the individual.
31. "Owner" means a partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.
32. "Owner's proportionate share", with respect to each owner of a pass-through entity, means the ratio of (a) the owner's income from the pass-through entity that is subject to taxation by the municipal corporation, to (b) the total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.

33. "Pass-through entity" means a partnership, limited liability company, S corporation, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.
34. "Person" includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any association includes the partners or members thereof, and as applied to corporations, the officers thereof, and in the case of any unincorporated entity or corporation not having any partner, member or officer within the Village, any employee or agent of such unincorporated entity or corporation who can be found within the corporate limits of the Village.
35. "Place of business" means 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.
36. "Principal place of business" in the case of an employer having its headquarters' activities at a place of business within a taxing municipality, the term shall mean the place of business at which the headquarters is situated. In the case of an employer not having its headquarters' activities at a place of business within a taxing municipality, the term shall mean the largest place of business located in a taxing municipality.
37. "Qualified plan" means a retirement plan satisfying the requirements under section 401 of the Internal Revenue Code, as amended.
38. "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code.
39. "Resident" means an individual domiciled in the Village. Continuous residence within the Village for ninety (90) days or more shall prima facie constitute domiciliary residence.
40. "Resident incorporated business entity" means an incorporated business entity whose office, place of operations or business situs is within the Village.
41. "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Village.
42. "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.
43. "Rules and Regulations" means the Rules and Regulations, IF ANY, as adopted and authorized or required by this Ordinance and which are incorporated as the rules of interpretation of this Ordinance, if any.
44. "Schedule C" means Internal Revenue Service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.
45. "Schedule E" means Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.
46. "Schedule F" means Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.
47. "S Corporation" means a corporation that has made an election under subchapter S of Chapter 1 of subtitle A of the Internal Revenue Code for its taxable year, treated as a corporation for purposes of the Village tax.
48. "Tax Commissioner" means the individual appointed to administer the Village's Income Tax Ordinance and to direct the operation of the Village Income Tax Department or the person executing the duties of the Tax Commissioner.
49. "Taxable income" means qualifying wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance

pay, any pay as part of an employee buyout or wage continuation plan and other compensation paid by an employer or employers, compensation for personal services, gambling winnings, other income defined by statute as taxable, and/or adjusted federal taxable income from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this Ordinance.

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

51. "Taxing municipality" means a municipality levying a tax on income earned by nonresidents working within such municipality and on income earned by its residents.

52. "Taxpayer" means a person subject to a tax on income levied by a municipal corporation. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

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

### 171.03 IMPOSITION OF TAX.

A. Rate. Subject to the provisions of prior section 181.03, an annual tax for the purposes specified in section 181.02 shall be and is hereby levied on and after December 6, 1976, at the rate of one percent (1.0%) per annum, on and after September 1, 1987, at the rate of one and one-half percent (1.5%) per annum upon the following:

1. Resident Employee. On all qualifying wages, including sick and vacation pay, bonuses, commissions, grievance pay, incentive payments, settlements, stock options, severance pay, any pay as part of an employee buyout or wage continuation plan, other compensation, and other taxable income earned or received by residents of the Village.

a) For the purpose of determining the tax on the earnings of resident taxpayers taxed under section 171.03 of the Ordinance, the sources of the earnings and the place or places in or at which the services were rendered are immaterial. All such earnings wherever earned or paid are taxable.

b) The following items are subject to the tax:

.1 Qualifying wages, including sick and vacation pay, bonuses, commissions, grievance pay, incentive payments, settlements, stock options, severance pay, any pay as part of an employee buyout or wage continuation plan, other compensation, and other taxable income earned or received by an individual whether directly or through an agent and whether in cash or in property for services rendered during the tax period as:

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

.02 An employee (as distinguished from a partner or member) of a partnership, limited partnership, or any form of unincorporated enterprise owned by two or more persons;

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

.04 An officer or employee (whether elected, appointed or commissioned) of the United States Government, or any of its agencies; or of the State of Ohio or any of its political subdivisions or agencies thereof; or any foreign country or dependency except as provided in section 171.03(G) of the Ordinance;

- .05 An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates; and whether paid by an individual, partnership, association, corporation (including charitable and other non-profit corporations), governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity.
- .2 Commissions earned by an individual directly or through an agent and whether in cash or in property for services rendered during the effective period of the Ordinance, regardless of how computed or by whom or wheresoever paid.
  - .01 If amounts received as a drawing account exceed the commissions earned and the excess is not subject to the demand of the employer for repayment the tax is payable on the amounts received as a drawing account.
  - .02 Amounts received from an employer for expenses, and not as compensation, and used as such by the individual receiving them, are not deemed to be compensation if the employer deducts such expenses or advances as such from his gross income for the purpose of determining his net profits taxable under federal law, and the employee is not required to include such receipts as income on his federal tax return.
  - .03 If commissions are included in the net earnings of the trade, business, profession, enterprise, or activity carried on by an unincorporated entity of which the individual receiving such commission is owner or part owner and therefore subject to the tax under section 171.03(A)(3) or 171.03(A)(4) of the Ordinance, they shall not be taxed under section 171.03(A)(1).
- .3 Fees, unless such fees are properly includable as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity owned or partly owned by said individual and such net profits are subject to the tax under section 171.03(A)(3) of the Ordinance.
- .4 Other compensation, including but not limited to: tips, bonuses, gifts or prizes of any type connected with employment or in lieu of pay, and including compensation paid to domestic servants, casual employees and other types of employees.
- .5 Employer paid premiums for group term life insurance to the extent taxable for federal income tax purposes.
- .6 Payments made to an employee by an employer as sick leave, holiday pay, vacation pay, or qualifying wages under any other wage continuation plan during periods of disability, sickness or absence from work are taxable when paid.
- .7 Payments made to an employee for sick or disability pay, whether paid by the employer to the employee or through a third party, are taxable if the amount appears on a W-2 form and the employer or third party has paid the premium for this insurance coverage.
- .8 Contributions by an employee or on behalf of an employee from gross wages into employer or third party trusts, non-qualified retirement plans, nonqualified deferred compensation plans or programs or qualified retirement plans, as permitted by any provisions of the Internal Revenue Code and which are excludable from gross wages for federal tax purposes are not and never have been excludable from qualifying wages subject to the Village income tax (401k plans and similar plans).
- .9 Sums deducted from gross wages or other compensation for retirement purposes (deferred compensation plans and similar plans) are taxable.
- .10 The ordinary income portion of a stock option, employee stock purchase plan or other compensation received in the form of property to the extent that it is shown on a W-2 as ordinary income and is includable on the taxpayer's federal income tax return.

