

VILLAGE OF BOTKINS, OHIO

AMENDED AND RESTATED INCOME TAX CODE
ORDINANCE NO. 04-08

ADOPTED BY THE COUNCIL OF THE VILLAGE OF BOTKINS JUNE 8, 2004

Section 1 PURPOSE

Section 1.1 The One Percent (1%) Tax

The initial One Percent (1%) of tax passed pursuant to Ordinance No. 632 shall be used to provide funds for the purposes of construction, maintaining, operating and acquiring of capital improvements and for general municipal operations in the Village of Botkins, Ohio, and there shall be and hereby is levied a tax on , qualifying wages, commissions and other compensation and on net profits and other taxable income as hereinafter provided.

Section 1.2 The One Half Percent (½%) Tax

The additional one half percent (½%) tax passed pursuant to Ordinance No. 88-16 shall be used to provide funds for the construction and acquisition of capital improvements and new equipment in the Village of Botkins.

Section 2 DEFINITIONS

As used in this Ordinance, the following words shall have the meanings ascribed to them in this Section, except as and if the context clearly indicates or requires a different meaning. The singular shall include the plural and the masculine shall include the feminine and the neuter:

“ADJUSTED FEDERAL TAXABLE INCOME” - 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.

Add an amount equal to five percent (5%) of intangible income deducted.

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.

Add taxes on, or measured by, net income allowed as a deduction in the computation of federal taxable income.

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 income.

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:

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

Amounts paid or accrued to a qualified self-employment 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.

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

“BOARD OF REVIEW” - The Board created by and constituted as provided in Section 13 of Ordinance 632.

“BUSINESS” - An enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit whether by an individual, partnership, association, corporation, or any other activity, including but not limited to the renting or leasing of property, real, personal, or mixed.

“BUSINESS ALLOCATION APPORTIONMENT” - The portion of net profits to be allocated to the Village of Botkins as having been made within the Village of Botkins pursuant to Section 3 of Ordinance 632.

“CORPORATION” - 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.

“DOMICILE” - A principal place of residence that the taxpayer intends to use and whenever absent, intends to return. A taxpayer has only one domicile even though the taxpayer may have more than one residence.

“EMPLOYEE” - One who works for wages, salary, commission, or other types of compensation in the service 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 Workers' Compensation Law, shall prima facie be an employee.

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

"FISCAL YEAR" - An accounting period of twelve months ending on any day other than December 31.

"GENERIC FORM" - An electronic or paper form designed for reporting estimated Village of Botkins income taxes and annual Village of Botkins income tax liability for filing a refund claim that is not prescribed by the Village of Botkins for the reporting of the Village of Botkins' tax on income.

"GROSS RECEIPTS" - Total income from any source whatsoever excepting from intangible and capital gains from the sale of property used in the trade or business as defined in Section 1231(b) of the Internal Revenue Code.

"INCOME FROM A PASS-THROUGH ENTITY" - Partnership income of partners, membership interest of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from other pass-through entities.

"INTANGIBLE INCOME" - 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, trade names, 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 similar games of chance.

"INTERNAL REVENUE CODE" - The Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

"LIMITED LIABILITY COMPANY" - A limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

"NET PROFITS" - The profit required to be reported on Schedule C, Schedule E, or Schedule F, other than amounts described in Section 3 E, for a taxpayer who is an individual, and adjusted federal taxable income for a taxpayer who is other than an individual.

"NONRESIDENT" - A person, whether an individual, association, corporation, or other entity, domiciled outside the Village of Botkins.

"NONRESIDENT UNINCORPORATED BUSINESS" - An unincorporated business not having an office or place of business within the Village of Botkins.

THE or THIS ORDINANCE means Ordinance No. 632 enacted by the Council of Botkins effective January 1, 1976, and Ordinance 88-16, enacted by the Council of Botkins effective July 1, 1988, and any amendments and supplements.

"OTHER ENTITY" - A person or unincorporated body not previously named or defined, including but not limited to fiduciaries.

"OWNER" - 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.

"PASS-THROUGH ENTITY" - 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.

"PERSON" - Individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity.

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

A taxpayer does not have a regular place of business outside Botkins solely by consigning goods to an independent factor or other contractor outside of the Village for sale.

"PRINCIPAL PLACE OF BUSINESS" - In the case of an employer having headquarters' activities at a place of business within the Village of Botkins, the place of business at which the headquarters is situated. In the case of any employer not having its headquarters' activities at a place of business within the Village of Botkins, the largest place of business located in the Village of Botkins.

"QUALIFIED RETIREMENT PLAN" - A retirement plan satisfying the requirements under section 401 of the Internal Revenue Code as amended.

"QUALIFYING WAGES" - 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.

"RESIDENT" - A person, whether an individual, association, corporation, or other entity, domiciled in the Village of Botkins.

"TAX COMMISSIONER" - The Income Tax Commissioner of the Income Tax Department of the Village of Botkins, or the person executing the duties of the aforesaid Commissioner.

"TAXABLE INCOME" - Qualifying wages paid by an employer or employers, compensation for personal services, 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.

"TAXABLE YEAR" - The calendar year, or the fiscal year ending during such calendar year, upon the basis of which the 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 made. Unless approved by the Tax Commissioner, the taxable year of an individual shall be a calendar year.

"TAXPAYER" - An association, business, corporation, employer, person, or other entity required by this Ordinance to file a return on earnings or net profits or to pay a tax upon such earnings or net profits.

Section 3 IMPOSITION OF THE TAX
Section 3.1 The One Percent (1%) Tax

A. Subject to the provisions of Section 16, an annual tax for the purpose specified in Section 1 of Ordinance 632, shall be levied on and after January 1, 1976, at the rate of one percent (1%) per annum upon the following:

On all qualifying wages, commissions, rentals, and other compensation earned or received on and after January 1, 1976, by residents of the Village of Botkins.

On all qualifying wages, commissions, rentals, and other compensation earned or received on and after January 1, 1976, by nonresidents for works done or services performed or rendered in the Village of Botkins.

(A) On the portion attributable to the Village of Botkins of the net profits earned on and after January 1, 1976, of all resident associations, unincorporated businesses, pass-through entities, professions, or other activities derived from work done or services performed or rendered, and business conducted in the Village of Botkins.

(B) On a resident partner's or owner's share of the net profits of a resident association or other unincorporated business entity not attributable to the Village of Botkins and not levied against such association or other unincorporated business entity.

(A) On the portion attributable to the Village of Botkins, the net profits earned on and after January 1, 1976, of all nonresident associations, unincorporated business, professions, or other activities, derived from sales made, work done, or services performed or rendered or business or other activities derived from work done or services performed or rendered, and business or other activities conducted in the Village of Botkins, whether or not such association or unincorporated business entity has an office or place of business in the Village of Botkins.

(B) On a resident partner's or owner's share of the net profits of a nonresident association or other unincorporated business entity not attributable to the Village of Botkins and not levied against such association or other unincorporated business entity.

5. On the portion attributable to the Village of Botkins of the net profits earned on and after January 1, 1976, of all corporations derived from sales made, work done or services performed or rendered and business or other activities conducted in the Village of Botkins, whether or not such corporations have an office or place of business in the Village of Botkins.

6. 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, prizes and lottery winnings.

B. An employee who pays his business expenses from his commissions or other compensation, without reimbursement from his employer, may deduct from his gross commissions or other compensation business expenses allowed by the Internal Revenue Service for federal income tax purposes, but only to the extent such expenses are incurred in earning commissions or other compensation subject to the tax.

C. Net profit from a business or profession conducted both within and without the boundaries of the Village of Botkins shall be considered as having a taxable situs in the Village of Botkins for purposes of Village of Botkins income taxation in the same proportion as the average ratio of the following:

1. Multiply the entire net profits of the business by a business apportionment percentage to be determined by:

(A) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the Village of Botkins during the taxable period 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.

(B) Ascertaining the percentage which the gross receipts of the business from sales made and services performed in the Village of Botkins, during the period covered by the return, is of the total gross receipts from all sales and services, wherever made or performed, during such period.

(1) Sales made within the Village of Botkins shall be deemed to include all sales of tangible personal property which is delivered within the Village of Botkins regardless of where title passes if shipped or delivered from a stock of goods within the Village of Botkins.

(2) All sales of tangible personal property which is delivered within the Village of Botkins, regardless of where title passes, even though transported from a point outside the Village of Botkins, if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village of Botkins.

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

(C) Ascertaining the percentage which the total qualifying wages and other compensation paid during the period covered by the return, to employees for services performed in the Village of Botkins is of the total qualifying wages, commissions, and other compensation paid, during such period, to all employees within and outside the Village of Botkins.

(D) Adding together the percentage determined in accordance with subsections (C)(1)(A), (B), and (C) above or such of the previously stated percentages as are applicable to the particular taxpayer and dividing the total so obtained by the number of percentages used in deriving such total. A factor is applicable even though it may be allocable entirely in or outside the Village of Botkins.

2. Provided, however, that in the event a just and equitable result cannot be obtained under the formula provided for within this Section, the Board of Review, upon application of the taxpayer or the Tax Commissioner shall under uniform regulations adopted by the Board, have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

D. Net Operating Loss Carry Forward.

1. The portion of a net operating loss apportioned to the Village of Botkins in any taxable year ending after January 1, 1976, shall be applied against the portion of the profit of succeeding year(s) apportioned to the Village of Botkins, until exhausted but in no event for more than five (5) taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

2. The portion of a net operating loss sustained shall be apportioned to the Village of Botkins in the same manner as provided herein for apportioning net profits to the Village of Botkins.

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

4. The new operating loss of a taxpayer that loses its legal identify, by any means such as merger or consolidation, shall not be allowed as a carryforward loss deduction to the surviving or new taxpayer.

5. The new operating loss sustained by a business or profession is not deductible from employee earnings, but may be carried forward as provided in Ordinance 632. If a taxpayer is engaged in two or more taxable business activities to be included in the same return, however, the net loss of one unincorporated business activity (except any portion of a loss reportable for local income tax purposes to another locality) may be used to offset the profits of another for purposes of arriving at overall net profits.

