

**AN ORDINANCE IMPOSING A MUNICIPAL INCOME TAX
IN THE VILLAGE OF ANTWERP, OHIO; AND
DECLARING THE SAME AN EMERGENCY**

WHEREAS, the Council for the Village of Antwerp has determined that it is necessary to provide funds for the purpose of emergency services (fire, police and rescue), maintenance of equipment, new equipment, extension, enlargement and improvement of municipal services and facilities, and capital improvements of the municipality and the debt reduction (loans, notes and/or bonds) for the Village of Antwerp; and

WHEREAS, the Council for the Village of Antwerp currently has determined the source of funds to provide for the above-referenced services, equipment, facilities, capital improvements and debt reduction is to impose a municipal income tax on all salaries, wages, commissions and other compensation earned by residents of this municipality; on all salaries, wages, commissions and other compensation earned by non-residents in this municipality; for work done or services performed or rendered in this municipality or other activities conducted by residents of this municipality; on the net profits earned on all businesses, professions or other activities conducted in this municipality by non-residents, and on the net profits earned by all corporations doing business in this municipality as the result of work done or services performed or rendered in this municipality.

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Antwerp, Paulding County, Ohio:

SECTION A. PURPOSE

1. Purpose of Levy

To provide funds for the purpose of emergency services (fire, police and rescue), maintenance of equipment, new equipment, extension, enlargement and improvement of municipal services and facilities, and capital improvements of the municipality and the debt reduction (loans, notes and/or bonds) for the Village of Antwerp, on all salaries, wages, commissions and other compensation earned by residents of this municipality; on all salaries, wages, commissions and other compensation earned by non-residents in this municipality; for work done or services performed or rendered in this municipality or other activities conducted by residents of this municipality; on the net profits earned on all businesses, professions or other activities conducted in this municipality by non-residents, and on the net profits earned by all corporations doing business in this municipality as the result of work done or services performed or rendered in this municipality; requiring the filing of returns and furnishing of information by employers and all those subject to said tax; imposed on employers the duty of collecting the tax at the source and paying the same to this municipality; providing for the administration, collection and enforcement of said tax, declaring violation thereof to be a misdemeanor of the first degree and imposing penalties therefore; and declaring the same an emergency.

SECTION B. DEFINITIONS

1. Definitions Generally

For the purposes of this ordinance the terms, phrases, words and their derivative shall have the meanings given in the next succeeding sections. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

2. Adjusted Federal Taxable Income

"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 set forth in Sections 718.01(A)(1) of the Ohio Revised Code.

3. Administrative Rulings

"Administrative Rulings" mean the rulings issued by the Tax Administrator, upon the request of a taxpayer or employer, interpreting this ordinance and the Rules and Regulations. Administrative Rulings shall be binding and effective upon issuance as to the taxpayer or employer requesting the ruling.

4. Administrator

"Administrator" means the person designated and charged with direct responsibility to administer and enforce the provisions of the Village Income Tax Ordinance, who also may be referred to in this Ordinance as the "Tax Administrator." The Village of Antwerp designates the City of Cleveland Central Collection Agency as the Tax Administrator as provided in 718.01(A)(10)(a) of the Ohio Revised Code.

5. Association

"Association" means any partnership, limited partnership, limited liability company, limited liability partnership, Subchapter S corporation ("S corporation") as defined in the Internal Revenue Code, or any other form of unincorporated business or enterprise taxed on a pass-through basis under the Internal Revenue Code. The terms "association," "pass-through entity," and "unincorporated business entity" are synonymous for purposes of this Ordinance and the Rules and Regulations.

6. Board of Review

"Board of Review" means the Board created by and constituted as provided in Section M1 of this ordinance as set forth hereinafter.

7. Board of Tax Appeals

"Board of Tax Appeals" means the board created pursuant to Section 718.11 of the Ohio Revised Code also known as the "Board of Review".

8. Business

"Business" means any enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, including but not limited to the renting or leasing of property, real, personal or mixed. For purposes of determining if "business is conducted within the village," any direct and/or indirect ownership of an interest in an association, pass-through entity or unincorporated business entity that conducts business within the Village is considered included.