- .11 Incentive payments and/or settlement payments, no matter how described, including but not limited to payments to induce early retirement.
  - .12 Car allowance, personal use of employer-provided vehicle.
  - .13 Payment made to an employee by an employer for moving or relocation in excess of federal allowance.
  - .14 Payments to an employee by an employer as separation or severance payouts (including, but not limited to sick pay, vacation pay, separation pay, termination pay, early retirement incentives and/or settlement payments) and reportable as earned income are taxable when paid if applicable tax has not previously been paid.
  - .15 Trusts not made pursuant to employee's retirement.
  - .16 Supplemental unemployment compensation benefits described in section 3402 (o)(2) of the Internal Revenue Code.
  - .17 Grievance pay and strike pay.
  - .18 Any monies withheld from employees' wages by a non-profit organization on a voluntary basis for the purchase of "TAX SHELTER ANNUITIES" under the provisions of Internal Revenue Code, section 401 shall be considered as income for determination of wages, subject to the Village income tax.
  - .19 All other earned compensation. If income appears on a W-2 form and is not shown to be an exception in accordance with section 171.03(G) hereof, it shall be considered other compensation and therefore taxable to the individual.
  - .20 Losses from the operation of a business or profession are not deductible from employee earnings.
- c) Where compensation is paid or received in property, its fair market value, at the time of receipt, shall be subject to the tax and to withholding. Board, lodging and similar items received by an employee in lieu of additional cash compensation shall be included in earnings at their fair market value.
- .1 In the case of domestics and other employees whose duties require them to live at their place of employment or assignment, board and lodging shall not be considered as wages or compensation earned.
  - .2 Housing for clergy shall not be considered as wages or compensation earned.
2. Nonresident Employee. On all qualifying wages, including sick and vacation pay, bonuses, commissions, grievance pay, incentive payments, settlements, stock options, severance pay, any pay as part of an employee buyout or wage continuation plan, other compensation, and other taxable income earned or received by nonresidents for work done or services performed or rendered in the Village or as a result of employment in the Village whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property.
- a) The location of the place from which payment is made is immaterial.
  - b) The items subject to tax under section 171.03(A)(2) of the Ordinance are the same as those listed and defined in section 171.03(A)(1).
  - c) The Village shall not tax the compensation of an individual if all of the following apply:
    - .1 The individual does not reside in the Village;
    - .2 The compensation is paid for personal services performed by the individual in the Village on twelve (12) 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 and the individual pays tax on compensation described in item (.2) of this section to the municipality, 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, as a may be reasonably defined by the Village.
  - d) For purposes of the 12-day calculation, "Day" means any part of a 24-hour calendar day where compensation is earned in the Village.
  - e) Beginning with the thirteenth (13) day, the individual shall no longer be considered an occasional entrant and is liable for taxes on income earned for the first twelve (12) days.
3. a) Resident Unincorporated Business. On the portion attributable to the Village of the net profits earned by all resident associations, unincorporated businesses, pass-through entities, professions or other entities, derived from sales made, work done, services performed or rendered or business or other activities conducted in the Village.
- .1 The tax imposed on resident associations, unincorporated businesses, pass-through entities, professions or other unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof, but the tax imposed on an unincorporated resident entity owned by one person is upon the individual owner.
  - .2 The tax imposed by section 171.03(A)(3) of the Ordinance is imposed on all resident unincorporated entities having net profits attributable to the Village under the business apportionment percentage formula provided for in the Ordinance, regardless of where the owner or owners of such resident unincorporated business entity reside.
  - .3 Resident associations, unincorporated businesses, pass-through entities, professions or other unincorporated entities owned by two or more persons, all of whom are residents of the Village, may disregard the business apportionment percentage formula provided for in the Ordinance and pay the tax on their entire net profits thereof if no apportionment by the entity to another taxing municipality exists. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of the net profits from the entity; however, an additional return shall be required from any such owner or member having taxable income other than the distributive share of the net profits from the entity.
  - .4 The tax imposed shall not apply to income derived within the Village by any person from interstate commerce if the only business activities within the State of Ohio by or on behalf of such person, are either, or both of the following:
    - .01 Solicitation of orders by such person, or his representative, in the State of Ohio for sales of tangible personal property, which orders are sent outside of the State of Ohio for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State of Ohio; and
    - .02 The solicitation of orders by such person, or his representative in the State of Ohio, in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitations are orders described in subsection (.01) above; provided, however, that the provisions of this subsection shall not apply to any corporation which is incorporated under the laws of the State of Ohio or any individual who is domiciled in or a resident of the State of Ohio. For the purpose of this subsection a person shall not be considered to have engaged in a business activity within the State of Ohio during any taxable year merely by reason of sales in the State of Ohio, or the solicitation of orders for sales within the State of Ohio, of tangible personal

property on behalf of such person by one or more independent contractors, or by reason of the maintenance of an office within the State of Ohio by one or more independent contractors whose activities on behalf of such person in the State of Ohio consist solely of making sales, or soliciting orders for sales of tangible personal property. For the purposes of this subsection the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for sales of tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities. For the purpose of this subsection, the term "representative" does not include an independent contractor.

- b) Resident's Distributive Share of Profits of a Resident Unincorporated Business Entity, Not Attributable to the Village. On the portion of the distributive share of the net profits earned by a resident owner of a resident association, unincorporated business entity, pass-through entity, profession or other unincorporated entity not attributable to the Village and not levied against such resident association, unincorporated business entity, pass-through entity, profession or other unincorporated entity by the Village or any other taxing municipality at the same or higher rate.
- .1 A resident individual who is sole owner of a resident unincorporated entity shall pay the tax on the entire net profits of his resident unincorporated business entity. If allocation to another municipality exists, the taxpayer may qualify for credit for tax paid to another locality under section 171.14.
  - .2 In the case of a resident individual partner or part owner of a resident unincorporated entity, the tax is imposed on such individual's distributive share of net profits not attributable to the Village, under business apportionment percentage formula provided for in section 171.03(B) of the Ordinance, and not taxed against the entity.
4. a) Nonresident Unincorporated Business. On the portion attributable to the Village of the net profits earned by all nonresident associations, unincorporated businesses, pass-through entities, professions or other unincorporated entities, derived from sales made, work done, services performed or rendered or business or other activities conducted in the Village, whether or not such nonresident association, unincorporated business, pass-through entity, profession or other unincorporated entity has an office or place of business in the Village.
- .1 The tax imposed on nonresident associations, unincorporated businesses, pass-through entities, professions or other unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof.
  - .2 The tax imposed by section 171.03(A)(4) of the Ordinance is imposed on all nonresident unincorporated entities having net profits attributable to the Village under the business apportionment percentage formula provided for in the Ordinance, regardless of where the owner or owners of such nonresident unincorporated business entities reside.
  - .3 Nonresident associations, unincorporated businesses, pass-through entities, professions or other unincorporated entities owned by two or more persons, all of whom are residents of the Village, may disregard the business apportionment percentage formula provided for in the Ordinance and pay the tax on their entire net profits thereof if no apportionment by the entity to another taxing municipality exists. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of the net profits from the entity; however, an additional return shall be required from any such owner or

member having taxable income other than the distributive share of the net profits from the entity.

- b) Resident's Distributive Share of Profits of a Nonresident Unincorporated Business Entity, Not Attributable to the Village. On the portion of the distributive share of the net profits earned by a resident owner of a nonresident association, unincorporated business entity, pass-through entity, profession or other unincorporated entity not attributable to the Village and not levied against such nonresident association, unincorporated business entity, pass-through entity, profession or other unincorporated entity by the Village or any other taxing municipality at the same or higher rate.
- .1 A resident individual who is sole owner of a nonresident unincorporated entity shall pay the tax on the entire net profits of his resident unincorporated business entity. If allocation to another municipality exists, the taxpayer may qualify for credit for tax paid to another locality under section 171.14.
  - .2 In the case of a resident individual partner or part owner of a nonresident unincorporated entity, the tax is imposed on such individual's distributive share of net profits not attributable to the Village, under business apportionment percentage formula provided for in section 171.03(B) of the Ordinance, and not taxed against the entity.
5. Net Profits of Corporations. On the portion attributable to the Village of the net profits earned by all corporations, whether domestic or foreign, that are not pass-through entities derived from sales made, work done or services performed or rendered or business or other activities conducted in the Village, whether or not such corporations have an office or place of business in the Village.
- a) The tax is imposed on the net profits attributable to the Village under the business apportionment percentage formula provided for in the Ordinance.
  - b) In determining whether a corporation is conducting a business or other activity in the Village, the provisions of the Rules and Regulations, if any, of this Ordinance shall be applicable.
  - c) A corporation whose sole business location is within the Village shall be considered a resident Village corporation and shall disregard the business apportionment percentage formula and pay the tax on the entire net profits of the corporate entity, unless allocation to another taxing municipality exists.
  - d) Corporations which are required by the provisions of Ohio Revised Code 5727.38 to 5727.41, inclusive, to pay an excise tax in any taxable year as defined by the Ordinance, may exclude that part of their gross receipts upon which the excise tax is paid. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to the tax imposed by the Ordinance.
6. Amplification.  
In amplification of the definition contained in section 171.02 herein, but not in limitation thereof, the following additional information respecting net business profits is furnished.
- a) Net Profits.
    - .1 "Net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts described in section 171.03(E), required to be reported on schedule C, schedule E, or schedule F.
    - .2 "Adjusted federal taxable income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as defined in section 171.02 herein.

b) Gross Receipts.

- .1 Gross receipts shall include but not be limited to income in the form of commissions, fees, directors' fees, subpay, profit sharing from nonqualified plans, rentals from real and tangible personal property, and other compensation for work or services performed or rendered as well as income from sales of stock in trade.
- .2 Gross receipts shall include ordinary income from Form 4797.

c) Expenses.