E. Exclusions from Tax. The tax provided for under Ordinance No. 632 shall not be levied on the following:

1. The 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. Poor relief, pensions, unemployment insurance benefits, supplemental unemployment benefits, old age benefits, old age pensions or similar payment received from local, state, or federal governments or from charitable, religious, or educational organizations.

3. Proceeds of insurance, annuities, workers' compensation insurance, permanent disability benefits, compensation for damages for personal injury and similar reimbursements, not including damages for loss of profits and wages, welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.

4. Alimony/ spousal support received.

5. Income, dues, contributions, receipts from casual entertainment, amusements, sports events and health and welfare activities received by religious, fraternal, charitable, scientific, literary, educational institutions or organizations.

6. Any association, organization, corporation, club or trust, which is exempt from federal taxes on income by reason of its charitable, religious, education, literary, scientific, etc. purposes, to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities;

Notwithstanding, any association or organization listed in this paragraph receiving income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall not be excluded from the Village of Botkins income tax.

Moreover, in the event any association or organization receives taxable income as provided in the preceding paragraph from real or personal property ownership or income producing business located both inside and outside the Village of Botkins limits, such association or organization shall calculate its income apportioned to the Village of Botkins under the method or methods provided above.

7. Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, and income of a decedent's estate during the period of administration (except such income from the operation of a business).
8. Earnings and income of all persons under seventeen (17) years of age whether residents or nonresidents.
9. Compensation paid under Section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars (\$1,000.00) annually;
10. Parsonage allowance pursuant to Section 107 of the Internal Revenue Code;
11. Compensation paid to an employee of a transit authority for operating a transit bus in or through the Village of Botkins, unless the bus is operated on a regularly scheduled route, the operator is a resident or domiciled in the Village of Botkins, or the headquarters of the authority or commission is located within the Village of Botkins;
12. Intangible income;
13. On and after January 1, 2003, items excluded from federal gross income pursuant to Section 107 of the Internal Revenue Code.
14. On and after January 1, 2001, compensation paid to a nonresident individual for personal services performed by the individual in the Village of Botkins, on twelve (12) or fewer days in a calendar year unless one of the following applies:
 - (A) The individual is an employee of another person, the principal place of business of the individual's employer is located in another local taxing authority that imposes a tax applying to compensation paid to an individual for services paid on those days; and the individual is not liable to that other local taxing authority for tax on the compensation paid for such services.

(B) The individual is a professional entertainer or professional athlete, the promoter of a professional entertainer or sports event, or an employee of such promoter, all as may reasonably defined by the Village of Botkins.

15. 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 the Village of Botkins may tax the following, subject to Chapter 5745 of the Ohio Revised Code:

(A) The income of an electric company or combined company; or

(B) The income of a telephone company.

As used in this paragraph, "electric company," combined company," and "telephone company" have the same meanings as in Section 5727.01 of the Ohio Revised Code.

16. If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from the Village of Botkins income 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 shall be taxable.

Section 3.2 The One Half Percent (½%) Tax

3.2.1 Subject to the provisions of Section 16, an annual tax for the purposes specified in Ordinance 88-16, shall be levied on and after July 1, 1988, at the rate of one half percent (½%) per annum in addition to the one percent (1%) currently levied and collected under Ordinance No. 632, as approved by the requisite majority of the voters in the Primary Election held on May 8, 1988, in the manner as set forth in Section 3.1.

3.2.2 The additional one half percent (½%) tax per annum provided for under Ordinance No. 88-16 shall not be levied on the items set forth in Section 3.1(E).

Section 4 EFFECTIVE DATE

Section 4.1 The One Percent (1%) Tax

The One Percent (1%) Tax levied under Ordinance 632 shall be levied, collected and paid with respect to the qualifying wages, commissions and other compensation earned on and after January 1, 1976, and with respect to the net profits of businesses, professions, or other activities earned on and after January 1, 1976.

Provided, however, that where the fiscal year of the business, profession, or other activity differs from the calendar year, the tax shall be applied to that part of the net profits for the fiscal year as shall be earned on and after January 1, 1976, to the close of the taxpayer's fiscal year. Thereafter, the taxpayer shall report on its fiscal year basis.

Section 4.2 The One Half Percent (½%) Tax

The One Half Percent (½%) tax levied under Ordinance 88-16 shall be levied, collected and paid with respect to the qualifying wages, commissions and other compensation on and after July 1, 1988, and with respect to the net profits of businesses, professions or other activities earned on or after July 1, 1988, in a manner consistent with Section 3.1.

Provided, however, where the fiscal year of the business, profession or other activity differs from the calendar year, the tax shall be applied to that part of the net profits for the fiscal year as shall be earned on or after July 1, 1988, to the close of the taxpayer's fiscal year. Thereafter, the taxpayer shall report on a fiscal basis.

Section 5 RETURN AND PAYMENT OF TAX

A. Each person who engages in business, or whose qualifying wages, commissions, and other compensation are subject to the tax imposed by this Ordinance shall, whether or not a tax be due thereon, make and file on or before April 15 of each year a return with the Village of Botkins on a form or forms furnished or obtained upon request, or an acceptable generic form, setting forth:

1. The aggregate amounts of qualifying wages, commissions, other compensation received, allocated, apportioned or set aside, other income defined by statute as taxable, and gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to said tax; and
2. The amount of the tax imposed by this Ordinance; and
3. Such other pertinent statements, information, returns, or other information returns or information as the Tax Commissioner requires, including a statement of taxable income as determined for federal income tax purposes, adjusted to set forth only such income as is taxable under the provisions of this Ordinance.

B. A taxpayer on a fiscal year accounting basis for federal tax purposes shall, beginning with his first fiscal year any part of which falls within the tax period, pay the tax on the basis of his fiscal year and shall file his annual returns . by the fifteenth (15th) day of the fourth (4th) month following the end of the fiscal year or period.

C. The return shall be filed with the Tax Commissioner on a form or forms furnished by or obtainable upon request from the Tax Commissioner; or on a generic form, if the generic form, when completed and filed, contains all of the information required to be submitted with the Village of Botkins prescribed return and, if the taxpayer or preparer filing the generic form otherwise complies with the Tax Code governing the filing of returns.

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

Department. Any taxpayer not required to file a federal income tax return may request an extension for filing a Village of Botkins Income Tax Return in writing. The request for extension must be filed on or before the original due date for the annual return. If the request is granted, the extended due date of the Village of Botkins income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. The Tax Commissioner may deny a taxpayer's request for an extension if the taxpayer fails to timely file the request; fails to file a copy of the federal extension request; owes the Village of Botkins any delinquent income tax, penalty, or interest; or has failed to file any required income tax return, report, or other related document for a prior tax period.

E. The taxpayer making such return shall, at the time of the filing thereof, pay to the Village of Botkins, the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source, pursuant to the provisions of SECTION 6 of this Ordinance, or where any portion of said tax shall have been paid by the taxpayer, pursuant to the provisions of SECTION 7 of this Ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with SECTION 15, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return. Should it then appear that the taxpayer has paid more than the amount of tax to which the Village of Botkins is entitled under the provisions of this Ordinance, such over payment shall be refunded, or at the option of the taxpayer, credited to his next year's tax liability; provided, however, that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's Botkins tax liability, such taxpayer shall make and file an amended Botkins return showing income subject to the Botkins 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 over payment.

F. The Tax Commissioner is hereby authorized to accept the return of an employer or employers, showing the total amount of tax deducted by said employer or employers from the qualifying wages, commissions or other compensation of employees, and paid by them to the Village of Botkins Income Tax Department as the return required of any employee whose sole income, subject to the tax or taxes under this Ordinance, is such qualifying wages, commissions, or other compensation.

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

1. A corporation may, at its option, make a consolidated return, if that affiliated group of corporations filed a consolidated return with the Internal Revenue Service pursuant to Section 1501 of the Internal Revenue Code. A consolidated return must include all companies that are so affiliated.

In the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, the Tax Commissioner shall require such additional information as may be necessary to ascertain whether net profits apportioned to the Village of Botkins are

being distorted by the shifting of income, apportionment of expenses, or other devices available to a common control.

If the Tax Commissioner finds that a corporation's net profits apportioned to the Village of Botkins are distorted by reason of transaction with stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, the Tax Commissioner shall adjust said transactions so as to produce a fair and proper allocation of net profits to the Village of Botkins. If necessary, the Tax Commissioner may require the filing of a consolidated return.

2. Once a consolidated return has been filed for any taxable year, consolidated returns shall continue to be filed in subsequent years unless the applicable requirements of the Rules and Regulations for discontinuing the filing of consolidated returns have been met.

H. 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/or limitations contained in SECTIONS 11 and 15. Such amended returns shall be on a form obtainable on request from the Tax Commissioner. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

SECTION 6 COLLECTION AT SOURCE

A. Each employer within or doing business within the Village of Botkins, who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct at the time of the payment of such salary, wage, commission or other compensation the tax as required under this Ordinance of the , qualifying wages, commissions, or other compensation due by said employer to said employee and shall on or before the last day of April, July, October and January of each year, make a return and pay to the Village of Botkins Income Tax Department, the amount of taxes so deducted during the preceding calendar quarter. Said return shall be on a form or forms prescribed by or acceptable to the Income Tax Department and shall be subject to the rules and regulations prescribed therefore by the Village of Botkins.

1. The Tax Commissioner is authorized to enter into agreements with employers outside the Village, provided they have the written consent of the employees affected, to collect such taxes at the source in the same manner as provided above.

B. Such employer in collecting said tax shall be deemed to hold the same until payment is made by such employer to the Village of Botkins, as a trustee for the benefit of the Village of Botkins and any such tax collected by such employers shall, until the same is paid to the Village of Botkins, be deemed a trust fund in the hands of such employer.

C. Provided, however, that no person shall be required to withhold the tax on the wages, or other compensation paid domestic servants employed exclusively in or about such person's residence.

SECTION 7 DECLARATIONS OF ESTIMATED TAX

A. Every person who anticipates any taxable income which is not subject to the provisions of SECTION 6 hereof, or who engages to any business shall file a declaration setting forth such estimated income or the estimated profit or loss from such business during the year covered by the declaration, together with the estimated tax due thereon, if any.

B. Each person required to file a declaration shall file such declaration on or before April 15th of each year. In the case of a person starting in business, such declaration shall be filed within four (4) months of the date he starts such business.