9. Village

"Village" means the Village of Antwerp, Ohio.

10. Corporation

"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, or any unincorporated entity treated as a corporation for federal income tax purposes.

"Corporation" also includes a combined company, an electric company and a telephone company, as defined in Section 5727.01 of the Ohio Revised Code.

11. Employee

"Employee" means one who works for qualifying wages in the service of an employer.

12. Employer

"Employer" means 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 qualifying wage basis.

13. Fiscal Year

"Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.

14. Gross Receipts

"Gross receipts" means total revenue from any source whatsoever.

15. Intangible Income

“Intangible income” means that income specified in Section 718.01(A)(5) of the Ohio Revised Code including any of the following types of income: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange or other disposition of intangible property including, but not limited to, investments, deposits, money or credits as those terms are defined in Chapter 5701. of the Ohio Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. “Intangible income” does not include prizes, awards or other income associated with, attributable to or derived from any lottery winnings or other similar games of chance.

16. Internal Revenue Code

“Internal Revenue Code” means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. References to Schedule C, Schedule E, and Schedule F mean the internal revenue service schedules C, E or F filed by a taxpayer pursuant to the Internal Revenue Code. References to Form 2106 mean internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

17. Net Profits

“Net profits” mean (i) if the taxpayer is a corporation, the corporation’s “adjusted federal taxable income” as that term is defined in Sections 718.01(A)(1)(a)-(f) of the Revised Code; (ii) if the taxpayer is an “association,” “pass-through entity,” or “unincorporated business entity,” “adjusted federal taxable income” as that term is defined in Section 718.01(A)(1)(g) of the Revised Code; and (iii) if the taxpayer is an individual, the individual’s profit, other than amounts specifically excluded in Section 718.01(F) of the Ohio Revised Code, required to be reported on federal Schedule C, Schedule E, or Schedule F, as provided by the Internal Revenue Service.

The “net profits” of a taxpayer shall be adjusted in accordance with the provisions of this Ordinance and the Rules and Regulations.

18. Nonresident

“Nonresident” means an individual domiciled outside the Village of Antwerp, Ohio.

19. Nonresident Owner

“Nonresident owner” means an individual domiciled outside the Village who has a direct or indirect ownership interest in an association, pass-through entity or unincorporated business entity that conducts business in the village or a corporation that has a direct or indirect ownership interest in an association, pass-through entity or unincorporated business entity that conducts business in the Village.

20. Nonresident Unincorporated Business Entity

“Nonresident unincorporated business entity” means an unincorporated business entity not having an office or place of business within the Village.

21. Ohio Revised Code

“Ohio Revised Code” means the codified statutes of the State of Ohio, as amended, also referred to herein as “Revised Code”.

22. Other Payer

“Other payer” means 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.

23. Owner

“Owner” means an individual, partner, member, or any other person having an ownership interest in an association, pass-through entity, or unincorporated business entity.

24. Pass-Through Entity

“Pass-through entity” means a partnership, limited liability company, S corporation or any other type of entity the income or profits of which are given pass-through treatment under the Internal Revenue Code. “Income from a pass-through entity” includes 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 income from other pass-through entities.

25. Person

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

With respect to provisions of this ordinance that impose or prescribe a penalty, the term “person” shall include the owners of an association, pass-through entity and unincorporated business entity and the officers of a corporation.

26. Place of Business

“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.

27. Qualifying Wages

“Qualifying wages” means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as provided in division (A)(2) of Section 718.03 of the Revised Code. “Qualifying wages” includes compensation attributable to a nonqualified deferred compensation plan or program as defined in section 3121(v)(2)(C) of the Internal Revenue Code and compensation arising from the sale, exchange or other disposition of a stock option, the exercise of a stock option, or the sale, exchange or other disposition of stock purchased by the stock option. “Qualifying wages” does not include compensation deferred before January 1, 2004, to the extent that the deferred compensation does not constitute “qualifying wages” when paid or distributed.

28. Resident

“Resident” means an individual domiciled in the Village.

