

VILLAGE OF KETTLERSVILLE, OHIO

ORDINANCE NO. 08-_____

ORDINANCE levying a tax to provide funds for the purpose of construction, acquiring, maintaining and operating capital improvements; for general municipal operations; on all salaries, wages, commissions and other compensation earned by residents of the Village of Kettlersville; on all salaries, wages and commissions and other compensations earned by non-residents of the Village of Kettlersville for work done or services performed or rendered in the Village of Kettlersville; on the net profits earned by all businesses, professions or other activities conducted by residents of the Village of Kettlersville; on the net profits earned by all businesses, professions and/or other activities conducted in the Village of Kettlersville by non-residents and on the net profits earned by all corporations doing business in the Village of Kettlersville as a result of work done or services rendered or performed in the Village of Kettlersville; requiring the filing of income tax returns and the furnishing of information by employers and all others subject to said tax; imposing on employers the duty of collecting the tax at the source and paying the same to the Village of Kettlersville; providing for the administration, collection and enforcement of said tax; declaring violation of said tax ordinance to be a misdemeanor, and imposing penalties therefor.

Be it ordained by this Council for the Village of Kettlersville, State of Ohio:

SECTION 1 – PURPOSE

To provide funds for the purposes of construction, maintaining, operating and acquiring of capital improvements and for general municipal operations in the Village of Kettlersville, Ohio, and there shall be and hereby is levied a tax on qualifying wages, commissions and other compensation and on net profits as hereinafter provided.

SECTION 2 – DEFINITIONS

As used in this Ordinance, the following words shall have the 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.

- b. Add an amount equal to five percent (5%) of intangible income deducted.
- c. Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.
- d. Add taxes on, or measured by, net income allowed as a deduction in the computation of federal taxable income.
- e. 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.
- f. 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:
 - (i) 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
 - (ii) 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.

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 this Ordinance.

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

BUSINESS APPORTIONMENT – The portion of net profits to be apportioned to the Village of Kettlersville as having been made therein pursuant to SECTION 3 of this Ordinance.

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 residence that the taxpayer intends to use and whenever he is absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence.

EMPLOYEE – One who works for wages, salary, 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 purposes or on whose account payments are made under the workers' compensation law shall prima facie be an employee.

EMPLOYER – An individual, partnership, limited liability company, 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 (12) months ending on any day other than December 31.

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

GENERIC FORM – 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.

GROSS RECEIPTS – Income from any source whatsoever, excepting intangible income 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.

INTERNET – The international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.

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 – For a taxpayer other than an individual means adjusted federal taxable income, and for a taxpayer who is an individual means the individual’s profit (other than amounts described in Section 3.E of this Ordinance) required to be reported on Schedule C, Schedule E, or Schedule F.

NON-QUALIFIED DEFERRED COMPENSATION PLAN – A compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.

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

NON-RESIDENT BUSINESS ENTITY – A business entity not having an office or place of business within the Village of Kettlersville.

OTHER ENTITY – A person or unincorporated body not previously named or defined, and includes inter alia fiduciaries.

OTHER PAYER – Any person other than an individual’s employer or the employer’s agent that pays an individual any amount included in the federal gross income of the individual.

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 the Village of Kettlersville 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 a taxing municipality, 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 a taxing municipality, the term means the largest place of business located in a taxing municipality.

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 Kettlersville.

TAX COMMISSIONER – The person appointed to administer the Village’s Income Tax Ordinance and to direct the operation of the Tax Department or the person executing the duties of the Tax Commissioner.

TAXABLE INCOME – The 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 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 Income 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 thereon.

SECTION 3 – IMPOSITION OF THE TAX

- A. Subject to the provisions of SECTION 16 of this Ordinance, an annual tax for the purposes specified in SECTION 1 hereof, shall be levied on and after January 1, 2009, at the rate of one percent (1%) per annum upon the following:
1. On all qualifying wages, commissions, rentals and other compensation earned or received by residents of the Village of Kettlersville.
 2. On all qualifying wages, commissions, rentals and other compensation earned or received by non-residents for work done or services performed or rendered in the Village of Kettlersville.
 3. (A) On the portion attributable to the Village of Kettlersville, the net profits earned by all resident associations, businesses, pass-through entities, professions or other activities derived from work done or services performed or rendered, and business conducted in the Village of Kettlersville.