C. Such declaration shall be filed upon a form or forms furnished by, or obtainable upon request, from the Income Tax Department, or an acceptable generic form, which form or forms may contain a statement that the figures used in making such declaration are the figures used in making the declaration of the estimate for federal income tax, adjusted to set forth only such income as is taxable under the provisions of this Ordinance.

D. Such declaration of estimated tax to be paid to the Village of Botkins shall be accompanied by a payment of at least Twenty-two and one-half Percent (22 ½ %) of the estimated tax.

Exclusive of taxpayers filing on a fiscal year basis, at least a similar amount shall be paid on or before July 31, October 31, and January 31 of each year. Such estimate may be amended at any time.

A taxpayer reporting on a fiscal year basis shall file, beginning with the taxpayer's first fiscal year any part of which falls within the tax period, a declaration on or before the fifteenth day of the fourth month of the taxpayer's taxable year accompanied by a payment of at least Twenty-two and one-half Percent (22 ½ %) of the estimated tax shown due thereon. At least a similar amount shall be paid on or before the fifteenth day of the sixth month, the fifteenth day of the ninth month, and the fifteenth day of the twelfth month of the taxpayer's taxable year.

E. Taxpayers that are not individuals must remit Twenty-two and one-half Percent (22 ½ %) of the estimated tax liability for the current year on or before the day on which the annual tax return for the prior year is required to be filed disregarding any extension or, in the case of fiscal year taxpayer, the fifteenth day of the fourth month of the taxpayer's taxable year. Exclusive of taxpayers filing on a fiscal year basis, at least a similar amount shall be paid on or before June 15, September 15, and December 15 of each year. Such estimate may be amended at any time.

F. Penalty and interest will not be imposed for the late payment or nonpayment of estimated tax liability if the taxpayer has remitted an amount at least equal to One Hundred Percent (100%) of the taxpayer's tax liability for the preceding year, provided that the return for the preceding year reflected a twelve (12) month period and the taxpayer filed a return for the preceding year; or, if the taxpayer, which is an individual, was not domiciled within the Village of Botkins on the first day of January of the current calendar year.

SECTION 8 DUTIES OF THE TAX COMMISSIONER

A. The Tax Commissioner is hereby charged with the enforcement of provisions of this Ordinance and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and for the administration and enforcement of the provisions of this Ordinance, for the re-examination and correction of returns. 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 proven 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 proper returns are filed by the taxpayer for all amounts owed by him under the Ordinance. Failure to make any deferred payments when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the applicable provision of the Ordinance shall apply.

B. It shall be the duty of the Tax Commissioner to prescribe the form and method of keeping the accounts and reports to be rendered to his office and shall maintain accurate records showing the amount received from each taxpayer and the date of said receipt. The Tax Commissioner is hereby charged with the internal audit of all accounts and returns including the re-examination and correction of the returns. The Tax Commissioner shall further fix the amount of the tax due from a taxpayer who fails to file a return or when the tax has been established from an audit or examination of the taxpayer's income and shall send to the taxpayer by certified mail a written statement showing the amount of tax so fixed, together with the interest and penalties hereon, if any.

C. The Tax Commissioner shall demand and receive all taxes due the Village of Botkins and shall make a written report to Council at the end of each quarter of all monies collected during the preceding quarter.

D. The Tax Commissioner shall be the administrative head of the Income Tax Division, under the supervision of the Mayor, subject to approval of the Council.

E. Subject to the consent of the Board of Review or pursuant to regulation approved by said Board, the Tax Commissioner shall have the power to compromise any interest or penalty or both as imposed by the Ordinance.

SECTION 9 EXAMINATION OF BOOKS AND RECORDS AND
CONFIDENTIALITY OF INFORMATION

A. The Tax Commissioner and any authorized employee is hereby authorized to examine the books, papers and records of any employer, or of any taxpayer or person subject to the tax, for the purposes of verifying the accuracy of any return made, or if no return was made, to ascertain the tax due. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish to the Tax Commissioner or his duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigation as are hereby authorized.

B. The Tax Commissioner or his duly authorized agent or employee is hereby authorized to examine any person, employer or employee under oath concerning any income which was or should have been returned for taxation and for this purpose may compel the production of books, papers, and records and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income.

C. The refusal to produce books, papers, records and federal income tax returns or the refusal to submit to such examination by any employer or person subject to tax or required to withhold tax or the failure of any person to comply with the provisions of this section or with any order of subpoena of the Tax Commissioner authorized hereby shall be deemed a violation of this Ordinance punishable as prescribed in SECTION 12.

D. Any information gained as a result of any returns, investigations, hearing or verification required or authorized by this Ordinance shall be confidential and no disclosure thereof shall be made unless ordered by a court of competent jurisdiction or unless disclosure is necessary to the conduct of a hearing before the Board of Review. Any person divulging such information in violation of this Section shall upon conviction thereof be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than five hundred dollars (\$500.00) or imprisoned not more than six (6) months or both. Each disclosure shall constitute a separate offense.

E. Every taxpayer shall retain all records necessary to compute the tax liability under this Ordinance for a period of three (3) years from the date his return is filed, or the withholding taxes are paid.

SECTION 10 INTERESTS AND PENALTIES

A. All taxes imposed and all 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 percent (1%) per month or a fraction thereof.

B. In addition to interest as provided in paragraph A above, penalties based on the unpaid tax are hereby imposed as follows:

1. The taxpayer upon whom said taxes are imposed and any employer required by this Ordinance to deduct, withhold and pay taxes imposed by this Ordinance, shall be liable in addition hereto to a penalty of five percent (5%) of the amount of the unpaid tax up to the first month after the tax becomes due and ten percent (10%) of the unpaid tax if paid during the second and third months and fifteen percent (15%) thereafter.

C. 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; and provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after final determination of the federal tax liability.

D. Upon recommendation of the Tax Commissioner, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and interest, the Board of Review may nevertheless abate penalty or interest or both.

SECTION 11 COLLECTION OF UNPAID TAXES

A. All taxes imposed by this Ordinance shall be collectible, together with any interest and penalties thereon, by suit as other debts of like amount are recoverable. No additional assessment shall be made after three years from the time of payment of any tax due hereunder provided, however, there shall be no period of limitation on an additional assessment in a case of a return that omits gross income in excess of twenty-five percent (25%) of that required to be reported, 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.

In those cases in which the District Director of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations, the period within which an additional assessment may be made by the Tax Commissioner shall be extended three (3) years from the time of the final determination of federal tax liability.

B. All taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the time of payment thereof or within three (3) years after determination of the federal tax liability.

SECTION 12 VIOLATIONS AND PENALTIES

A. Any person who shall:

Fail, neglect or refuse to make any return or declaration required by this Ordinance; or

Shall knowingly make any incomplete, false or fraudulent tax return; or

Fail, neglect or refuse to pay the tax, penalties or interest imposed by this Ordinance; or

Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Tax Commissioner; or

Refuse to permit the Tax Commissioner or any duly authorized agent or employee to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or

Fail to appear before the Tax Commissioner and to produce his books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Commissioner; or

Refuse to disclose to the Tax Commissioner any information with respect to the income or net profits of a taxpayer; or

Fail to comply with the provisions of the Ordinance or any order or subpoena of the Tax Commissioner authorized hereby; or

Give to an employer false information as to his true name, correct social security number and residence address or fail to promptly notify an employer of any change in residence address and date thereof; or

Fail to use ordinary diligence in maintaining proper records of employee's addresses, total wages paid and Botkins tax withheld or to knowingly give the Commissioner false information; or

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 and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six (6) months or both, for each offense.

Prosecutions for an offense made punishable under this SECTION or any other provisions of 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.

The failure of any employer 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.

SECTION 13

BOARD OF REVIEW

A. A Board of Review, consisting of a Chairman and two other individuals to be appointed by the Mayor, is hereby created. A majority of the numbers of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately, and the provisions of SECTION 9 hereto with reference to the confidential character of information required to be disclosed by the Ordinance shall apply to such matters as may be heard before the Board on appeal.

B. All rules and regulations and amendments or changes thereto, which are adopted by the Commissioner under the authority conferred by this Ordinance must be approved by the Board of Review before the same becomes effective. The Board shall hear and pass on appeals from any ruling or decision of the Commissioner, and, at the request of the taxpayer or Commissioner, is empowered to substitute alternate methods of apportionment.

C. Any person dissatisfied with any ruling or decision of the Commissioner which is made under the authority conferred by this Ordinance may appeal therefrom to the Board of Review within thirty (30) days from the announcement of such ruling or decision by the Commissioner, and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.

SECTION 14 APPORTIONMENT OF FUNDS

Section 14.1 The One Percent (1%) Tax

A. The funds collected under the provisions of Ordinance 632 shall be applied for the following purposes, and in the following order:

1. Such part thereof as shall be necessary to defray all cost and expenses of collecting the taxes levied by Ordinance 632 and the cost of administering the enforcing the provisions hereof.

2. That eighty percent (80%) of the remaining revenue, after the cost and expenses of collecting, administering and enforcing the taxes levied under Ordinance 632, shall be paid into the Capital Improvement Fund for the purpose of construction, acquisition, maintenance and operation of capital improvements and the cost incidental thereto.

3. The balance of any such funds collected under the provisions of Ordinance 632 shall be placed in the General Improvement Fund of the Village of Botkins.

Section 14.2 The One Half Percent (½%) Tax

A. The funds collected under the provisions of Ordinance 88-16 shall be applied for the following purposes and in the following order:

1. Such part as shall be necessary to defray all cost and expenses of collecting the taxes levied by Ordinance 88-16 and the cost of administering the enforcing such provisions.

2. That one hundred percent (100%) of the remaining revenue, after the cost and expenses of collecting, administering and enforcing the taxes levied under Ordinance 88-16, shall be paid into the Capital Improvement Fund for the purpose of construction and acquisition of capital improvements and new equipment in the Village of Botkins, and the costs incidental.