- .1 All ordinary and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed but no deduction may be claimed for salary or withdrawal of a proprietor or of the partners, members, or other owners of an unincorporated business or enterprise.
- .2 If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty, not compensated for by insurance or otherwise of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the federal income tax. Provided, however, that loss on the sale, exchange or other disposition of depreciable property or real estate, used in the taxpayer's business, shall not be allowed as a deductible expense.
- .3 Current amortization of emergency facilities under the provisions of the Internal Revenue Code, if recognized as such for federal income tax purposes, may be included as an expense deduction hereunder.
- .4 Where depreciable property is voluntarily destroyed, only the cost of such demolition and the undepreciated balance thereof will be allowed as an expense in the year of such demolition, to the extent allowable for federal income tax purposes.
- .5 Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Tax Commissioner (if the reserve method is used), a reasonable addition to the reserve may be claimed, but in no event shall the amount exceed the amount allowable for federal income tax purposes.
- .6 Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax, then taxes on and other expenses of said property are not deductible. In any event, the following taxes are not deductible from income: (1) the tax under the Ordinance; (2) federal or other taxes based upon income; (3) gift, estate or inheritance taxes; (4) taxes for local benefit or improvements to property which tend to appreciate the value thereof; and (5) self-employment taxes for unincorporated businesses or other entities, including credit for employment taxes as allowed for federal tax purposes.
- .7 If the taxpayer reports income that is non-taxable under the Ordinance and such amounts are deducted in order to reconcile the municipal return with the taxpayer's federal return, expenses attributable to this non-taxable income shall not be allowed as a deduction from the remaining taxable income. The expenses attributable to such non-taxable income shall be:
  - .01 Five percent (5%) of the non-taxable income. Non-taxable income given capital gain treatment on the federal return, from which attributable expenses were already deducted, is not subject to the foregoing.
- .8 An employee who is paid on a commission or other compensation basis and who pays his business expense from his commissions or other compensation, without reimbursement from his employer, may deduct from his gross commissions or other compensations, business expenses allowed by the Internal Revenue Service

for federal income tax purposes but only to the extent said expenses are incurred in earning commissions or other compensations subject to the tax imposed by the Ordinance. Business expenses allowed shall be those expenses allowed to be claimed on the federal Form 2106 and upon the request of the Tax Commissioner, verifiable with supporting schedules and/or receipts. Failure to produce the supporting schedules and/or receipts upon request of the Tax Commissioner shall result in disallowance of the expenses in question. No expenses claimed on federal Form Schedule A, Itemized Deductions shall be allowed.

- .9 Income from the sale of, or lease of mineral rights are not taxable and expenses or loss in connection therewith are not deductible for tax purposes except in cases where taxpayer conducts the activities by which the minerals are extracted from the land.
- .10 Funds allocated by employers to qualified plans of employees are not taxable to the employees if the employees have no vested right in the money so allocated.
- .11 401(k), IRA, SEP, KEOGH plans or any other type of deferred compensation plans shall not be allowed as a deduction against income for unincorporated entities or the like as allowed for federal purposes.
- .12 Deductions shall not be allowed for self-employed health insurance against income as allowed for federal or state tax purposes for unincorporated entities or the like.
- .13 Expenses incurred while attending educational courses may not be deducted from wages.
- .14 Moving expenses included in gross earnings shall be an allowance as a deductible expense. No deduction will be allowed if the taxpayer does not provide the federal Form 3903 for his moving deductions. Only moving expenses incurred, as part of income included in gross earnings, will be allowed.
- .15 In general, all business expense recognized and to the extent allowed as such for the purpose of determining federal income tax will be recognized and allowed for determining Village income tax under the provisions of the Ordinance. However, contributions are not considered as an ordinary and necessary expense of doing business and are disallowed as an expense.

#### 7. Rentals From Real Property.

- a) The rental of real estate is ordinarily a business activity, and the income from such rentals are taxable, provided, however, where the taxpayer's entire rental activity produces gross rentals of less than two hundred fifty dollars (\$250.00) per month, it will be prima facie evidence that such rental activities are not a business activity. If gross rentals equal or exceed two hundred fifty dollars (\$250.00) per month, the entire net income from rentals is taxable. In determining the amount of gross monthly rental of any real property, periods during which, by reason of vacancy or any other cause, rentals are not received shall not be taken into consideration by the taxpayer.
- b) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- c) Real property shall include commercial property, residential property, farm property, and any and all types of real estate.
- d) In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for federal income tax purposes.
- e) Residents of the Village are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned. However, if any such property is located outside the Village, and is subject to another municipal income tax, credit shall be claimed in accordance with section 171.14.

- f) Nonresidents of the Village are subject to such taxation only if the real property is situated within the Village.
  - g) To be considered non-taxable as ground rents, the property must be under perpetual leasehold by the terms of which the lessor performs no services of any type, including the payment of taxes on the property.
  - h) Businesses owning or managing real estate are taxed only on that portion of income derived from property located in the Village.
8. Royalties. Income in the form of royalties is taxable if taxpayer's activities produced the publication or other product, the sale of which produces the royalties.
  9. Gambling Winnings. On all income received as gambling winnings as reported on Internal Revenue Service Form W-2G, Form 5754 and/or any other form required by 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.
  10. Non-employee compensation.
  11. Fellowships, scholarships, stipends and grants, to the extent that they are taxable for federal income tax purposes.

B. Apportionment of Business Profits for Businesses Both In and Outside the Village Boundaries. This section does not apply to taxpayers that are subject to and required to file reports under Chapter 5745, of the Ohio Revised Code. Except as otherwise provided in division (C) of this section, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of the following:

1. Business Apportionment Percentage Formula. Multiply the entire net profits of the business by a business apportionment percentage formula to be determined by:
  - a) STEP 1. Ascertain the percentage which the average original cost of the real and tangible personal property, including leasehold improvements, owned or used by the taxpayer in the business or profession and situated within the Village during the taxable period is to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.
    - .1 As used in the preceding subsection, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight (8). The percentage of taxpayer's real and tangible personal property within the Village is determined by dividing the average original cost of such property within the Village (without deduction of any encumbrances) by the average original cost of all such property within and without the Village.
    - .2 Gross rents means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or possession of property and includes:
      - .01 Any amount payable for the use or possession of real and tangible personal property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales profits or otherwise;
      - .02 Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs, or other amounts required to be paid by the terms of a lease or other arrangement.

- .3 A residence may not be considered an office unless a portion thereof is used exclusively for business purposes and is reached by a separate entrance in an exterior wall which does not serve as the entrance to the balance of the building.
- b) STEP 2. Ascertain the percentage which the total wages, salaries, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan and other forms of compensation paid during the taxable period to persons employed in the business or profession for services performed in the Village is to the total wages, salaries, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan and other forms of compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under section 718.011 of the Ohio Revised Code.
  - .1 Salaries, wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan and other forms of compensation subject to the Village income tax paid owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purpose of this computation.
  - .2 Salaries, wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan and other forms of compensation subject to the Village income tax shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.
  - .3 In the case of an employee who performs services both within and without the Village the amount treated as compensation for services performed within the Village shall be deemed to be:
    - .01 In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the Village.
    - .02 In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services, within the Village bears to the value of all his services; and
    - .03 In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the Village is of his total working time.
    - .04 Provided, however, all employees regularly connected with or working out of a place of business maintained by the taxpayer in the Village who perform 75% or more of their services within the Village be considered employees within the Village.
  - .4 Nonresident professional persons shall use the factor of days spent within the Village to total working days. All employees regularly connected with or working out of a place of business maintained by the taxpayer outside the Village who perform 25% or less of their services within the Village shall be considered employees outside the Village. (The provisions of this subsection are not applicable in determining the tax liability of a nonresident who works in and outside the Village.)