- (B) On a resident partner's or owner's share of the net profits of a resident association or other business entity not attributable to the Village of Kettlersville and not levied against such association or other business entity.
- 4.
 - (A) On the portion attributable to the Village of Kettlersville, the net profits earned by all non-resident associations, businesses, professions or other activities, derived from sales made, work done, or services performed or rendered, and business or other activities conducted in the Village of Kettlersville, whether or not such association or business entity has an office or place of business in the Village of Kettlersville.
 - (B) On a resident partner's or owner's share of the net profits of a non-resident association or other business entity not attributable to the Village of Kettlersville and not levied against such association or other business entity.
 - (C) Distributions received by an owner domiciled in the Village of Kettlersville from any non-resident pass-through entity such as a partnership, limited partnership, limited liability company, or Sub-Chapter S corporation shall be considered as income from an association as defined in SECTION 3.A.4(B) of this Ordinance.
- 5.
 - (A) On the portion attributable to the Village of Kettlersville, the net profits earned by all corporations derived from sales made, work done or services rendered or performed, and business or other activities conducted in the Village of Kettlersville, whether or not such corporations have an office or place of business in the Village of Kettlersville.
 - (B) The tax imposed by this Section on corporations shall apply at the entity level to resident corporations which have elected to be taxed as a Sub-Chapter S corporation under the Internal Revenue Code.
- 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 said expenses are incurred in earning commissions or other compensation subject to the tax imposed by this Ordinance.
- C. Net profit from a business or profession conducted both within and without the boundaries of the Village of Kettlersville shall be considered as having a taxable

situs in the Village of Kettlersville for purposes of municipal 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) Ascertaining the percentage which the original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the Village of Kettlersville during the taxable period is to the 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 Kettlersville during the period covered by the return is to the total gross receipts from all sales and services, wherever made or performed during such period. Sales made within the Village of Kettlersville shall be deemed to include:
 - (1) All sales of tangible personal property which is delivered within the Village of Kettlersville, regardless of where title passes if shipped or delivered from a stock of goods within the Village of Kettlersville.
 - (2) All sales of tangible personal property which is delivered within the Village of Kettlersville, regardless of where title passes, even though transported from a point outside the Village of Kettlersville, if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village of Kettlersville and the sales result from such solicitation or promotion.
 - (3) All sales of tangible personal property which is shipped from a place within the Village of Kettlersville to purchasers outside the Village of Kettlersville, 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, commissions, and other compensation paid during the period covered by the return to employees for services performed in the Village of Kettlersville is to the total qualifying wages, commissions and other compensation paid during such period to all employees within and outside the Village of Kettlersville.

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

2. Provided, however, that in the event a just and equitable result cannot be obtained under the formula provided for herein, the Board or 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 allocable to the Village of Kettlersville in any taxable year may be applied against the portion of the profit of succeeding year(s) allocable to the Village of Kettlersville, 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. The portion of a net operating loss sustained shall be allocated to the Village of Kettlersville in the same manner as provided herein for allocating net profits to the Village of Kettlersville.

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

E. Exclusions from Tax. The tax provided for herein 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 component, including the Ohio National Guard.

2. Poor relief, pensions, unemployment compensation or similar payments, including disability benefits received from local, state or federal governments or from charitable, religious or educational organizations.

3. Alimony received.

4. 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.

5. Any association, organization, corporation, club or trust, which is exempt from federal taxes on income by reason of its charitable, religious, educational, literary, scientific, etc., purposes.
6. 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).
7. Earnings and income of all persons under seventeen (17) years of age, whether residents or non-residents.
8. Compensation paid under Section 3501.28 or 3501.36 of the Ohio 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.
9. Parsonage allowance pursuant to Section 107 of the Internal Revenue Code.
10. Compensation paid to an employee of a transit authority for operating a transit bus in or through the Village of Kettlersville, unless the bus is operated on a regularly scheduled route, the operator is a resident or domiciled in the Village of Kettlersville, or the headquarters of the authority or commission is located within the Village of Kettlersville.
11. Intangible income.

SECTION 4 – EFFECTIVE DATE

Said tax shall be levied, collected and paid with respect to the qualifying wages, commissions and other compensation earned on and after January 1, 2009, and with respect to the net profits of businesses, professions, or other activities earned on and after January 1, 2009.

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, 2009, to the close of the taxpayer's fiscal year. Thereafter, the taxpayer shall report on its fiscal year basis.

SECTION 5 – RETURN AND PAYMENT OF TAX

- A. Each person who engages in business, or whose salary, 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 Kettlersville on a form or forms furnished or obtained upon request setting forth:

1. The aggregate amounts of qualifying wages, commissions, and 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 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 the taxpayer's first fiscal year, any part of which falls within the tax period, pay the tax on the basis of the taxpayer's fiscal year and shall file returns by the fifteenth (15th) day of the fourth (4th) month following the end of the fiscal year or period.
- C. 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 Kettlersville Income Tax Return by filing a copy of the taxpayer's federal extension request with the Department of Taxation. Any taxpayer not required to file a federal income tax return may request an extension for filing a Village of Kettlersville 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 Kettlersville 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; or fails to file a copy of the federal extension request; or owes the Village of Kettlersville 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.
- D. The taxpayer making such return shall, at the time of the filing thereof, pay to the Village of Kettlersville, the amount of taxes shown 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, 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 Kettlersville is entitled under the provisions of this Ordinance, such overpayment 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) shall be collected or refunded. 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 of Kettlersville Income Tax Return showing income subject to the Village income 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.