SECTION 15 CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES

SECTION 15.1 The One Percent (1%) Tax

Resident individuals of Botkins who are required to pay and do pay tax to a municipality other than Botkins on qualifying wages, commissions, and other compensation for work done or services performed outside Botkins or net profits from businesses, professions or other activities conducted outside Botkins may claim a credit of the amount of the tax paid by them or on their behalf to such other municipality to the extent of the tax imposed by Ordinance 632 on such income, such credit being limited to one percent (1%) of the amount of income tax by both the Village of Botkins and such other municipality. A return must be filed for the purpose of claiming such credit or allowance, together with such evidence of the payment of similar tax to the municipality in which such resident has a source of income as the Tax Commissioner may require.

Section 15.2 The One Half Percent (½%) Tax

Resident individuals of Botkins who are required to pay and do pay tax to a municipality other than Botkins on qualifying wages, commissions, and other compensation for work done or services performed outside Botkins or net profits from businesses, professions or other activities conducted outside Botkins may claim a credit of the amount of the tax paid by them or on their behalf to such other municipality to the extent of the tax imposed by Ordinance 88-16 on such income, such credit being limited to one half percent (½%) of the amount of income tax by both the Village of Botkins and such other municipality. A return must be filed for the purpose of claiming such credit or allowance, together with such evidence of the payment of similar tax to the municipality in which such resident has a source of income as the Tax Commissioner may require.

SECTION 16 SAVING CLAUSE

This Ordinance shall not apply to any person, firm, or corporation or to any property as to whom or which it is beyond the power of Council to impose the tax provided for in this Ordinance. In any sentence, clause, section or part of this Ordinance, or any tax against or exemption granted any individual or any of the several groups of persons, or forms of income specified herein is 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 for the Village of Botkins that this Ordinance could have been adopted had such unconstitutional, illegal or invalid sentence or part not been included.

SECTION 17 DATE OF ENACTMENT

Section 17.1 The One Percent (1%) Tax

Ordinance 632, upon its passage, shall be effective January 1, 1976, and shall remain in full force and effect until repealed by the Council of the Village of Botkins.

Section 17.2 The One Half Percent (½%) Tax

Ordinance 88-16, upon its passage, shall be effective July 1, 1988, and shall remain in full force and effect until repealed by the Council of the Village of Botkins.

VILLAGE OF BOTKINS, OHIO

AMENDED AND RESTATED INCOME TAX RULES AND REGULATIONS
ORDINANCE NO. 04-08

ADOPTED BY THE COUNCIL OF THE VILLAGE OF BOTKINS JUNE 8, 2004

ARTICLE I PURPOSE

Section I of the Ordinance deals only with the purposes for which the tax collected will be used.

ARTICLE II DEFINITIONS

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

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

THE BOARD means the Board of Review provided for under the Ordinance.

BUSINESS means an enterprise, cooperative 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. 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 inter vivos or testamentary, unaccompanied by the actual operation of a business as herein defined shall not be construed as the operation of a business.

BUSINESS APPORTIONMENT as used in these regulations, means the portion of net profits to be apportioned to the Village of Botkins as having been made in Botkins under the three factor formula of property, payroll, and sales, provided for in the Ordinance.

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.

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 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.

EMPLOYEE means one who works for wages, salary, commission or other types of compensation in the service 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 Workmen's Compensation law shall prima facie be an employee.

EMPLOYER means an individual, partnership, association, corporation (including a corporation not for profit), governmental agency, board, body, bureau, department, subdivision, or unit or any other entity, 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.

FISCAL YEAR means an accounting period of twelve (12) months or less ending on any day other than December 31st. Only fiscal years accepted by the Internal Revenue Service for federal income tax purposes may be used for Botkins tax purposes.

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

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.

GROSS RECEIPTS means total income from any source whatsoever.

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.

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, trade names, 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.

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

LIMITED LIABILITY COMPANY means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

NON-RESIDENT means an individual domiciled outside of the Village of Botkins.

NON-RESIDENT UNINCORPORATED BUSINESS ENTITY means one not having an office or place of business within the Village of Botkins.

THE or THIS ORDINANCE means Ordinance No. 632 enacted by the Council of Botkins effective January 1, 1976, and Ordinance 88-16, enacted by the Council of Botkins effective July 1, 1988, and any amendments and supplements.

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.

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.

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.

PERSON includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity.

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 regular employees regularly in attendance.

PRINCIPAL PLACE OF BUSINESS means in the case of an employer having its headquarters activities at a place of business within a taxing municipality, 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 means the largest place of business located in a taxing municipality.

QUALIFIED PLAN means a retirement plan satisfying the requirements under section 401 of the Internal Revenue Code as amended.

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.

RESIDENT means an individual domiciled in Botkins.

RESIDENT UNINCORPORATED BUSINESS ENTITY means an unincorporated business entity having an office or place of business within Botkins.

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

SCHEDULE E means Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.

SCHEDULE F means Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.

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.

TAX COMMISSIONER means the Income Tax Commissioner of the Income Tax Department of the Village of Botkins, or the person executing the duties of the aforesaid Commissioner.

TAXABLE INCOME means qualifying wages paid by an employer or employers, compensation for personal services, other income defined by the 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 the Ordinance and these regulations.

TAXABLE YEAR means the calendar year, or the fiscal year, used as the basis on which net profits are to be computed under the 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.

TAXPAYER means an individual, association, corporation or other entity required by the Ordinance to file a return and/or to pay a tax. 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.

VILLAGE means the Village of Botkins.

In all definitions and these regulations the singular shall include the plural and the masculine shall include the feminine and the neuter.

ARTICLE III IMPOSITION OF TAX

Article III.1 The One Percent (1%) Tax

A. Bases

1. Resident Employee:

a. In the case of residents of the Village an annual tax of 1% is imposed on all salaries, wages, commissions, and other compensation earned during the effective period of Ordinance No. 632. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 3, the source 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 are items which are subject to the tax imposed by Section 3, paragraph A.1.:

.1 Qualifying wages, bonuses and incentive payments earned 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 of a corporation created and owned or controlled by 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 3;

.05 An employee of any other entity or person, whether based upon hourly, daily, weekly, semimonthly, 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, sub-division, section or unit, or any other entity.

.2 Commissions earned by a taxpayer whether directly or through an agent and whether in cash or in property for services rendered during the effective period, regardless of how computed or by whom or wheresoever paid.

.01 If the 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 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 net profits taxable under federal law, and the employee is not required to include such receipts as income on his federal income 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 owned or part owner and therefore subject to the tax under paragraphs A.3. or A.4. of Section 3, they shall not be taxed under Section 3, paragraph 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 3, paragraph A.3.

.4 Other compensation, including tips, bonuses or gifts of any type, and including compensation paid to domestic servants, casual employees and other types of employees.

.5 Payments made to employees by an employer as vacation wages are taxable. Payments made to an employee by an employer under a wage continuation plan during periods of disability or sickness, are taxable.

.6 Sums deducted from gross wages or other compensation for retirement purposes (deferred compensation) are taxable.

.7 If the income appears on a W-2 form and is not shown to be an exception in accordance with paragraph (E) hereof (Exceptions), it shall be considered other compensation and therefore taxable to the individual. This includes, but is not limited to:

.01 Tips, bonuses, fees, gifts in lieu of pay, gratuities.

.02 Supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code.

.03 Strike pay; grievance pay.

.04 Incentive payments, no matter how described, including, but not limited to payments to induce early retirement.

.05 Severance pay.

.06 Car allowance, personal use of employer-provided vehicle.

.07 Group term life insurance to the extent taxable to the federal government.

.08 Sick pay or disability pay whether paid by the employer to the employee or through a third party.

.09 Contributions by an employee or on behalf of an employee from gross wages, into an employee or third party trust or pension plan as permitted by any provision of the Internal Revenue Code which may be excludable from gross wages for federal income tax purposes (401K plans and similar plans).

.10 The value of employer sponsored plans which permit the participant to reduce his taxable income for federal tax purposes. Such a reduction does not cause the gross wage or salary to lose its character as a gross wage or salary subject to the provisions of section 171.03(a) (cafeteria plans and the like).

.11 The ordinary income portion of a stock option or employee stock purchase plan to the extent that it is shown on the W-2 as ordinary income and is includable on the taxpayer's federal income tax return.

.12 Trusts not made pursuant to employee's retirement.

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 Rentals given to clergy are not to be considered as income.

2. Non-resident Employee:

a. In the case of individuals who are not residents of the Village, there is imposed under Section 3, paragraph A.2., a tax of 1% on all qualifying wages, commissions, other compensation, and taxable income earned or received during the effective period for work done or services performed or rendered within the Village whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place for which payment is made is immaterial.

b. The items subject to tax under Section 3, paragraph A.2. are the same as those listed and defined in Article III.A. For the methods of computing the extent of such work or services performed within the Village, in cases involving compensation for person services partly within and partly without the Village, see Article VI.A.6.

3. a. Imposition of Tax on Net Profits of Resident Unincorporated Businesses:

.1 In the case of resident unincorporated businesses, professions, enterprises, undertakings or other entities conducted, operated, engaged in, prosecuted or carried on, irrespective of whether such taxpayer has an office or place of business in the Village, there is imposed an annual tax of 1% on the net profits earned, accrued or received during the effective period attributable to the Village, under the formula or separate accounting method provided for in Section 3, derived from sales made, work done or services performed or rendered and business or other activities conducted in the Village.

.2 The tax imposed on resident associations or other unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof but the tax imposed on an unincorporated resident entity owned by one person is upon the individual owner. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see ARTICLE III.A.3b).

.3 The tax imposed by Section 3, paragraph A.3a is imposed on all resident unincorporated entities having net profits attributable to the Village under the business apportionment percentage formula, regardless of where the owner or owners of such resident unincorporated business entity reside.

.4 Resident unincorporated entities owned by two or more persons all of whom are residents of the Village shall disregard the business apportionment percentage formula, and pay the tax on their entire net profits thereof. 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 such net profits; 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.

.5 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 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 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 a. above; provided, however, that the provisions of this subsection shall not apply to any corporation which is incorporated under the laws of the State of Ohio or any individual who is domiciled in or a resident of the State of Ohio. For the 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 purpose of this subsection the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling or soliciting orders for sales of tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities. For the purpose of this subsection, the term "representative" does not include an independent contractor.

b. Imposition of Tax on Resident's Distributive Share of Profits of a Resident Unincorporated Business Entity, Not Attributable to the Village.