- c) STEP 3. Ascertain the percentage which the gross receipts of the business or profession from sales made and services performed during the taxable period in the Village is to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.
    - .1 The following sales shall be considered Village sales:
      - .01 All sales made through retail stores located within the Village to purchasers within or without the Village except such of said sales to purchasers outside the Village that are directly attributable to regular solicitations made outside the Village personally by taxpayer's employees.
      - .02 All sales of tangible personal property delivered to purchasers within the Village regardless of where title passes if shipped or delivered from a stock of goods at an office, store, warehouse, factory, or place of storage located within the Village.
      - .03 All sales of tangible personal property delivered to purchasers within the Village regardless of where title passes even though transported from a point outside the Village if the Taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village and the sales directly or indirectly result from such solicitation or promotion.
      - .04 All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within the Village to purchasers outside the Village if the taxpayer is not, through its own employees regularly engaged in the solicitation or promotion of sales at the place of delivery.
      - .05 Charges for work done or services performed incident to a sale, whether or not included in the price of the property shall be considered gross receipts from such sale.
      - .06 In the application of the foregoing subsections a carrier shall be considered the agent of the seller, regardless of the FOB point or other conditions of the sale, and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside the Village by mail or phone from an office, or place of business within the Village shall not be considered a solicitation of sales outside the Village.
      - .07 Nonresident professional persons shall use the factor of the Village billings over total billings.
  - d) STEP 4. Adding together the percentages determined in accordance with section 171.03(B)(1)(a)(b) and (c) herein 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 such total. The result so obtained is the business apportionment percentage.
    - .1 A factor is applicable even though it may be apportioned entirely in or outside the Village. A factor is excluded only when it does not exist anywhere.
    - .2 Provided, however, that in the event a just and equitable result cannot be obtained under the business apportionment percentage formula provided for herein, the Tax Commissioner, upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.
  - e) STEP 5. The business apportionment percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits apportioned to the Village.
2. Substitute Method.
- a) In the event a just and equitable result cannot be obtained under the business apportionment percentage formula, the Tax Commissioner, upon application of the

taxpayer, shall have the authority to substitute other factors in the business apportionment percentage formula or prescribe other methods of apportioning net income calculated to effect a fair and proper apportionment.

- b) Application to the Tax Commissioner to substitute other factors in the business apportionment percentage formula or to use a different method to apportion net profits must be made in writing before the end of the tax year and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. A copy thereof shall be served at the time of filing upon the taxpayer or Tax Commissioner as the case may be. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the Tax Commissioner.
- c) The decision of the Tax Commissioner on subsections (2)(a) and (2)(b) hereof may be appealed by the taxpayer to the Board of Review, which shall have the power to affirm, reverse or modify such decision of the Tax Commissioner.

3. Professional And Personal Service.

In the case of professional people and others furnishing personal services, if their only place of business is within the Village all their net profits shall prima facie be attributable to the Village.

C. Except as otherwise provided in division (D) of this section, net profit from rental activity not constituting a business or profession shall be subject to tax only by the municipal corporation in which the property generating the net profit is located.

D. This section does not apply to individuals who are residents of the Municipality and, except as otherwise provided in section 718.01 of the Ohio Revised Code, the Municipality may impose a tax on all income earned by residents of the Municipality to the extent allowed by the United States Constitution.

E. Net Operating Loss (NOL).

- 1. The municipality does not allow a net operating loss carryback or carryforward.
- 2. Nothing contained in Chapter 718.01 of the Ohio Revised Code requires a municipal corporation to allow a net operating loss carryback or carryforward.

F. Consolidated Returns.

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

G. Exceptions. The following shall not be considered taxable:

1. Military pay or allowances of members of the armed forces of the United States and of members of their reserve components, including the Ohio National Guard.
2. Income of any religious, fraternal, charitable, scientific, literary, or educational institutions enumerated in section 718.01 of the Ohio Revised Code to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.
  - a) Any association or organization falling in the category listed in the preceding paragraph is required to file declarations and final returns and remit the taxes levied under the Ordinance on all net profits from activities, the income from which is not specifically exempt from taxation in section 718.01 of the Ohio Revised Code.
  - b) Where such non-profit association or organization conducts income-producing business both within and without the corporate limits, it shall calculate its profits apportioned to the Village under the method or methods provided above.
3. Income from intangibles by way of dividends, interest and the like, if such income is subject to taxation under the intangible personal property laws of the State of Ohio, are specifically exempt from municipal taxation under said law.
4. Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars (\$1,000) may be subject to taxation. The payer of such compensation is not required to withhold Village tax from that compensation.
5. Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the Village, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the Village, or the headquarters of the authority or commission is located within the Village.
6. The income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code, except a municipal corporation may tax the following, subject to Chapter 5745 of the Ohio Revised Code:
  - a) The income of an electric company or combined company;
  - b) The income of a telephone company.
  - c) As used in division (G)(6) of this section, "combined company", "electric company", and "telephone company" have the same meanings as in section 5727.01 of the Ohio Revised Code.
7. The rental value of a home furnished to a minister of the gospel as part of his compensation, or the rental allowance paid to a minister of the gospel as part of his compensation, to the extent used by him to rent or provide a home pursuant to section 107 of the Internal Revenue Code.
8. Compensation earned by occasional entrants as defined in 171.03(A)(2)(c).
9. An S corporation shareholder's distributive share of net profits of the S corporation, other
10. Compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.
11. Proceeds from welfare benefits, unemployment insurance benefits or similar payments received from local, state or federal government or charitable or religious groups.
12. Proceeds of social security benefits, qualified retirement plans as defined by the Internal Revenue Service, annuities, insurance, worker's compensation, permanent disability benefits, compensation for non-punitive damages for physical personal injuries and like reimbursement, not including damages for loss of profits.
13. Compensation for damage to property by way of insurance or otherwise.

14. Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the State of Ohio from which the Village is specifically prohibited from taxing and income of a decedent's estate during the period of administration (except such income from the operation of a business).
15. Alimony is not taxed to the recipient if exempt for federal income tax purposes nor is it allowed as a deduction by the payer.
16. If exempt for federal income tax purposes, fellowship and scholarship grants are also exempt from the Village tax.
17. Generally, the above noted items in this section are the only forms of income not subject to the tax. Any other income, benefits, or other forms of compensation would be assumed to be taxable.
18. All income and earnings under \$600.00 per annum of individuals under 18 years of age, whether resident or non-resident.

#### 171.04 EFFECTIVE PERIOD.

The tax imposed by this Ordinance shall be levied, collected and paid with respect to the, qualifying wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan and other compensation paid by an employer or employers, with respect to gambling winnings and with respect to the net profits of businesses, professions or other activities subject to the tax, earned on or after September 1, 1987.

#### 171.05 RETURN AND PAYMENT OF TAX.

##### A. Dates and Requirements for Filing.

1. On or before April 15<sup>th</sup> of each year, every person subject to the provisions of section 171.03 of the Ordinance, except as hereinafter provided, and every resident, shall make and file with the Tax Commissioner, a return on a form prescribed by and obtainable upon request from the Tax Commissioner, or on an acceptable generic form whether or not a tax be due.
2. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the end of such fiscal year or period.
3. The Tax Commissioner is hereby authorized to provide by regulation that the return of an employer or employers showing the amount of Village tax deducted by such employer or employers from the qualifying wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan, other compensation, and other taxable income of an employee, and paid by him or them to the Tax Commissioner may be accepted as the return required of any employee whose sole income, subject to tax under this Ordinance, is such qualifying wages, including sick and vacation pay, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan or other compensation.
4. The return shall be accompanied by payment of any taxes due thereon.
5. An employee who is paid on a qualifying wage, commission or other compensation basis and who pays his business expense from his qualifying wage, commission or other compensation, without reimbursement from his employer, may deduct from his qualifying wage, commission or other compensation, business expenses allowed by the Internal Revenue Service for federal income tax purposes but only to the extent said expenses are incurred in earning commissions or other compensations subject to the tax imposed by the Ordinance. The employee must file a return in order to claim such deductions

even though all or parts of such qualifying wage, commission or other compensation are subject to withholding. Business expenses allowed shall be those expenses allowed to be claimed on the federal Form 2106 and upon the request of the Tax Commissioner, verifiable with supporting schedules and/or receipts. Failure to produce the supporting schedules and/or receipts upon request of the Tax Commissioner shall result in disallowance of the expenses in question. No expenses claimed on federal Form Schedule A, Itemized Deductions shall be allowed.