- E. 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 Kettlersville Income Tax Department as the return required of any employee whose sole income, subject to the tax or taxes under this Ordinance, is such salary, wages, commissions, or other compensation.
- F. 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.
- G. 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. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.
- H. An adjustment made 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 underpayment or overpayment of tax.

SECTION 6 – COLLECTION AT SOURCE

- A. Each employer within or doing business within the Village of Kettlersville, 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 of one percent (1%) of the qualifying wages, commissions or other compensation due by said employer to said employee. Each such employer 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 Kettlersville 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 therefor by the Village of Kettlersville.

1. The Tax Commissioner is authorized to enter into agreements with employers outside the Village of Kettlersville, 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 Kettlersville, as a trustee for the benefit of the Village of Kettlersville, and any such tax collected by such employers shall, until the same is paid to the Village of Kettlersville, 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 – DECLARATION 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 in any business, shall file a declaration setting forth such estimated income or the estimated profit and 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 15 of each year. In the case of a person starting in business, such declaration shall be filed within four (4) months of the date said taxpayer 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, 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 Kettlersville shall be accompanied by a payment of at least 22.5% 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 15, October 15 and January 15 of each year. Such estimate may be amended at any time.
- E. A taxpayer reporting on a fiscal year basis shall file, beginning with 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 fiscal year accompanied by a payment of at least 22.5% 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.

- F. Taxpayers that are not individuals must remit 22.5% 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 a 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.
- G. 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 Kettlersville 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 and 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 provisions of SECTIONS 10 and 12 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 said office, and the Tax Commissioner 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 reexamination 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 thereof, if any.

- C. The Tax Commissioner shall demand and receive all taxes due the Village of Kettlersville and shall make a written report to Council at the end of each quarter of all moneys collected during the preceding quarter.
- D. The Tax Commissioner shall be the administrative head of the Income Tax Department, 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 imposed by SECTION 10 of this 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 or subpoena of the Tax Commissioner authorized hereby shall be deemed a violation of this Ordinance punishable as prescribed in SECTION 12 hereof.
- D. Any information gained as a result of any returns, investigations, hearings or verifications required or authorized by this Ordinance shall be confidential, and no disclosure thereof shall be made 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) 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 – INTEREST AND PENALTIES

- A. All taxes imposed and all moneys 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; 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 or an additional tax assessment made by the Tax Commissioner when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Commissioner; and provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after final determination of the federal tax liability.
- D. 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 (3) years from

the time of payment of any tax due hereunder; provided, however, there shall be no period of limitation on an additional assessment in a case of a return that omits gross income in excess of twenty-five percent (25%) of that required to be reported, 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:
 - 1. Fail, neglect or refuse to make any return or declaration required by this Ordinance; or
 - 2. Shall knowingly make any incomplete, false or fraudulent tax return; or
 - 3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this Ordinance; or
 - 4. Fail, neglect or refuse to withhold the tax from his employees 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 a 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' addresses, total wages paid and Kettlersville tax withheld or to knowingly give the Tax Commissioner false information; or
11. Attempt to do anything whatsoever 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) or imprisoned not more than six (6) months, or both, for each offense.

- B. Prosecution 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.
- C. 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 for two-year terms, 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 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 Tax 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 Tax Commissioner and, at the request of the taxpayer or Tax Commissioner, is empowered to substitute alternate methods of apportionment.
- C. Any person dissatisfied with any ruling or decision of the Tax Commissioner which is made under the authority conferred by this Ordinance may appeal therefrom to the Board of Review within thirty (30) days from the announcement of such ruling or decision by the Tax Commissioner, and the Board shall, on

hearing, having jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.

SECTION 14 – APPORTIONMENT OF FUNDS

The funds collected under the provisions of this Ordinance shall be applied for the following purposes in the following order, and in the percentages stated:

- A. Such part thereof which shall be necessary to defray all costs and expenses of collecting the taxes levied by this Ordinance and the cost of administering and enforcing the provisions hereof.
- B. The balance of any such funds collected under the provisions of this Ordinance shall be paid into the General Fund.

All income tax refunds shall be obtained from the above funds in the same percentages.

SECTION 15 – SAVINGS CLAUSE

This Ordinance shall not apply to any person, firm, or corporation or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. If 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 Kettlersville that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence or part thereof not been included therein.

SECTION 16 – DATE OF ENACTMENT

This Ordinance, upon its passage, shall be effective January 1, 2009, and shall remain in full force and effect until repealed by the Council of the Village of Kettlersville.

Passed this ____ day of December, 2008.

Ben Bowsher, Mayor

ATTEST:

Jo Bollheimer, Village Fiscal Officer

G:\Kettlersville, Village of\Ord\Income Tax Ord 08-_____
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