.1 A resident individual who is sole owner of a resident unincorporated entity shall disregard the business apportionment percentage formula and pay the tax on the entire net profits of this resident unincorporated business entity by the Village.

.2 In the case of a resident individual partner or part owner of a resident unincorporated entity, there is imposed an annual tax of 1% on such individual's distributive share of net profits earned, accrued or received during the effective period not attributable to the Village, under the business apportionment percentage formula provided for in Section 3, and not taxed against the entity by the Village.

4. a. Imposition of Tax on Net Profits of Non-Resident Unincorporated Businesses:

.1 In the case of non-resident unincorporated businesses, professions, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of 1% on the net profits earned, accrued or received during the effective period attributable to the Village, under the business apportionment percentage formula.

.2 The tax imposed on non-resident unincorporated entities owned by two or more persons is upon the entities rather than the individual members or owners thereof. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity by the Village, see ARTICLE III.A.4.b.)

.3 Non-resident unincorporated entities owned by two or more persons all of whom are residents of the Village may elect to disregard the business apportionment percentage formula and pay the tax on the entire net profits. 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; however, a return shall be required from such owner or member having taxable income other than the distributive share of the net profit from the entity. See Article XV for credits.

b. Imposition of Tax on Resident's Share of Profits of a Non-Resident Unincorporated Business Entity Not Attributable to the Village. See Article XV for Credits.

.1 A resident individual who is sole owner of a not resident unincorporated business entity shall disregard the business apportionment percentage formula and pay the tax on the entire net profits of this unincorporated entity.

.2 In the case of a resident individual partner or part owner of a non-resident unincorporated entity there is imposed an annual tax of 1% on such individual's distributive share of net profits earned, accrued or received during the effective period not attributable to the Village under the business apportionment percentage formula provided for in Section 3 of the Ordinance and not taxed against the entity by the Village.

5. Imposition of Tax on Net Profits of Corporations.

a. In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the Village, there is imposed an annual tax of 1% on the net profits earned received or accrued during the effective period attributable to the Village under the business apportionment percentage formula .

b. In determining whether a corporation is conducting business or other activity in the Village, the provisions of Article III.B. of these regulations shall be applicable.

c. Corporations which are required by the provisions Section 5727.38 to 5727.41, inclusive, of the Revised Code of Ohio, to pay an excise tax in any taxable years as defined by Ordinance No. 632, 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.

6. Amplification: In amplification of the definition contained in Article II of these regulations but not in limitation thereof, the following additional information respecting net business profits is furnished:

a. NET PROFITS.

.1 Net Profits means, for a taxpayer other than an individual, the 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 (F) of Section 3, 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 follows:

.01 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,

.02 Add an amount equal to five percent (5%) of intangible income deducted under 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;

.03 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;

.04 Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

.05 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;

.06 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;

.001 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

.002 Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in 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 the Village to administer, audit, and enforce the provisions of its income tax.

b. GROSS RECEIPTS.

.1 Gross Receipts shall include but not be limited to income in the form of commissions, fees, 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, reasonable 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.

.01 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 other-wise 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.

.02 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.

.03 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.

.04 Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the 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.

.05 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 Ordinance No. 632; (2) federal or other taxes based upon income exclusive of the amount of Ohio franchise tax computed on the net worth basis; (3) gift, estate or inheritance taxes; and (4) taxes for local benefits or improvements to property which tend to appreciate the value thereof.

.06 If the taxpayer reports income that is nontaxable under Ordinance No. 632 and such amounts are deducted in order to reconcile the Village return with the taxpayer's federal income tax return, expenses attributable to this nontaxable income shall not be allowed. In the absence of records showing the actual expenses attributable to such nontaxable income, and upon approval of the Commissioner, such amount shall be deemed to equal five percent of such nontaxable 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.

.07 An employee who is paid on a commission or other compensation basis and who pays his business expense from his commissions or other compensation, without reimbursement from his employer, may deduct from his gross commissions or other compensations, business expenses allowed by the Internal Revenue Service for federal income tax purposes but only to the extent such expenses are incurred in earning commissions or other compensations subject to the tax imposed by 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. No expenses claimed on federal Form "Schedule A, Itemized Deductions" shall be allowed and failure to produce the supporting schedules and/or receipts upon request by the Tax Commissioner shall result in disallowance of the expenses in question.

.08 Expenses incurred while attending educational courses may not be deducted from wages.

.09 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, "Employee Moving Expenses Information," for his moving deductions. Only moving expenses incurred, as part of income included in gross earnings, will be allowed.

.10 No deduction shall be allowed for self-employed health insurance against income as allowed for federal or state tax purposes for unincorporated entities or the like.

.11 With respect to certain tangible personal property used in business, the "federal investment credit" for current year investments, as determined for federal income tax purposes, shall be treated as a deduction from income with respect to new or used property, (subject to federal tax limitations in the case of used property), acquired after December 31, 1961, and the remaining costs shall be depreciated in succeeding years on the same basis used for federal income tax purposes. In the event the "Federal Investment Credit" is required to be adjusted by reason of a sale or other early

disposition affecting the original amount of the "Federal Investment Credit", such adjustment must be reported and treated as taxable income in the year of such sale or other early disposition.

.12 Capital gains and losses from sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned. Any amount received on a sale or other disposition of tangible personal property used in business, in excess of book value, shall be treated as taxable income under Ordinance No. 632 to the extent of depreciation allowable after January 1, 1976. The balance shall be treated as capital gain.

7. Rentals from Real Property.

a. Rentals received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by the taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

b. 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.

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

d. Real property, as the term is used in this regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.

e. 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.

f. 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.

g. Non-residents of the Village are subject to such taxation only if the real property is situated within the Village.

h. Corporations owning or managing real estate are taxable only on that portion of income derived from property located in the Village.

8. Royalties:

a. Income in the form of royalties is taxable if the taxpayer's activities produced the publication or other product the sale of which produces the royalties.

9. Gambling Winnings:

a. Gambling winnings as reported on Internal Revenue Service Form W-2G, Form 5754 and or any other forms required by the Internal Revenue Service that reports winnings from gambling.

B. Apportionment of Business Profits.

1. Business Apportionment Percentage Formula.

a. STEP 1: Ascertain the percentage which the original cost of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within the Village is of the original cost of all real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.

.1 The percentage of taxpayer's real and tangible personal property within the Village is determined by dividing the original cost of such property within the Village (without deduction of any encumbrances) by the original cost of all such property within and without the Village. In determining such percentage property rented to the taxpayer as well as real and tangible personal property owned by taxpayer must be considered.

.01 The original cost of real and tangible personal property rented by taxpayer shall be determined by multiplying gross annual rents payable by eight (8).

.02 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:

.001 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;

.002 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.

b. STEP 2: Ascertain the percentage which the total wages salaries, commissions and other compensation of employees within the Village is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without the Village during the period covered by the return.

.1 Salaries and reasonable compensation paid owners or credited to the account of owners or partners during the period covered by the return are considered wages for the purpose of this computation.

.2 Wages, salaries, and other compensation 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, an employee regularly connected with or working out of a place of business maintained by the taxpayer in the Village who performs seventy-five percent (75%) or more of his services within the Village be considered an employee within the Village.

All employees regularly connected with or working out of a place of business maintained by the taxpayer outside the Village who performs twenty-five percent (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 taxpayer derived from sales made and services rendered in the Village is of the total gross receipts wherever derived during the period covered by the return. All resident corporations, unincorporated businesses, or other entities whose principal place of business is within the Municipality, shall be considered a resident Municipal business and be subject to the following provision:

If the sales apportionment percentage is less than one hundred percent (100%), a statement shall be submitted with the return indicating: (1) other municipalities to which sales are apportioned; (2) percentage of sales apportioned to each municipality; (3)

whether or not a return was filed and tax paid on the sales apportioned to each municipality. Failure to submit this statement (or when the statement indicates no other municipal tax was filed and paid), shall result in all sales being considered as sales of the Village.

.1 The following sales shall be considered the Village's 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 if shipped or delivered from 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 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 sale is directly or indirectly the result of such solicitation.

.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 places 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.

.2 In the application of the foregoing subparagraphs 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.

d. STEP 4: Add the percentages determined in accordance with Steps 1, 2 and 3 or such of the aforesaid percentages as may be applicable to the particular taxpayer's business and divide the total so obtained by the number of percentages used in ascertaining said total. The result so obtained is the business apportionment percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be apportioned entirely outside the Village. A factor is excluded only when it does not exist anywhere.

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 Board, upon application of the taxpayer or the Commissioner, may substitute other factors in the business percentage formula or prescribe other methods of apportioning net income calculated to effect a fair and proper apportionment.

b. Application to the Board 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 taxable year and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. A copy thereof shall be served at the time of filing upon the taxpayer or 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 Board of Review.

3. 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. Operating Loss Carry Forward.

1. The portion of a net operating loss, based on income taxable under Ordinance No. 632, sustained in any taxable year subsequent to January 1, 1976 apportioned to the Village may be applied against the portion of the profit of succeeding year(s) apportioned to the Village, until exhausted but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.

2. In the event net profits are apportioned both within and without the Village, the portion of a net operating loss sustained shall be apportioned to the Village in the same manner as provided herein for apportioning net profits to the Village. The portion of a net operating loss to be carried forward shall be determined in the year the net operating loss is sustained, on the basis of the apportionment factors applicable to that year. The same method of accounting and apportionment must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained.

3. In the case of fiscal years beginning prior to the effective date of the Ordinance, the net operating loss deduction will be that portion of the operating loss that the number of months of the fiscal-year after the effective date of the Ordinance bears to the total number of months in such fiscal year.

4. A short fiscal year (a fiscal year of less than twelve (12) months) in cases where there has been a change in accounting period, where a new taxpayer selects a short fiscal year, or where a new taxpayer operates in the Village for less than his full accounting period, shall be considered as a full taxable fiscal year

5. In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:

a. Year in which net operating loss was sustained.

b. Method of accounting and apportionment used to determine portion of net operating loss apportioned to the Village.

c. Amount of net operating loss used as a deduction in prior years.

d. Amount of net operating loss claimed as a deduction in current year.