6. Moving expenses included in gross earnings shall be an allowance as a deductible expense. No deduction will be allowed if the taxpayer does not provide the federal Form 3903 for his moving deductions. Only moving expenses incurred, as part of income included in gross earnings, will be allowed.
7. Except as provided for herein, the tax is on the association, unincorporated business, pass-through entity, profession or other unincorporated entity as an entity whether resident or nonresident and a return is required disclosing the net profits apportioned to the Village and the tax paid thereon. However, any resident partner or resident member is required to make a return and pay the tax in accordance with this Ordinance and Rules and Regulations.
8. Any taxpayer who received taxable income not subject to withholding under the Ordinance must file a return.
9. Any taxpayer having income, wages, or other compensation for which a return must be filed, and also having net profits from a business is required to file only one return.
10. Executors, administrators and trustees are required to file returns on the trusts, are liable for the payment of any taxes due by a deceased from an estate of such deceased and are required to give the name and address of the beneficiaries, even though the latter individually pays the tax.

B. Joint Returns.

1. A husband and wife may file either separate returns or a joint return for Village purposes, even though one of the spouses has neither taxable income nor deductions included on the Village return regardless of whether their federal and state returns were filed separately or jointly. If a joint Village return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.
2. A husband and wife may file a joint return either when engaged in the same or separate businesses, but may not deduct business losses of either from compensation paid by an employer.

C. Returns, Information Required and Reconciliation with Federal Returns. The return shall be filed with the Tax Commissioner on a form or forms furnished by or obtainable upon request from such Commissioner, or an acceptable generic form that contains all of the information required to be submitted with the Village's prescribed form setting forth:

1. The aggregate amounts of qualifying wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan, other compensation earned, received, apportioned or set aside from each employer, gambling winnings, and the net profits from any business, profession or other activity, including the rental from use of real and personal property, distributive shares from pass-through entities and other income defined by statute as taxable, received for the period covered by the return and such other pertinent facts and information in detail as the Tax Commissioner may require.
2. The amount of the tax imposed by this Ordinance on such earnings and profits; and

3. Such other pertinent statements, information returns, copies of federal or state tax returns and/or schedules or other information as the Tax Commissioner may require, including a statement that the figures used in the return are 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. Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be a violation of this Ordinance. Provided, however, that the taxpayer shall have ten (10) days after notification by the Tax Commissioner, or his authorized representative, to file the items required by this paragraph.
5. The Tax Commissioner 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's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the Ordinance and Rules and Regulations governing the filing of returns, reports or documents.
6. Where figures of total income, deductions, and net profits are included, as shown by a federal return, any items of income that are not subject to the Village tax and unallowable expenses shall be eliminated in determining net income subject to the Village tax. The fact that any taxpayer is not required to file a federal tax return does not relieve him from filing a Village tax return.
7. If a change in federal income tax liability, made by the Internal Revenue Service, or by a judicial decision, results in an additional amount of tax payable to the Village, a report of such change shall be filed by the taxpayer within three (3) months after receipt of the final notice from the Internal Revenue Service or final court decision.
8. If a change in federal income tax liability results in a reduction of taxes owed and paid to the Village, a claim for refund shall be filed with the Tax Commissioner as prescribed in section 171.11 of this Ordinance and Rules and Regulations.

D. Extensions.

1. Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of the Village's 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.
2. Any taxpayer not required to file a federal income tax return may request an extension for filing the Village's tax return in writing.
3. The request for extension shall be filed not later than the last day for filing the Village's tax return as prescribed by this Ordinance and Rules and Regulations.
4. 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 income tax return has been extended.
5. The Tax Commissioner may deny a taxpayer's request for extension if the taxpayer:
  - a) Fails to timely file the request;
  - b) Fails to file a copy of the federal extension request (if applicable);
  - c) Owes the Village any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or nonpayment of income tax;
  - d) Has failed to file any required income tax return, report, or other related document for a prior tax period.
6. The granting of an extension for filing a Village income tax return does not extend the due date for paying 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 171.10. 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 Village 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.

7. Information returns, schedules and statements needed to support tax returns are to be filed within the time limits set forth for filing the tax returns.

E. 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. However, where any portion of the tax so due shall have been deducted at the source, pursuant to the provisions of section 171.06, where any portion of such tax shall have been paid by the taxpayer, pursuant to the provisions of section 171.07, or where an income tax, creditable against the Village tax pursuant to section 171.14 has been paid to another taxing 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 the return.
2. Subject to the limitations contained in section 171.11(B), a taxpayer who has overpaid the amount of tax to which the Village is entitled under the provisions of this Ordinance may have such overpayment applied against any subsequent liability hereunder or, at 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.

F. 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 sections 171.11 and 171.14. Such amended returns shall be on a form obtainable on request from the Tax Commissioner or upon an acceptable generic form that contains all of the information required to be submitted with the Village's prescribed form. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.
2. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's Village tax liability, such taxpayer shall make and file an amended Village return showing income subject to the Village tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

171.06 COLLECTION OF TAX AT THE SOURCE.

A. Duty of Withholding and Payment of Tax Withheld by Employer.

1. It is the duty of each employer within, or doing business within the Village, who employs one or more persons, whether as an employee, officer, director or otherwise, on a salary, wage, commission or other personal service compensation basis to deduct, each time any such compensation is paid, allocated or set aside to an employee the tax at the rate provided in section 171.03 hereof on the qualifying wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan or other compensation due by such employer to each such employee and shall, on or

before the fifteenth (15<sup>th</sup>) day of the month following such withholding, make a return and pay to the Tax Commissioner the amount of taxes so deducted. However, the Tax Commissioner shall have the authority to grant to employers with three or less resident employees permission for said employees to file individually. 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. Nothing in this section prohibits an employer from withholding tax on a basis greater than qualifying wages. The tax shall be deducted by the employer from:

- a) The gross amount of all salaries, wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan or other forms of compensation subject to the Village income tax paid, allocated or set aside to residents of the Village, regardless of the place where services are rendered; and
  - b) The gross amount of all salaries, wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan or other forms of compensation subject to the Village income tax paid, allocated or set aside to nonresidents for work done or service performed or rendered in the Village or as a result of employment in the Village or other activities engaged in within the Village.
  - c) An employer is liable for the payment of the tax required to be deducted and withheld, whether or not such tax in fact has been withheld.
2. All employers within or doing business within the Village are required to make the collections and deductions specified, regardless of the fact that the services on account of which any particular deduction is required, as to residents of the Village, were performed outside the Village.
  3. Employers who do not maintain a permanent office or place of business in the Village, but who are subject to tax on net profits attributable to the Village, under the method of allocation provided for in the Ordinance, are considered to be employers within the Village and subject to the requirements of withholding.
  4. Commissions and fees paid to professionals, brokers and others who are independent contractors, and not employees of the payer, are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and return and pay the tax pursuant to the provisions of the Ordinance and Rules and Regulations.
  5. Where a nonresident receives compensation for personal services rendered or performed partly within and partly without the Village, the withholding employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within the Village in accordance with the following rules of apportionment:
    - a) If an employer is located within the Village, all non-resident employees who report to the Village location are taxable to the Village unless the employer is withholding tax for other taxing municipalities where the employee's work is performed.
    - b) If the nonresident is a salesman, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within the Village bears to the total volume of business transacted by him within and outside the Village.
    - c) The deducting and withholding of personal service compensation of other nonresident employees, including officers of corporations shall attach to the proportion of the

- personal service compensation of such employee which the total number of his working hours within the Village is of the total number of working hours.
- d) The fact that nonresident employees are subject to call at any time does not permit the apportionment of pay for time worked within the Village on a seven-day per week basis. The percentage of time worked in the Village will be computed on the basis of a forty-hour week unless the employer notifies the Tax Commissioner that a greater or lesser number of hours per week is worked.
    - .1 The determination of tax liability of nonresidents working in and out of the corporate limits is to be computed on the formula of the total number of days worked in the Village divided by the total number of days worked during the year and the resulting percentage applied to the total annual income from qualifying wages including sick leave, holiday pay, vacation pay and other wage continuation plans during periods of disability, sickness or absence from work. Where no record can be substantiated of the number of days worked, the figure 260 is to be used as the total number of days worked.
  - e) Wages of occasional entrants as defined in section 171.03(A)(2)(c) are not subject to withholding.
  - f) Wage continuation plans paid by the employer or third party agent on behalf of the employer for the purpose of health, rest, recuperation or other reward are deemed to have the same tax situs as the primary job assignment or job location of the employee and are taxable on the same ratio as the normal earnings of such employee for this primary job assignment.
6. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions.
  7. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided such expenses are incurred in earning compensation, including commissions, and are not deducted as a business expense by the employee.
  8. An employer whose records show that an employee is a nonresident of the Village and has no knowledge to the contrary shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside the Village by such employee, provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Tax Commissioner notifies said employer in writing that such employee is a resident of the Village. All employees are required to notify the employer of any change of residence and the date thereof.
  9. An employer shall not be required to withhold the Village tax from the qualifying wages earned by a resident of the Village for work done or services performed in another taxing municipality which imposes a tax upon such qualifying wages of such Village resident if such employer withholds the tax on such resident's wages or other compensation for such other taxing municipality. Except, where such municipal tax is for a smaller amount than the tax imposed by the Ordinance, the employer shall withhold and remit the difference to the Village.
  10. The Tax Commissioner shall have authority to enter into agreement with other taxing municipalities permitting an employer to withhold the entire tax on the qualifying wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan or other forms of compensation subject to the Village income tax

of a floater either for the taxing municipality in which the employer has his principal place of business or the taxing municipality in which the employee resides.