29. Resident Owner

“Resident owner” means an individual domiciled in the Village who has an interest in an association, pass-through entity or unincorporated business entity.

30. Resident Unincorporated Business Entity

“Nonresident unincorporated business entity” means an unincorporated business entity not having an office or place of business within the Village.

31. Rules and Regulations

“Rules and Regulations” mean the Rules and Regulations promulgated by the Tax Administrator and approved by the Board of Review.

32. S Corporation

“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.

33. State

“State” means the State of Ohio.

34. Tax Commissioner

“Tax Commissioner” means the Tax Commissioner of the State of Ohio.

35. Taxable Income

"Taxable income" means all qualifying wages, net profits and all other income from whatever source derived set forth in Section C1 of this ordinance, and the Rules and Regulations as taxable.

36. Taxable Situs

"Taxable Situs" means that portion of a taxpayer's net profits attributable to the Village where the taxpayer conducts a business or profession both within and without the Village, determined in accordance with Section 718.02 of the Ohio Revised Code.

37. Taxable Year

"Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

38. Taxpayer

"Taxpayer" means a person subject to the tax imposed by this ordinance, whether the tax is imposed on the taxable income of the entity in the hands of the entity or on the taxable income from the entity in the hands of the owners of the entity. "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.

39. Unincorporated Business Entity

"Unincorporated Business Entity" means either an "association," "pass-through entity" or "corporation," determined by the treatment afforded such entity for federal income tax purposes.

SECTION C. IMPOSITION OF INCOME TAX

1. Rate and Taxable Income

For the purposes specified in Section A1 of this ordinance, on and after the effective date of this Ordinance as provided in Section C2 of this Ordinance, an annual tax of one percent (1%) per annum shall be imposed upon the hereinafter specified income. Such tax shall be imposed upon all taxable income as follows:

- (a) On all qualifying wages, net profits and other taxable income earned and/or received on and after the effective date of this Ordinance, by residents of the Village;
- (b) (1) On all qualifying wages, earned and/or received on and after the effective date of this Ordinance, by nonresidents of the Village for work done or services performed or rendered within the Village or attributable to the Village; on all net profits earned and/or received by a nonresident from the operation or conduct of any business or profession within the Village; and on all other taxable income earned and/or received

by a nonresident derived from or attributable to sources, events or transactions within the Village;

- (2) For nonresidents employed at a place of business or profession within the Village, only those qualifying wages earned and/or received by such nonresident that are specifically attributable to a place or location worked that is outside the Village will be treated as earned outside the Village;
- (c) (1) On the portion attributable to the Village of the net profits earned and/or received on and after the effective date of this Ordinance, of all resident associations, pass-through entities or other unincorporated business entities treated as a pass-through entity for federal income tax purposes or professions or other activities, derived from sales made, work done, services performed or rendered, and business, or other activities conducted in the Village and/or derived from sales made, work done, services performed or rendered and business or other activities attributable to the Village;
- (2) On the portion of the distributive share of the net profits earned and/or received on and after the effective date of this Ordinance, of a resident partner or owner of a resident association, pass-through entity or other unincorporated business entity treated as a pass-through entity for federal income tax purposes not attributable to the Village and upon which the Village's income tax has not been imposed and levied;
- (d) (1) On the portion attributable to the Village of the net profits earned and/or received on and after the effective date of this Ordinance, of all nonresident associations, pass-through entities or other unincorporated business entities treated as a pass-through entity for federal income tax purposes, professions or other activities, derived from sales made, work done, services performed or rendered, and business, or other activities conducted in the Village and/or derived from sales made, work done, services performed or rendered and business or other activities attributable to the Village, whether or not such association, pass-through entity or other unincorporated business entity treated as a pass-through entity for federal income tax purposes has an office or place of business in the Village;
- (2) On the portion of the distributive share of the net profits earned and/or received on and after the effective date of this Ordinance, of a resident partner or owner of a nonresident association, pass-through entity or other unincorporated business entity treated as a pass-through entity for federal income tax purposes not attributable to the Village and upon which the Village's income tax has not been imposed and levied from wherever such business is located;
- (e) On the portion attributable to the Village of the net profits earned and/or received on and after the effective date of this Ordinance, of all corporations and all other entities and business activities not defined herein as associations, pass-through entity or unincorporated business entity treated as a pass-through entity for federal income tax purposes derived from