6. The net operating loss of a business which loses its identity through merger, consolidation, etc., shall not be allowed as a carry-forward loss deduction to the surviving business entity.

7. In the case of a net operating loss in the filing of consolidated returns, see Article III, paragraph D.

D. Consolidated Returns:

1. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership. For a subsidiary corporation to be included in a consolidated return, 80% of its stock must be owned by the other members of the affiliated group. A consolidated return must include all companies which are so affiliated in accordance with IRS regulations.

2. Once a consolidated return has been filed for any taxable year, the consolidated group must continue to file consolidated returns in subsequent years unless:

a. Permission in writing is granted by the 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.

3. If a corporation becomes a member of the group during the taxable year the consolidated return must include the income for the entire taxable year of the common

parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group, but for the period after it ceases to be a member, separate returns must be filed. If a corporation has been a member of the affiliated group for less than one month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one month.

If a subsidiary is a member of the consolidated group for only part of a taxable year, the income considered to be earned in such fractional part of the year shall be that portion of the net income for the entire year which the number of days it was a member of the group bears to the total number of days in the taxable year.

4. In determining the apportionment fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property fraction (Step 1 of the formula) shall be determined on the basis of the average net book value of the property during the period such corporation was a member of the group. The rental portion of the fraction, however, shall be computed at 8 times the annual rent. The gross receipts and wage fractions shall be based on the actual figures.

5. All subsidiary corporations must agree in writing to the filing of the consolidated return as they will be liable for the tax as well as will be the parent corporation.

6. The net operating loss carryover of a corporation which filed a separate return in a prior year may be carried over to the consolidated return but will be limited in the amount to the amount of that same corporation's net income included in the consolidation. The net operating loss carryover from a separate year shall be deducted first before application of the apportionment fraction. After application of the apportionment fraction, the consolidated net operating loss carryover apportioned to the Village shall be allowed.

7. In consolidating the net income, the taxable income of each corporation shall be computed in accordance with the provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of the affiliated group.

8. In determining expenses that are not allowable because they are apportionable to non-taxable income, such calculations shall be based on the consolidated net income. As an example, inter-company dividends which are eliminated in the consolidation will not be taken into consideration in determining non-taxable income.

E. Exceptions.

The following shall not be considered taxable.

1. The 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. Poor relief, pensions, unemployment insurance benefits, supplemental unemployment benefits, old age benefits, old age pensions or similar payment received from local, state, or federal governments or from charitable, religious, or educational organizations.
3. Proceeds of insurance, annuities, workers' compensation insurance, permanent disability benefits, compensation for damages for personal injury and similar reimbursements, not including damages for loss of profits and wages, welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.
4. Alimony/spousal support received.
5. Income, dues, contributions, receipts from casual entertainment, amusements, sports events and health and welfare activities received by religious, fraternal, charitable, scientific, literary, educational institutions or organizations.
6. Any association, organization, corporation, club or trust, which is exempt from federal taxes on income by reason of its charitable, religious, education, literary, scientific, etc. purposes, to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities;

Any association or organization falling in the category listed in this paragraph receiving income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall not be excluded from the Village of Botkins income tax and is required to file declarations and final returns and remit taxes levied under this Ordinance.

Where such non-profit association or organization receives taxable income as provided in the preceding paragraph from real or personal property ownership or 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.

7. Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, and income of a decedent's estate during the period of administration (except such income from the operation of a business).

8. Earnings and income of all persons under seventeen (17) years of age whether residents or nonresidents.
9. Ministers' Housing Allowance.
10. Pay received for work performed at an election precinct for amounts less than One Thousand Dollars (\$1,000) during a calendar year.
11. Compensation paid to an employee of a transit authority for operating a transit bus in or through the Village of Botkins, unless the bus is operated on a regularly scheduled route, the operator is a resident or domiciled in the Village of Botkins, or the headquarters of the authority or commission is located within the Village of Botkins;
12. Intangible income;
13. Interest and dividends from intangible income;
14. Compensation for damage to property by way of insurance or otherwise.
15. On and after January 1, 2003, items excluded from federal gross income pursuant to Section 107 of the Internal Revenue Code.
16. On and after January 1, 2001, compensation paid to a nonresident individual for personal services performed by the individual in the Village of Botkins, on twelve (12) or fewer days in a calendar year unless one of the following applies:
 - a. The individual is an employee of another person, the principal place of business of the individual's employer is located in another local taxing authority that imposes a tax applying to compensation paid to an individual for services paid on those days; and the individual is not liable to that other local taxing authority for tax on the compensation paid for such services.
 - b. The individual is a professional entertainer or professional athlete, the promoter of a professional entertainer or sports event, or an employee of such promoter, all as may reasonably defined by the Village of Botkins.
17. 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 the Village of Botkins may tax the following, subject to Chapter 5745 of the Ohio Revised Code:
 - a. The income of an electric company or combined company; or
 - b. The income of a telephone company.

As used in this paragraph, "electric company," "combined company," and "telephone company" have the same meanings as in Section 5727.01 of the Ohio Revised Code.

18. If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from the Village of Botkins income tax.

19. 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 shall be taxable.

Article III.2 The One Half Percent (½%) Tax

The one half percent (½%) annual tax for the purposes specified in Ordinance 88-16, shall be levied and collected in the manner as set forth in Article III.1, and not levied on the items set forth in Article III.1.(E).

ARTICLE IV EFFECTIVE PERIOD OF TAX

Article IV.1 The One Percent (1%) Tax

A. The tax imposed by Section 3.1, paragraphs A.1. and A.2. of Ordinance No. 632, shall be levied, collected and paid with respect to qualifying wages, bonuses, incentive payments, commissions, fees, and other compensation earned on or received and after January 1, 1976.

B. The tax imposed by Section 3.1, paragraphs A.3., A.4., and A.5. of the Ordinance, with respect to net profits of trades, businesses, professions, enterprises, undertakings and other activities is on the net profits earned on or received and after January 1, 1976.

Article IV.2 The One Half Percent (½%) Tax

A. The tax imposed by Section 3.2 of Ordinance No. 88-16 shall be levied, collected and paid with respect to qualifying wages, bonuses, incentive payments, commissions, fees, and other compensation and earned on and after July 1, 1988.

B. The tax imposed by Section 3.2 of Ordinance No. 88-16 with respect to net profits of trades, businesses, professions, enterprises, undertakings and other activities is on the net profits earned on and after July 1, 1988.

ARTICLE V RETURN AND PAYMENT OF TAX

A. Date and Requirement For Filing.

1. On or before April 15th of the year following the effective date and each year thereafter, every person subject to the provisions of Section 3, paragraphs A.1. to A.5.,

inclusive, shall, except as hereinafter provided, make and file with the Commissioner, a return on a form prescribed by and obtainable upon request from the Commissioner, or a generic form which must contain all of the information requested on the tax form as provided by the tax commissioner, whether or not a tax be due.

2. If the return is made for a fiscal year or any period less than a year, said return shall be made within four (4) months from the end of each fiscal year or other period.

3. Every person subject to the provisions of Section 3 shall, except as hereinafter provided, file a return setting forth the aggregate amount of qualifying wages, commissions, other compensation, and other taxable income, net profits from business or other activities including the rental from use of real and personal property, and other income taxable under the Ordinance, received for the period covered by the return and such other pertinent facts and information in detail as the Commissioner may require.

4. Where an employee's entire earnings for the tax period are paid by a resident employer or resident employers, and the proper tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire earnings of such employee-taxpayer, and where the resident employer of such employee has filed a report or return in which such employee's entire and only earnings are reported to the Commissioner, and where such employee has no taxable income other than such earnings and the tax so withheld has been paid to the Commissioner, such employee need not file a return.

5. An employee who is permitted to deduct business expenses from qualifying wages, commissions, or other taxable income, must file a return in order to claim such deductions even though all or part of such qualifying wages, commissions, or other taxable income are subject to withholding.

6. Any taxpayer who received taxable income not subject to withholding under the Ordinance must file a return.

7. Any taxpayer having income, wages, or other compensation for which a return must be filed, and also having net profits from a business covering the same or a different period, is required to file only one return.

8. Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof.

9. Except as provided for herein, the tax is on the partnership or association as an entity whether resident or non-resident 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 of the unincorporated entity is required to make a return and pay the tax in accordance with Article III.1.A.3.b..2. of these regulations.

10. A husband and wife may, in any tax year, elect to file separate or joint returns.

11. Operating losses from business or professional activities, the profits of which would be taxable under the Ordinance, may be offset against salaries, wages, commissions and other-personal service compensation or against not profits from other business or professional activities. To the extent that such losses are offset they shall not be allowable as an operating loss carry forward under Section 3.1.D. of the Ordinance of Article III.1.C of the regulations.

12. Executors and administrators are liable for the payment of any taxes due by a deceased from an estate of such deceased.

13. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions.

B. Information Required and Reconciliation With Federal Returns

1. In returns filed hereunder, there shall be set forth the aggregate amount of salaries, wages, bonuses; incentive payments, commissions, fees and other compensation less reasonable allowable expenses incurred subject to the tax earned from each employer, taxable net profits and other pertinent information as the Commissioner may require.

2. Where figures of total income, total deductions, and net profits are included, as shown by a federal return, any items of income as are not subject to the Village's tax and unallowable expenses shall be eliminated in determining net income subject to the Village's tax. In the absence of records showing the actual unallowable expenses, such expenses shall be determined in accordance with Article III.1.A-6.c. of these regulations. The fact that any taxpayer is not required to file a federal tax return does not relieve him from filing the Village's tax return.

3. If a change in federal income tax liability, made by the Federal 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 Federal Internal Revenue Service or final Court decision.

4. 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 Commissioner as prescribed in Section 11 of the Ordinance and Article XI.B. of these regulations.

C. Extensions.

1. Upon written request of the taxpayer, or upon the receipt of a copy of the taxpayer's federal extension, postmarked on or before the date for filing the return, and for good cause shown, the Commissioner may extend the time for filing such return for a period equal to that allowed or allowable, or granted by the Federal Internal Revenue Service. Whenever he deems such necessary, the Commissioner may require a tentative return

accompanied by payment of the estimated tax. No penalty will be assessed in those cases in which the return is filed and the final tax paid within the period as extended provided an estimated tax, equal to or greater than 90% of the taxpayer's previous year's liability, is paid on or before the original filing date of the return. Interest will be assessed on any remaining balance found to be due upon receipt of the extended tax return and that all other filing and payment requirements of the Ordinance have been met.