- B. An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.
- C.
  - 1. An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by a municipal corporation or by the employer's exemption from the requirement to withhold the tax.
  - 2. The failure of an employer to remit to the municipal corporation the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.
- D. Compensation deferred before the effective date of this amendment is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.
- E. So long as the taxes withheld by an employer for the Village during the measurement period are less than three hundred dollars (\$300) per month, 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 the Tax Commissioner 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 Village 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.
- F. Employer Considered as Trustee.
  - 1. Each employer in collecting the tax shall be deemed to hold the same, until payment is made by such employer to the Village, as a trustee for the benefit of the Village, and any such tax collected by such employer from his employees shall, until the same is paid to the Village, be deemed a trust fund in the hands of such employer.
  - 2. Each employer 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.
- G. Personal Liability for Collection and Payment of Tax. Any person who is required to withhold tax from qualifying wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan or other compensation, shall pay all such tax to the Village in accordance with the provisions of this section. In the event taxes withheld from the qualifying wages of employees are not paid to the Village in accordance with the provisions of this section, all officers, members, managers, employees, and trustees having control or supervision of or charged with the responsibility of filing the return and making payment are jointly and severally personally liable for the tax not returned or paid to the Village as well as any related interest and penalties, and are also criminally liable under the provisions of section 171.12. The dissolution, termination, or bankruptcy of a corporation, limited liability company, or business trust does not discharge an officer's, member's,

manager's, employee's, or trustee's liability for a failure of the corporation, limited liability company, or business trust to file returns or pay said taxes.

H. Withholding Return; List of Employees.

1. Each employer shall file a withholding tax reconciliation form showing the sum total of all compensation paid all employees, the portion of which, if any, was not subject to withholding along with an explanation for same, and the portion of which was subject to withholding, together with the amount of such withholdings remitted. Such return shall include Form W-2 for each employee or a list of employees containing W-2 information concerning each employee from whom the Village tax was withheld, showing the name, address, zip code and social security number of each such employee, the total amount of compensation paid during the year and the amount of Village tax withheld. If the total tax withheld from any employee included tax withheld and remitted to another taxing municipality, the amount of same shall be separately shown on the return of information to the Village concerning each employee. The withholding tax reconciliation shall be filed by each employer on or before February 28 following the end of such calendar year.
2. If more than the amount of tax required to be deducted by the Ordinance is withheld from the employee's pay, the excess shall be refunded by the employer to the employee. If less than the amount of tax required to be deducted is deducted and withheld by the employer in any pay period or pay periods, the deficiency shall be deducted in subsequent pay periods.
3. When an employer has withheld the tax from all wages of a nonresident of the Village and such nonresident has been employed outside the Village for all or a part of the time and has been withheld for or has paid taxes due another municipality as a result of that employment, such employee shall file a claim with the Tax Commissioner covering such erroneous withholding and the Tax Commissioner shall, upon verification thereof by the employer, refund to the employee the amount of such withholding paid to another municipality, subject to the requirements and limitations contained in section 171.11 and 171.14 of the Ordinance.

I. Form 1099 Reporting. In addition to the wage reporting of this section, any person required by the Internal Revenue Service to report on Form 1099-Misc. payments to individuals not treated as employees for services performed shall also report such payment to the Village when the services were performed in the Village. The information may be submitted on a listing, and shall include the name, address and social security number (or federal identification number), and the amount of the payments made. Federal Form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before February 28.

J. Domestic Servants. However, no person shall be required to withhold the tax on the qualifying wages, commissions, other compensation and other taxable income paid to 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.

K. Fractional Parts Of Cents. In deducting and withholding tax at the source and in payment of any tax due under the Ordinance, a fractional part of a cent shall be disregarded unless it amounts to one-half cent (.005) or more in which case it shall be increased to one cent (.01).

171.07 DECLARATIONS.

A. Requirement for Filing.

1. Every person who anticipates any taxable income which is not or will not be withheld by an employer or employers subject to section 171.06, or who engages in any business, profession, enterprise or activity subject to the tax imposed by section 171.03, 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. Provided, however, if a person's income is wholly from qualifying wages from which the tax will be withheld and remitted to this Village in accordance with sections 171.03, 171.06 and 171.14, such person need not file a declaration.
2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith.

**B. Dates for Filing.**

1. Such declaration shall be filed on or before April 15<sup>th</sup> of each year during the effective period of this Ordinance, or on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the date the taxpayer first becomes subject to the provisions of this section.
2. Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the start of each fiscal year or period.

**C. Forms: Credit for Tax Withheld or Paid Another Taxing Municipality.**

1. Such declaration shall be filed upon a form furnished by or obtainable from the Tax Commissioner, or upon an acceptable generic form that contains all of the information required to be submitted with the Village's prescribed form. Credit shall be taken in such declaration for Village 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 Village tax under section 171.14.
2. For taxpayers who are individuals, such declaration of estimated tax to be paid the Municipality shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated tax liability for the current year and at least a similar amount shall be paid on or before the last day of the seventh (7<sup>th</sup>), tenth (10<sup>th</sup>) and thirteenth (13<sup>th</sup>) months after the beginning of the taxable year.
3. For taxpayers that are not individuals, such declaration of estimated tax to be paid the Municipality shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated tax liability for the current year and at least a similar amount shall be paid on or before the fifteenth (15<sup>th</sup>) day of the sixth (6<sup>th</sup>), ninth (9<sup>th</sup>) and twelfth (12<sup>th</sup>) months after the beginning of the taxable year.
4. The mere submission of a declaration estimating a tax liability shall not constitute filing unless accompanied by the required payment.

**D. Amended Declaration.**

1. 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.
2. An amended declaration must be filed on or before the last day of the month following the close of the taxpayer's tax year, if it appears that the original declaration made for such year underestimated the taxpayer's income by ten percent (10%) or more. At such time a payment, which together with prior payments, is sufficient to pay the taxpayer's entire estimated liability, shall be made. If, upon the filing of the return required it appears that the taxpayer did not pay ninety percent (90%) of his tax liability, as shown on such return,

on or before the last day of the month following the close of the tax year, the difference between ninety percent (90%) of such taxpayer's tax liability and the amount of estimated tax he actually paid on or before such date shall be subject to the interest and penalty provisions of section 171.10.

3. In the event an amended declaration has been filed the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

E. Annual Return Required. On or before the fifteenth (15th) day of the fourth (4<sup>th</sup>) month following the end of the calendar or fiscal year an annual return shall be filed and any balance which may be due the Village shall be paid therewith in accordance with the provisions of section 171.05.

#### 171.08 DUTIES OF THE TAX COMMISSIONER.

A. 1. It shall be the duty of the Tax Commissioner to collect and receive the tax imposed by this Ordinance in the manner prescribed herein, to keep an accurate record thereof and to report all monies so received.

2. It shall be the duty of the Tax Commissioner to enforce payment of all income taxes owing the Village, to keep accurate records for a minimum of six (6) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including a return of taxes withheld, and to show the dates and amounts of payments thereof.