- sales made, work done, services performed or rendered, and business, or other activities conducted in the Village, and/or derived from sales made, work done, services performed or rendered, and business, or other activities attributable to the Village, whether or not such corporations, entities or business activities have an office or place of business in the Village;
- (f) On the net profits of an electric company, combined company or telephone company apportioned and attributable to the Village in accordance with Section 718.01(F)(6) of the Revised Code and Chapter 5745. of the Revised Code;
 - (g) On all income derived from prizes, awards, gaming, wagering, lotteries or other similar games of chance by a resident from whatever source and from anywhere derived;
 - (h) On all income earned and/or received from covenants not to compete or similar agreements and on all income attributable to cancellation of indebtedness to the extent reported on the taxpayer's federal income tax return;
 - (i) On all guardian, executor, conservator, trustee or administrator fees earned and/or received by a taxpayer in connection with the operation or conduct of a business or profession;
 - (j) On all other compensation, net profits and income earned and/or received by the taxpayer that is not specifically exempted from the tax imposed by this ordinance as set forth in Section E1 of this ordinance and Section 718.01(F) of the Revised Code;
 - (k)
 - (1) For taxable years beginning on or after January 1, 2004, the net profits from a business or profession shall be taxed only to the extent of the taxpayer's adjusted federal taxable income except that nothing shall be construed as limiting the ability of the Tax Administrator to administer, audit, or enforce the provisions of this Ordinance including making all necessary adjustments and allocations to adjusted federal taxable income to produce a fair and proper allocation of net profits to the Village;
 - (2) Division (k)(1) of this section shall not apply to any taxpayer required to file a return under Section 5745.03 of the Revised Code or to the net profits from a sole proprietorship;
 - (l) For taxable years beginning on or after January 1, 2004, in the case of a taxpayer who has a net profit from a business or profession that is operated as a sole proprietorship, or in the case of a taxpayer who has a net profit from a business and the taxpayer is an individual, the Village shall not tax or use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the Village, an amount other than the net profit required to be reported on Internal Revenue Service Schedules C or F from such sole proprietorship for the taxable year; and
 - (m) For taxable years beginning on or after January 1, 2004, in the case of a taxpayer who has a net profit from rental activity required to be reported on Internal Revenue Service Schedule

E, the Village shall not tax or use as the base for determining the amount of the net profit that shall be considered as having a taxable situs in the Village, an amount other than the net profit from rental activities required to be reported by the taxpayer on Schedule E for the taxable year.

2. Effective Date

The village income tax shall be levied, imposed, collected and paid on any and all qualifying wages, net profits and taxable income as provided in Section C1 of this ordinance, earned and/or received on and after September 12, 2006.

SECTION D. DETERMINATION OF TAX ALLOCATION

1. Method of Determination

This Section does not apply to taxpayers that are subject to and required to file reports under Chapter 5745. of the Revised Code.

(a) Except as otherwise provided in division (d) of this section, for taxable years beginning on or after January 1, 2004, the net profits from a business or profession conducted both within and without the Village shall be considered as having a taxable situs in the Village for purposes of imposing the village income tax to the extent of the amount determined by multiplying the entire net profits by a business allocation percent determined by the average ratio of the following:

- (1) 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 during the taxable period to the average original cost of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in this division (a)(1), "real property" shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight (8).

- (2) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the Village to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the Village under Section 718.011 of the Revised Code.
- (3) Gross receipts of the business or profession from sales made and services performed during the taxable period in the Village to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the foregoing apportionment formula does not produce an equitable result, another basis may be substituted, under the Rules and Regulations, so as to produce an equitable result.