2. 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.

D. Payment With Return.

1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Commissioner the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 6 of the Ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 7 of the Ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 15 of the Ordinance, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.

2. A taxpayer who has overpaid the amount of tax to which the Village is entitled under the provisions of the 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.

E. Amended Returns.

1. Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 11 and 12. Such amended return shall be on a form obtainable on request from the Commissioner. 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's 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.

ARTICLE VI COLLECTION OF TAX AT THE SOURCE

A. Duty of Withholding.

1. Except as otherwise provided herein, 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, to deduct each time any compensation is paid the tax as required under this Ordinance from:

a. The gross amount of all salaries, wages, bonuses, incentive payments, fees, commissions or other forms of compensation paid to residents of the Village regardless of the place where the services are rendered; and

b. All compensation paid non-residents for services rendered, work performed 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 in this article, 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 business apportionment percentage formula provided for in the Ordinance, are considered to be employers within the Village and subject to the requirement of withholding.

4. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation paid. If the employer has withheld the tax and failed to pay the tax withheld to the Commissioner, the employee is not liable for the tax so withheld.

5. Commissions and fees paid to professionals, brokers and others who are independent contractors, and not employees of the payor, 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 Articles V and VII of the regulations.

6. Where a non-resident 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 the non-resident is in sales, an 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.

b. The deducting and withholding of personal service compensation of other non-resident 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.

c. The fact that non-resident employees are subject to call at any time does not permit the apportioning 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 Commissioner that a greater or lesser number of hours per week is worked.

d. The occasional entry into the Village of a non-resident employee who performs the duties for which he is employed primarily outside the city, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the Village.

e. Wage continuation plans paid by the employer or third party agent on behalf of the employer for 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.

7. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions.

8. 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 under Article III of these regulations.

9. An employer whose records show that an employee is a non-resident 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 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.

10. A Village employer required to withhold the tax from a Village resident for work done or services performed in another municipality, and who does so withhold and remit to

such other municipality, shall be relieved from the requirement of withholding the Village tax from such Village resident, except where the rate of tax for such other municipality is less than the rate of tax imposed by this Ordinance. In such case, the employer shall withhold and remit the difference to the Village.

11. No person shall be required to withhold the tax on the qualifying wages or other taxable income paid domestic servants employed exclusively in or about such person's residence, but such employee shall be subject to all of the requirements of the Ordinance.

B. Return and Payment of Tax Withheld and Status of Employers.

1. The deductions from salaries, wages, and other compensation required to be made by employers are to begin with the compensation earned on and after the effective date of the Ordinance.

The employer (in addition to any return required to be filed with respect to his own earning or net profits) shall, on or before the last day of the month next following each quarterly period, make a return and pay to the Commissioner the full amount of the tax so deducted or withheld with respect to compensation paid all of his employees subject to the tax under the Ordinance. Provided, however, the Commissioner may require an employer to remit withholding taxes at more frequent intervals.

The return required to be filed under this article shall be made on a form furnished by or obtainable on request from the Commissioner.

2. If more than the amount of tax required to be deducted by the Ordinance is withheld from an employee's pay, such excess may be refunded by the employer or the Commissioner, depending upon the circumstances and the time when the over-withholding is determined as follows:

a. Current employees.

.1 If the over-withholding is discovered in the same period the employer shall make the necessary adjustment directly with the employee and the amount to be reported on the return as withheld shall be the corrected amount;

.2 If the over-withholding is discovered in a subsequent period of the same calendar year the employer may make proper adjustment with the employee. In such case the return for the period in which the adjustment is made shall indicate the total amount actually withheld, the amount of the adjustment deducted therefrom, and the corrected amount reported on the return;

.3 If the over-withholding is discovered in the following year, the employer should notify the Commissioner of such over-withholding and the circumstances thereof. Upon proper verification the Commissioner shall refund to the employee the amount of such excess withholding;

b. Former employees:

.1 In case too much has been withheld from an employee who is no longer employed by the employer, the employer shall notify the Commissioner of the amount and circumstances of such over-withholding and the Commissioner shall then refund to the employee the amount of such excess withholding; or

.2 If the error is discovered by the employee such employee shall file a claim with the Commissioner and, upon verification thereof by the employer, the Commissioner shall refund to the employee the amount of such excess withholding;

c. Non-Residents Employed Outside the City:

.1 Where an employer has withheld the tax from all wages of a non-resident of the Village and such nonresident has been employed outside of the Village for all or a part of the time, such employee shall file a claim with the Commissioner covering such erroneous withholding and the Commissioner shall, upon verification thereof by the employer, refund to the employee the amount of such excess withholding;

d. Insufficient Withholding:

.1 If less than the amount of tax required to be deducted is withheld from an employee, such deficiency shall be withheld from subsequent wages. However, if the employee-employer relationship has terminated, the employer shall notify the Commissioner if such deficiency and the reason therefor.

3. Every employer is deemed to be a trustee for the Village in collecting and holding the tax required under the Ordinance to be withheld and the funds so collected by such withholding are deemed to be trust funds.

4. Every such employer required to deduct and withhold the tax at the source is liable directly to the Village for payment of such tax whether actually collected from such employee or not.

5. On or before the last day of February, following any calendar year in which such deductions have been made by any employer, such employer shall file with the Commissioner, in the form prescribed by the Commissioner, an information return for each employee from whom the Village's income tax has been withheld, showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of the Village's income tax withheld from such employee.

6. For the convenience of employers, the information return may be made in one of three ways at the election each employer, as follows:

a. Those employers using Form W-2 furnished, commercially, may submit a copy of such commercial Form W-2, providing the copy furnished the Village clearly shows the information required in paragraph 5 immediately preceding..

b. Those employers not using Form W-2 furnished commercially may obtain forms upon request from the Commissioner.

c. Where the furnishing of this information as above indicated will create a distinct hardship the employer, upon written request to the Commissioner may be permitted to furnish a list of all employees subject to the tax, which list shall show the employee's full name, last known address, social security number, gross amount of compensation paid during the year and the amount of Village income tax withheld. Such list may be compiled on any mechanical equipment presently used by the employer, but provision must be made for spacing equal to at least three lines between each name. The employer's name must be indicated on each sheet, each sheet must be numbered and the total number of sheets comprising the complete report indicated on the first page.

d. The gross compensation to be reported for each employee shall be for the full twelve (12) calendar months of the year or such portion thereof as the employee reported on was employed.

7. In addition to such information returns, and at the time the same are filed, such employer shall file with the Commissioner a form to enable the Commissioner to reconcile the sum total of compensation paid and taxes withheld as disclosed by information return W-2, or list of employees, and prior returns and remittances made pursuant to the Ordinance.

C. Fractional Parts of Cent: In deducting and withholding the 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 ($\frac{1}{2} \phi$) or more in which case it shall be increased to one cent (1ϕ).

ARTICLE VII DECLARATIONS

A. Requirement of Filing.

1. A declaration of estimated tax shall be filed by every taxpayer who may reasonably be expected to have taxable income, the tax on which is not or will not be withheld by an employer or employers. Where required such declaration shall be filed within four (4) months after the beginning of the taxable year.

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. Date of Filing.

1. A person or other entity conducting a business not previously subject to the tax, or whose employer does not withhold the tax, shall file a declaration within four (4) months after the date he becomes subject to the tax.

2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration within four (4) months after the start of each fiscal year or period.

C. Form for Filing.

1. Such declaration shall be filed upon a form or forms furnished by, or obtainable from the Commissioner. Provided, however, credit shall be taken for the Village's tax to be withheld from any portion of such income. In accordance with the provisions of Section 15 of the Ordinance, credit may be taken for tax to be withheld and remitted to another taxing municipality.

2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any quarterly payment date as set forth in Article VII-D.1. Such amendment shall be made on the regular declaration form.

D. Dates of Payments.

1. The estimated tax may be paid in full with the declaration or in equal installments on or before the last day of the fourth, seventh, tenth and thirteenth month after the beginning of the taxable year. Corporations, partnerships, or other like business entities must remit the estimated tax on the fifteenth day of the fourth month of the taxpayer's taxable year and the fifteenth day of the sixth month, the fifteenth day of the ninth month, and the fifteenth day of the twelfth month of the taxpayer's taxable year. A grace period of fifteen (15) days will be granted for the filing of the declaration and payment of the estimated tax as imposed on all taxpayers whose estimated tax liability is due on the fifteenth day of any calendar month.

2. The declaration must be accompanied by at least 22.5% of the estimated tax shown due thereon.

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. Final Returns Required.

1. The filing of a declaration does not relieve the taxpayer of the necessity of filing a final return even though there is no change in the declared tax liability. A final return must be filed to obtain a refund of any overpayment of over one dollar (\$1.00).

A. Collection of Tax and Retention of Records.

1. It shall be the duty of the Income Tax Commissioner to receive the tax imposed by the Ordinance in the manner prescribed therein from the taxpayers; 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 taxes owing the Village, to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

B. Enforcement Provisions.

1. The Tax Commissioner is charged with the administration and enforcement of the provisions of the Ordinance and is, subject to the approval of the Board of Review, empowered to adopt, promulgate, and enforce rules and regulations or any amendment thereof relating to any matter or thing pertaining to the administration and enforcement of the Ordinance. The Tax Commissioner has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the Ordinance.

2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the Ordinance or these rules and regulations, should submit to the Tax Commissioner in writing all the facts involved and the ruling sought.

3. These regulations, 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 during regular office hours.

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 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 Section 11 and 12 of the Ordinance shall apply.

C. Estimation of Tax by Tax Commissioner.

Whenever the Commissioner has been unable to secure information from the taxpayer as to his taxable income for any year, he may determine the amount of tax appearing to be due and assess the taxpayer upon the basis of such

determination, together with the interest and penalties as prescribed in Section 10 of the Ordinance.

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

D. Subject to the consent of the Board of Review or pursuant to regulation approved by said Board, the Tax Commissioner shall have the power to compromise any interest or penalty, or both, imposed by Section 10 of the Ordinance.