B. Enforcement Provisions.

1. Such Commissioner is hereby charged with the enforcement of the provisions of this Ordinance, including the interpretation and enforcement of the Rules and Regulations, if any, and is hereby empowered to enforce the Ordinance and the Rules and Regulations, If any 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.
2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the Ordinance and Rules and Regulations should submit to the Tax Commissioner in writing all the facts pertinent to the matter on which the ruling is sought.
3. This Ordinance and Rules and Regulations, if any, together with all amendments and supplements hereto and all changes herein, will be on file at the office of the Tax Commissioner and will be open to public inspection.
4. The Tax Commissioner is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Tax Commissioner that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until the proper returns are filed by the taxpayer for all amounts owed by him under the Ordinance.
5. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of sections 171.11 and 171.12 of the Ordinance shall apply.

C. Estimation of Tax by the Tax Commissioner.

1. 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 Village from the taxpayer, may assess the taxpayer upon the basis of such determination and may send to such taxpayer a written

statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

2. Such determination of tax may be adjusted upon submission by the taxpayer of actual records from which his tax may be computed.

D. Upon the demonstration and documentation of good cause, the Tax Commissioner shall have the power to compromise penalty and interest liabilities imposed by this Ordinance, consistent with this Ordinance and Rules and Regulations.

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

F. It shall be the duty of the Tax Commissioner to monitor the application of this Ordinance and to report to both the Board of Review and Council any recommendations for additions, deletions or adjustments.

#### 171.09 INVESTIGATIVE POWERS OF THE TAX COMMISSIONER; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

##### A. Investigations by Tax Commissioner.

1. 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, taxpayer or any person subject to, or whom the Tax Commissioner believes is subject to the provisions of this Ordinance, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax or withholding due under this Ordinance.

2. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, within ten (10) days following a written request of the Tax Commissioner or his duly authorized agent or employee, the means, facilities and opportunities for making such examinations and investigations as are hereby authorized.

##### B. Subpoena of Records and Persons.

1. 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 reported 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, state, county, school district and municipal 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.

2. The Tax Commissioner's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Tax Commissioner.

3. The Tax Commissioner may order the appearance before him, or his duly authorized agent(s), of any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Tax Commissioner is specifically authorized to order the appearance of the local manager or representative of any taxpayer.

4. Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show the time and place of the hearing and what books, papers or records the witness is to make available at such hearing.

5. The notice shall be served by the Tax Commissioner, or his duly authorized agent, by delivering it to the person named personally, or by leaving the notice at his usual place of business or residence, or by mailing it to the person by regular mail addressed to his usual place of business or residence, or by registered or certified mail, return receipt requested, addressed to his usual place of business or residence.
- C. Penalty for Non-Compliance. The failure or refusal to produce books, papers, records and federal income tax returns, 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 171.12.
  - D. Retention of Records. Every taxpayer shall retain all records necessary to compute his tax liability for a period of six (6) years from the date his return is filed or the taxes required to be withheld are paid.
  - E. Information by Landlords.
    1. Within thirty (30) days after a new tenant occupies rental property of any kind within the Village, all owners of rental property who rent to tenants of apartments, rooms, office complexes, warehouse operations 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 within the Village.
    2. Within thirty (30) days after a tenant vacates an apartment, room or other rental property located within the Village, 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, if known.
  - F. Any information gained as a result of any returns, investigations, hearings or verifications required or authorized by this Ordinance shall be confidential and no person shall disclose such information except in accordance with proper judicial order or in connection with the performance of that person's official duties or the official business of the municipal corporation as authorized by this Ordinance.
  - G. Any person divulging such information in violation of this section shall be fined not more than Fifty Dollars (\$50) for the first offense or imprisoned not more than six (6) months, or both, for each subsequent offense. Each disclosure shall constitute a separate offense.
  - H. In addition to the above penalty, any employee of the Village who violates the provisions of this section relative to the disclosure of confidential information shall be charged with an act of insubordination subject to immediate dismissal.

#### 171.10 INTEREST AND PENALTIES.

- A. All taxes imposed and monies withheld or required to be withheld by employers under the provisions of this Ordinance and remaining unpaid after they become due shall bear interest at the rate of one and one-half percent (  $1\frac{1}{2}\%$  ) or fraction thereof.

B. In addition to interest as provided in section (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. For failure to pay taxes due other than taxes withheld: one and one-half percent ( 1½% ) per month or fraction thereof ; minimum penalty for failure to file annual returns when due shall be fifty dollars ( \$50.00 ).
2. For failure to remit taxes withheld from employees: ten percent ( 10% ) per month or fraction thereof.
3. For failure to file tax returns, informational reports or any filing as required by this chapter: fifty dollars ( \$50.00 ) if not more than 160 days late; one hundred dollars ( \$100.00 ) if late by 160 days or more.

C. Exceptions.

1. A penalty shall not be assessed on 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. 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.
2. Upon recommendation of the Income Tax Commissioner, the Board of Review may abate penalty, interest or both or upon appeal from the refusal to recommend abatement of penalty the Board may nevertheless abate penalty or interest or both for good cause shown

#### 171.11 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

A. Unpaid Sums – A Civil Debt.

1. All taxes imposed by this Ordinance and not paid when due shall be collectible, together with any interest and penalties thereon, by suit as other debts of like amount are recoverable. Employers who are required, under section 171.06 of the Ordinance, to withhold or remit the taxes required to be withheld at the source and who fail to withhold or remit, become liable to the Village in a civil action to enforce the payment of the debt created by such failure.
2. No additional assessment shall be made by the Tax Commissioner after three (3) years from the time the tax was due or the return was filed, whichever is later. 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 failure to file a return.
3. In those cases in which the Commissioner of Internal Revenue Service 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 one (1) year from the time of the final determination of the federal tax liability.

B. Refunds and Overpayments.

1. 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 within three (3) months after final determination of the federal tax liability, whichever is later.
2. No refund shall be made to any taxpayer until he has complied with all provisions of the Ordinance and has furnished all information required by the Tax Commissioner.

3. Overpayments will be either refunded or credited to the taxpayer's current liability at his option. Where the taxpayer has made no election, overpayments of any year's taxes shall be applied as follows:
  - a) To taxes owed for any previous years in the order in which such taxes become due.
  - b) To current estimated tax liability
  
- C. Interest shall be allowed and paid on any overpayment by a taxpayer of any Village income tax obligation from the date of the overpayment, except that if any overpayment is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the complete return is filed, whichever is later, no interest shall be allowed on the refunded overpayment. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by Ohio Revised Code 5703.47.
  
- D. Amounts of less than one dollar (\$1.00) shall not be collected or refunded.

#### 171.12 VIOLATIONS; PENALTIES.

- A. 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 the 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 his 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. Willfully give to an employer by an employee false information as to his true name, correct social security number and/or residence address, or the failure of such employee to promptly notify an employer of any change in residence address and date thereof; or
  9. Failure on the part of any employer to maintain proper records of employees' residence addresses, total wages paid and/or Village tax withheld, or to knowingly give the Tax Commissioner false information; or
  10. Fail to comply with the provisions of this Ordinance or any order or subpoena of the Tax Commissioner; or
  11. Fail, neglect or refuse to make any payment on the estimated tax for any year or part of any year as required by section 171.07; or
  12. Fail to cause the tax withheld from the qualifying wages, including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan or any other compensation of employees pursuant to this Ordinance to be paid to the Village in accordance with the provisions of section 171.06; or
  13. 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 of 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 as provided for in the Village of Carey Codified Ordinances.

B. Statute of Limitations.

1. Civil actions to recover Village income taxes and penalties and interest on Village income taxes shall be brought within three (3) years after the tax was due or the return was filed, whichever is later.
2. Prosecutions for an offense made punishable under this Ordinance shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.

C. 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, return or declaration, from filing such form, or from paying the tax.

D. "Person" as used in this section shall, in addition to the meaning prescribed in section 171.02, include in the case of an association or corporation not having any partner, member or officer within the Village, any employee or agent of such association or corporation who can be found within the corporate limits of the Village.

171.13 BOARD OF REVIEW.

A. There shall be a Board of Review that shall consist of three (3) members as follows: The Village Administrator, Village Solicitor and Clerk-Treasurer. The Chairperson of the Board of Review shall be the Village Administrator. The resident members of the Board of Review shall receive such compensation as Council may determine and as may be restricted by the laws of the State of Ohio.