- (b) For taxable years beginning on or after January 1, 2004, no taxpayer shall use the books and records method of apportionment. Except as otherwise provided in Section 718.02 of the Revised Code and division (a) of this section, all taxpayers shall use the statutory apportionment formula set forth in this section.
- (c) Except as otherwise provided in division (d) of this section, for taxable years beginning on or after January 1, 2004, the net profits from rental activity not constituting a business or profession shall be subject to tax by the Village only if the property generating the net profit is located in the Village.
- (d) This section shall not apply to individuals who are residents of the Village and, except as otherwise provided in Section 718.01 of the Revised Code, the Village shall impose its tax on all income earned and/or received by residents of the Village from whatever source derived in accordance with Section C1 of this ordinance.

2. Sales Made in the Village

As used in Section D1(a)(3) of this ordinance, "sales made in the Village" means:

- (a) All sales of tangible personal property delivered within the Village regardless of where title passes if shipped or delivered from a stock of goods within the Village;
- (b) All sales of tangible personal property delivered within the Village regardless of where title passes even though transported from a point outside the Village, if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village, and the sales result from such solicitation or promotion; or
- (c) All sales of tangible personal property shipped from a place within the Village to purchasers outside of the Village 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.

3. Total Allocation

Add together the percentages determined in accordance with Section D1 of this ordinance, or such of the aforesaid percentages as are applicable to the particular taxpayer, and divide the total so obtained by the number of percentages used in deriving the total in order to obtain the business allocation percentage referred to in Section D1 of this ordinance.

A factor is applicable even though it may be allocable entirely within or without the Village.

4. Rentals

- (a) Rental income received by a taxpayer shall be included in the computation of net profits from business activities under divisions (c) to (e) of Section C1 of this ordinance, only if and to the extent that the rental, ownership, management or operations of the real estate from which such rentals are derived, whether so rented, managed or operated by a taxpayer individually or through agents or other representatives, constitutes a business activity of the taxpayer in whole or in part.
- (b) Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of One hundred fifty dollars (\$150.00) per month, it shall be prima-facie evidence that the rental, ownership, management or operation of such properties, is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax. However, in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits, of the lessee, whether or not such rental exceeds One hundred fifty dollars (\$150.00) per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds One hundred fifty dollars (\$150.00) per month. It is provided further that the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds One hundred fifty dollars (\$150.00) per month.

5. Operating Loss; Carry Forward

- (a) The portion of a net operating loss sustained in any taxable year subsequent to the effective date of this Ordinance, allocable to the Village may be applied against the portion of the net profit of succeeding tax years allocable to the Village, 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.
- (b) The portion of net operating loss sustained shall be allocated to the Village in the same manner as provided herein for allocating net profits to the Village.
- (c) The Tax Administrator shall provide by Rules and Regulations the manner in which such net operating loss carry forward shall be determined.

SECTION E. EXEMPTIONS

1. Sources of Income Not Taxed

The tax provided for in this ordinance shall not be levied on the following:

- (a) Military pay or allowance of members of the armed forces of the United States and of members of their reserve components, including the Ohio National Guard;
- (b) Income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities;
- (c) Proceeds from welfare benefits, unemployment benefits, social security benefits;
- (d) Proceeds of insurance paid by reason of the death of the insured; pensions, disability benefits, annuities, or gratuities not in the nature of compensation for services rendered from whatever source derived;
- (e) Receipts from seasonal or casual entertainment, amusements, sports events, and health and welfare activities when any such are conducted by bona fide charitable, religious, or educational organizations and associations;
- (f) Alimony received;
- (g) Personal earnings of any natural person under eighteen (18) years of age;
- (h) Compensation for personal injuries or for damages to property by way of insurance or otherwise;
- (i) Interest, dividends, gains, and other revenue from intangible property described in Section 718.01(A)(5) of the Revised Code;
- (j) Gains from involuntary conversion; cancellation of indebtedness, to the extent exempt from federal income tax; interest on Federal obligations; items of income already taxed by the State that the Village is specifically prohibited from taxing; and income of a decedent's estate during the period of administration, except such income from the operation of a business;
- (k) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in Section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in Section 1402(a) of the Internal Revenue Service Code;
- (l) The rental value of a parsonage, or the rental allowance furnished as compensation and actually used for a parsonage, by a minister;
- (m) Compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce;

- (n) Compensation and net profits, the taxation of which is prohibited by the Constitution of the State or any act of the Ohio General Assembly limiting the power of the Village to impose net income tax;
- (o) Those items listed in Section 718.01(F) and Section 718.011 of the Ohio Revised Code as not subject to taxation;
- (p) Only the income items listed in this Section E1 of this ordinance are not subject to the tax imposed by this ordinance. All other compensation, net profits and other income earned and/or received by a taxpayer shall be subject to the tax imposed by this ordinance unless prohibited by State or federal law.