ARTICLE IX EXAMINATION OF BOOKS AND RECORDS, INFORMATION SO OBTAINED CONFIDENTIAL; PENALTY

A. Investigations by Commissioner.

1. The Tax Commissioner, or his duly authorized agent, is authorized to examine the books, papers, records, and federal income tax returns of any employer, taxpayer or person subject to the Ordinance, or whom the Tax Commissioner believes is subject to the provisions of the Ordinance, for the purpose of verifying the accuracy of any return made; or, if no return was made, to ascertain the tax due under the Ordinance.

2. An employer or taxpayer shall furnish, within ten (10) days following a written request by the Tax Commissioner, or his duly authorized agent, the means, facilities and opportunity for making examinations and investigations authorized by the Ordinance.

B. Subpoena of Records and Persons.

1. The Tax Commissioner, or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The Commissioner may compel the production of books, papers and records and the attendance of all persons before him whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.

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, 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 registered mail, return receipt requested, addressed to his usual place of business or residence.

C. Penalty for Non-Compliance.

Refusal by any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Tax Commissioner or his duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 12 of the Ordinance.

D. Confidential Nature of Examinations.

Any information gained as a result of any returns, investigations, verifications or hearings before the Tax Commissioner, required by the Ordinance or authorized by these rules and regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of Five Hundred Dollars (\$500.00) or imprisonment for not more than six (6) months, or both.

In addition to the above penalty, any employee of the Village or any employee of the collection agency who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

E. Retention of Records.

All employers and taxpayers are required to keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits, or both. Such records shall be preserved for a period of not less than five (5) years from the date the final return is filed and paid or the withholding taxes are paid.

ARTICLE X INTEREST & PENALTIES

A. Interest.

Except as provided in paragraph C of this article, all taxes imposed and all monies withheld, or required to be withheld, by employers under the provisions of the Ordinance and remaining unpaid after they have become due shall bear interest in addition to the amount of the unpaid taxes or withholdings, at the rate of one percent (1%) per month or fraction thereof.

B. Penalties.

In addition to interest as provided in paragraph A hereof, penalties based on the unpaid tax are hereby imposed as follows:

1. The taxpayer upon whom said taxes are imposed and any employer required by this Ordinance to deduct, withhold and pay taxes imposed by this Ordinance, shall be liable in addition hereto to a penalty of five percent (5%) of the amount of the unpaid tax up to the first month after the tax becomes due and ten percent (10%) of the unpaid tax if paid during the second and third months and fifteen percent (15%) thereafter.

C. Exceptions.

1. No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within the prescribed time.

2. In the absence of fraud neither penalty nor interest shall be assessed on any additional taxes resulting from a federal audit for federal income tax purposes provided an amended return is filed and the additional tax paid within three (3) months after final determination of the federal tax liability.

D. Appeal from Assessment.

1. Upon recommendation of the Tax Commissioner, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and/or interest, the Board may nevertheless abate penalty or interest, or both.

ARTICLE XI COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS

A. Unpaid Sums - Civil Suit.

1. All taxes imposed by the Ordinance and not paid when due become, together with interest and penalties thereon, a debt due the Village from the taxpayer and are recoverable as are other debts by civil suits. Employers who are required, under Section 6 of the Ordinance, to withhold and remit the taxes required to be withheld at the

source, and who fail to withhold and/or remit, become liable to the Village in a civil suit to enforce the payment of the deficiency created by such failure.

2. No additional assessment shall be made by the Commissioner after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be no period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report 25% or more of income required to be reported shall be considered a substantial omission.

3. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal Statute of limitations, the period within which an assessment may be made by the Commissioner is extended to three (3) years from the time of final determination of 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 the tax was due or the return was filed, or three (3) months after the determination of the federal income 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 Commissioner, and has paid all taxes, penalties, and interest from any given year shown to be due.

3. Overpayments will be either refunded or credited to the taxpayer's current year's liability at his option. Where no election has been made by the taxpayer, 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 his current estimated tax liability.

C. Limitation.

1. Where the total amount due or refund claimed for a tax year is less than One Dollar (\$1.00), such amount shall not be collected or refunded.

2. Overpayments due to rounding will not be credited or refunded.

3. An adjustment to a tax return by the department of taxation, after the return has been filed in good faith by the taxpayer, will not be made by the department if the result of the adjustment is equal to or less than Five Dollars (\$5.00) as an underpayment of an overpayment of tax.

A. Any person who shall:

1. Fail, neglect or refuse to make any return or declaration required by the Ordinance; or
2. Make any incomplete, false or fraudulent returns or
3. Willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this Ordinance; or
4. Willfully fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Tax Commissioner; or
5. Refuse to permit the Tax Commissioner or any duly authorized agent or employee to examine his books, records, papers and federal income tax returns relating to the income or net profits- of a taxpayer; or
6. Fail to appear before the Tax Commissioner and to produce his books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Commissioner; or
7. Refuse to disclose to the Tax Commissioner any information with respect to the income or net profits of a taxpayer; or
8. Fail to comply with the provisions of the Ordinance or any order or subpoena of the Tax Commissioner authorized hereby; or
9. Give to an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
10. Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and this Village's income tax withheld, or to knowingly give the Tax Commissioner false information; or
11. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by the Ordinance.

Shall be guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned not more than six (6) months or both, for each offense.

B. Prosecutions.

Prosecutions for an offense made punishable under this Section or any other provision of 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. Failure to Receive Forms - Not a Defense.

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

ARTICLE XIII BOARD OF REVIEW OR APPELLATE AUTHORITY

A. Composition.

A Board of Review, consisting of a chairman and two other individuals to be appointed by the Mayor of the Village is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions.

Any hearing by the Board may be conducted privately and the provisions of Section 9 hereof with reference to the confidential character of information required to be disclosed by the Ordinance shall apply to such matters as may be heard before the Board of Review.

B. Duties.

All rules and regulations and amendments or changes thereto, which are adopted by the Commissioner under the authority conferred by the Ordinance, must be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Commissioner, and, at the request of the taxpayer or Commissioner, is empowered to substitute alternate methods of apportionment.

C. Appeals.

1. An appeal from a ruling of the Commissioner by a taxpayer or employer is effected by filing a notice of appeal with the Board within thirty (30) days after the announcement of the Commissioner's ruling or decision from which the appeal is taken. A copy of such notice of appeal must be filed with the Commissioner.

2. The Board, by a majority vote, may affirm, modify or reverse, in whole or in part any such ruling or decision of the Commissioner.

3. Hearings before the Board shall be private unless the taxpayer requests a public hearing.

ARTICLE XIV USE OF FUNDS

NO REGULATION ON THIS SECTION AS IT IS A POLICY MATTER FOR COUNCIL.

ARTICLE XV CREDIT ALLOWED FOR TAX PAID IN ANOTHER MUNICIPALITY

Article XV.1 The One Percent (1%) Tax

A. Limitation.

1. Where a resident of the Village is subject to a municipal tax, on or measured by income, in another municipality either located within or without the state of Ohio, he shall not pay a total municipal tax on the same income greater than the tax imposed at the higher rate.

B. Credits to Residents.

1. Resident individuals of the Village who are required to pay and do pay tax to another municipality on qualifying wages, commissions, other compensation, and other taxable income for work done or services performed in such other municipality or on net profits from businesses, professions or other activities conducted in such other municipality, may claim a credit of the amount of tax paid by them or on their behalf to such other municipality but only to the extent of one percent (1%) tax imposed by the Ordinance on such compensation or net profits.

C. Method of Applying for Credit.

1. No credit will be given unless the taxpayer claims such on his final return or other form prescribed by the Commissioner, and presents such evidence of the payment of a similar tax to another municipality, as the Commissioner may require.

Article XV.2 The One Half Percent (½%) Tax

A. Limitation.

1. Where a resident of the Village is subject to a municipal tax, on or measured by income, in another municipality either located within or without the state of Ohio, he shall not pay a total municipal tax on the same income greater than the tax imposed at the higher rate.

B. Credits to Residents.

1. Resident individuals of the Village who are required to pay and do pay tax to another municipality on qualifying wages, commissions, other compensation, and other taxable income for work done or services performed in such other municipality or on net profits

from businesses, professions or other activities conducted in such other municipality, may claim a credit of the amount of tax paid by them or on their behalf to such other municipality but only to the extent of one half percent (½%) tax imposed by the Ordinance on such compensation or net profits.

C. Method of Applying for Credit.

1. No credit will be given unless the taxpayer claims such on his final return or other form prescribed by the Commissioner, and presents such evidence of the payment of a similar tax to another municipality, as the Commissioner may require.

ARTICLE XVI SAVING CLAUSE

NO REGULATION AS THIS SECTION PERTAINS TO THE LEGALITY OF THE ORDINANCE AND NOT TO ITS ADMINISTRATION.

ARTICLE XVII COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE

A. Authority to collect after termination of Ordinance.

Although the tax imposed by the Ordinance will expire when the Ordinance is repealed, the Ordinance remains in full force and effect for purpose of collection and payment of taxes due and payable beyond that date; subject, however, to the provisions of Section 11 of the Ordinance with respect to the limitation of time within which an additional assessment may be made.

B. Payment of Taxes.

1. Taxes due and unpaid on account of compensation paid or received and on account of profits earned in the last effective year of the Ordinance or any part thereof which remains unpaid, are payable in full on or before the dates specified in Sections 5 and 6 of the Ordinance and Articles 5 and 6 of these regulations, and all final returns and withholding reports must be filed on or before that date, unless extended by the Tax Commissioner.

2. For purposes of collection of delinquent or unpaid taxes, actions or proceedings for such collection and/or the collection of interest and penalties thereon, or enforcing any provisions of the Ordinance (including prosecutions under the criminal sections of the Ordinance and including appeals before the Board of Review), the Ordinance remains in full force and effect until such time as all taxes accruing during the term of the Ordinance shall have been fully paid, and all actions, suits, prosecutions, appeals and other judicial or administrative proceedings relative to the collection or payment of such taxes, have been finally terminated.

ARTICLE XVIII

A. From time to time amendments and supplements to these regulations may be issued by the Tax Commissioner, subject to approval by the Board of Review as provided in Section 13 of the Ordinance.