B. A majority of the members of the Board of Review shall constitute a quorum. The Board of Review created and maintained to hear appeals 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 the Board of Review are not meetings of a public body subject to section 121.22 of the Ohio Revised Code. The provisions of section 171.09, 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 of Review on appeal.

C. Whenever the Tax Commissioner issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in the Ordinance and Rules and Regulations, the Tax Commissioner shall notify the taxpayer in writing 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.

D. Any person who is aggrieved by a decision by the Tax Commissioner and who has filed with the Village the required returns or other documents pertaining to the Village income tax obligation at issue in the decision may appeal the decision to the Board of Review by filing a request with the Board of Review. 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.

- E. The imposition of penalty and interest as prescribed in this Ordinance is not a basis for an appeal.
- F. The Board of Review shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board of Review and may be represented by an attorney at law, certified public accountant or other representative.
- G. The Board of Review 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 final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the Tax Commissioner may appeal the Board's decision as provided in section 5717.011 of the Ohio Revised Code.
- H. The Board of Review shall be empowered to recommend to Council for their consideration modifications to, additions to or deletions from this Ordinance, with or without the concurrence of the Tax Commissioner.

#### 171.14 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY OR JOINT ECONOMIC DEVELOPMENT ZONE OR DISTRICT.

- A. Where a resident of the Village is subject to and pays a municipal income tax in another municipality, joint economic development zone or district, he shall be entitled to a tax credit equal to 1) either the amount actually paid on the income taxed by the other municipality, JEDZ or JEDD, or 2) the maximum of one percent (1.0%) of the total amount paid on the income taxed by the other municipality, JEDZ or JEDD; whichever is LESS.
- B. Except as provided in division (D) of this section, if tax or withholding is paid to a municipal corporation on income or wages, and if a second municipal corporation imposes a tax on that income or wages after the time period allowed for a refund of the tax or withholding paid to the first municipal corporation, the second municipal corporation shall allow a nonrefundable credit against the tax or withholding the second municipality claims is due with respect to such income or wages, equal to the tax or withholding paid to the first municipal corporation with respect to such income or wages.
- C. If the tax rate in the second municipal corporation is less than the tax rate in the first municipal corporation, then the credit described in division (C) of this section shall be calculated using the tax rate in effect in the second municipal corporation.
- D. Notwithstanding the provisions contained in section 171.11 or any other provisions consistent herewith, a claim for refund or credit under this section shall be made in such manner as the Tax Commissioner may by regulation provide.
  - 1. No such claim for refund or credit shall be allowed unless made on or before the date of filing the taxpayer's final return unless such taxpayer's employer files with the Tax Commissioner a list showing the tax withheld from such taxpayer's qualifying wages including sick and vacation pay, bonuses, commissions, incentive payments, settlements, stock options, grievance pay, severance pay, any pay as part of an employee buyout or wage continuation plan or other compensation for other municipalities.

2. A refund must be claimed by the taxpayer or his employer within three (3) years of the due date of filing the final return for the year for which such refund is claimed. The Tax Commissioner shall prescribe rules for verification.
- E. A statement satisfactory to the Tax Commissioner from the taxing authority of the taxing municipality to which the taxes are paid that a Village resident or his employer is paying the tax shall be considered as fulfilling the requirement of this section.

#### 171.15 INCOME TAX DEPARTMENT CONFIDENTIALITY.

- A. All employees of the Village Income Tax Department shall maintain complete confidentiality over all data and statistical information compiled by them in their capacity as Village employees of the Village Income Tax Department, subject to the exceptions provided for in this Ordinance. This Ordinance shall apply only to the Village income tax, and not to any other tax data gathered by such employees in the normal course of their employment. All confidential information may be subject to Court Order or subpoena, or may be disclosed upon a proper release executed by the affected taxpayer.
- B. The following statistical data may be transmitted to another Village Department for internal administrative purposes: information that may be obtained from a separate source, including names, addresses and telephone numbers.
- C. The following statistical data may be transmitted to another Village Department for internal administrative purposes: data regarding the collective payroll withholding taxes of a business entity located within the Village, as long as such business entity involves more than one individual for whom the withholding tax payments are being generated.
- D. The following statistical data may be transmitted to another Village Department for internal administrative purposes: data regarding the number of employees and the total payroll taxes generated by all employees of a business entity located within the Village as long as the business entity employs more than one individual at any time. This data shall only include the total number of employees and the combined total payroll taxes, and shall not include earnings or payroll taxes of individual employees of such business entity.
- E. No employee of the Village Income Tax Department shall disclose to the general public or to any other Village Department data concerning individual earnings or profits earned by an individual or by a business entity. No statistical or administrative data shall be disseminated or disclosed to members of the general public.
- F. Upon proper release [ i.e. court order, etc. ] individual data, including confidential data, may be released. The Village Income Tax Department shall maintain a copy of the release after such data has been disclosed.

#### 171.16 SEVERABILITY.

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 provided for herein. Any sentence, clause, section or part of this Ordinance, any tax against or exception granted any individual or any of the several groups of persons or forms of income specified herein 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 that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, or part thereof, not been included therein.

#### 171.17 SAVINGS CLAUSE.

The Rules and Regulations, IF ANY as adopted and authorized or required by this Ordinance and which are incorporated as the rules of interpretation of the Ordinance contain changes from the Rules and Regulations adopted for previous years in an effort to affect uniform administration of municipal income taxes throughout Ohio. Changes in these Rules and Regulations from those of previous years do not imply intent to effect a substantial change in the Rules and Regulations, but are merely changes in form.

#### 171.18 PENALTY.

- A. Any person divulging information in violation of section 171.09(F) shall be fined not more than fifty dollars (\$50.00) for the first offense and imprisoned no more than six months, or both, for each subsequent offense. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the Village who violates the provisions of this section relative to the disclosure of confidential information shall be charged with an act of insubordination subject to immediate dismissal.
- B. Whoever violates any of the provisions of section 171.12(A) is guilty of a misdemeanor of the third degree punishable as provided in section 501.99 of the Village of Carey Codified Ordinances.

#### 171.19 AMENDMENTS & SUPPLEMENTS.

From time to time amendments and supplements to this Ordinance and Rules and Regulations, IF ANY, may be recommended by the Board of Review and/or the Tax Commissioner for consideration by Council.

#### 171.20 ALLOCATION OF FUNDS.

(a) To the extent that the funds collected under the provisions of this chapter are derived from the imposition of the tax provided by Section 171.03 at the rate of one and one-half percent (1 ½%) those funds shall be allocated for the following purposes and in the following order:

- (1) Such part thereof as shall be necessary to defray all costs and expenses of collecting the tax levied by this chapter and costs at the rate of administering and enforcing the provisions hereof.
- (2) An amount equal to the gross funds that would have been collected if the tax imposed by Section 171.03 has been imposed at the rate of one-half percent (1/2%), and assuming for this purpose that no credit(s) were available against such tax pursuant to Section 171.14, shall be allocated exclusively for the purpose of paying costs of improving and extending the municipal sewerage system, including the payment of principal of, interest on and other charges in connection with obligations for money borrowed by the municipality to pay any such costs; and
- (3) The balance of the funds collected shall be allocated as follows:
  - A. Eighty percent (80%) to the General Fund to meet current expenses and other expenditures;
  - B. Ten percent (10%) to the Capital Improvement Fund for expenditures for capital Improvements and
  - C. Ten percent (10%) to the Park Fund to meet current expenses and for other expenditures.

(b) To the extent that the funds collected under the provisions of this chapter are derived from imposition of the tax provided by Section 171.03 at the rate of one percent (1%), those funds shall be allocated for the following purposes and in the following order:

(1) Such part thereof as shall be necessary to defray all costs and expenses of collecting the tax levied by this chapter and costs of administering and enforcing the provisions hereof.

(2) The balance of the funds collected shall be allocated as follows:

- A. Eighty percent (80%) to the General Fund to meet current expenses and other expenditures;
- B. Ten percent (10%) to the Capital Improvement Fund for expenditures for Capital improvements; and
- C. Ten percent (10%) to the Park Fund to meet current expenses and other expenditures.