SECTION F. RETURNS

1. Date for Filing Returns

- (a) Each taxpayer who engages in business or whose qualifying wages are subject to the tax imposed by this ordinance, except as herein provided, shall, whether or not a village income tax is due thereon, make and file a return on or before April 30 of the year following the effective date of the passage of this Ordinance, and on or before April 30 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or period.
- (b) Unless the filing exemption in division (e) of this section applies, for taxable years beginning after 2005, each taxpayer shall, whether or not a village income tax is due thereon, make and file an annual village income tax return or report on the fifteenth (15th) day of the fourth (4th) month following the end of the taxpayer's taxable year.
- (c) No taxpayer shall be required to file an annual village income tax return or report prior to the filing date for the corresponding tax reporting period as prescribed for such taxpayer under the Internal Revenue Code.
- (d) Tax returns required to be filed under this section shall be deemed filed when postmarked by the United States Postal Service or the date of receipt recorded by authorized delivery service as defined in Sections 5703.056 of the Revised Code. Tax returns otherwise delivered to the Tax Administrator during normal business hours shall be deemed filed on the date received.
- (e) The Tax Administrator is authorized to provide by regulation that the return of an employer, showing the amount of tax deducted by the employer from the qualifying wages of an employee, and paid by him or them to the Tax Administrator shall be accepted as the return required of any employee whose sole income, subject to tax under this ordinance, is such qualifying wages. This filing exemption is limited to nonresident taxpayers whose sole

income is qualifying wages for which the tax imposed by this ordinance has been withheld and remitted to the Village by the employer.

2. Form and Content of Return

The village income tax return shall be filed with the Tax Administrator on a form prescribed by and obtainable upon request from the Tax Administrator or on a generic form in accordance with Section 718.05 of the Revised Code, setting forth:

- (a) The aggregate amounts of all qualifying wages net profits and all other taxable income earned and/or received by the taxpayer during the taxable year and subject to the village income tax;
- (b) The amount of the tax imposed by this ordinance on such qualifying wages, net profits; and all other taxable income;
- (c) Such other pertinent statements, schedules, information, returns, copies of federal or state tax returns or any other information as the Tax Administrator may require; and
- (d) In accordance with Section 718.051 of the Revised Code and the Rules and Regulations, taxpayers subject to the village income tax on the net profits from a business or profession may file the village income tax return by using the Ohio business gateway.

3. Extension of Time for Filing Returns

- (a) Except as otherwise provided in division (g) of this section, any taxpayer who has requested an extension for filing a federal income tax return may request an extension for filing the village income tax return for the same taxable year by filing a copy of the request for federal extension with the Tax Administrator in accordance with Section 718.05 of the Revised Code and the Rules and Regulations. Any taxpayer not required to file a federal income tax return may request an extension for filing the village income tax return in accordance with Section 718.05 of the Revised Code and the Rules and Regulations.
- (b) Requests for extensions are not automatic and may be denied in accordance with Section 718.05 of the Revised Code.
- (c) If granted, request for extensions filed before January 1 of the applicable taxable year shall extend the due date of the village income tax return for a period not less than the period of the federal extension requested.
- (d) For taxable years beginning after 2005, if the request for extension to file the village income tax return is granted, the extended due date 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.

- (e) The granting of an extension to file the village income tax return does not extend the last date to pay any village income tax due without penalty or interest in accordance with Sections H1 and H2 of this ordinance.
- (f) No late filing penalty shall be imposed if the village income tax return is filed on or before the due date as extended.
- (g) In accordance with Section 718.051 of the Revised Code and the Rules and Regulations, taxpayers subject to the village income tax on the net profits from a business or profession that have received an extension to file the federal income tax return by using the Ohio business gateway will receive an extension to file the village income tax return for the same taxable year provided that, the requirements of Section 718.051 of the Revised Code are met. In accordance with that Section, the extended due date will be the last day of the same month to which the due date for filing the federal return has been extended.
- (h) Extensions to file the village income tax return granted through the Ohio business gateway do not extend the time to pay any village income tax due without penalty or interest in accordance with Sections H1 and H2 of this ordinance.

4. Consolidated Returns

- (a) Filing of consolidated returns may be permitted or required in accordance with the Rules and Regulations prescribed by the Tax Administrator. A consolidated return may be filed by any affiliated group of corporations subject to the tax imposed by this ordinance if that affiliated group filed for the same taxable year a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code. If an affiliated group of corporations subject to the tax imposed by this ordinance is required to file a consolidated return or files a consolidated return in accordance with this Section, the affiliated group of corporations must continue to file consolidated returns including that group of corporations and any other group of corporations included in the federal consolidated filing group for all subsequent taxable years that the group files a consolidated tax return for federal tax purposes unless, on or before the due date for filing the village income tax return for the taxable year, the affiliated group obtains written permission from the Tax Administrator to file separate returns for that year.
- (b) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the Village constituting a portion only of its total business, the Tax Administrator shall require such additional information as it may deem necessary to ascertain whether net profits are properly allocated to the Village. If the Tax Administrator finds that net profits are not properly allocated to the Village by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, the Tax

Administrator shall make such allocation to produce a fair and proper allocation of net profits to the Village.

5. Amended Returns

- (a) Where necessary an amended return shall be filed in order to report additional income and pay any additional village income tax due, or claim a refund of village income tax overpaid, subject to the requirements, limitations, or both, contained in Sections I and J of this ordinance. Such amended return shall be on a form prescribed by and obtainable upon request from the Tax Administrator. A taxpayer may not change the method of accounting, filing status or method of apportionment of the net profits after the due date for filing the original village income tax return.
- (b) Within three 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 income tax based upon such final determination of federal tax liability, and pay any additional village income tax shown due thereon or make claim for refund of any overpayment.

SECTION G. PAYMENT OF TAX

1. Payment of Tax on Filing of Return

- (a) The taxpayer making a village income tax return shall, at the time of the filing thereof, pay to the Tax Administrator the amount of taxes shown as due thereon. However, where any portion of the tax so due has been deducted at the source pursuant to the provisions of Section G2 of this ordinance, or where any portion of the tax has been paid by the taxpayer pursuant to the provisions of Section G3 of this ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section J1 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 the return.
- (b) Subject to the limitations set forth in Section I2 of this ordinance, any taxpayer who has overpaid the amount of tax to which the Village is entitled under the provisions of this ordinance may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment, or part thereof, shall be refunded, provided that no additional taxes or refunds of less than One dollar (\$1.00) shall be assessed, collected or refunded.

2. Collection at Source

- (a) In accordance with this Ordinance, and the Rules and Regulations, each employer, agent of any employer or other payer within or doing business within the Village who employs one or more persons shall deduct when any qualifying wages are earned and/or received by the taxpayer, the amount of village income tax imposed by Section C1 of this ordinance on the

gross qualifying wages earned and/or received by the taxpayer and except as otherwise provided in divisions (f) and (g) of this section shall, on or before the twentieth (20th) day of the month following the close of each calendar quarter make a return and pay to the Tax Administrator the amount of village income taxes so deducted from such qualifying wages, subject to the provisions of divisions (c) to (e) of this section. Returns shall be on a form or forms prescribed by or acceptable to the Tax Administrator, and shall be subject to the Rules and Regulations prescribed therefore by the Tax Administrator. Such employer shall be liable for the payment of the village income tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

- (b) Each employer, agent of any employer or other payer in collecting the village income tax shall be deemed to hold the same, until payment is made by such employer, agent of any employer or other payer to the Village, as a trustee for the benefit of the Village and any such tax collected by such employer, agent of any employer or other payer from his employees shall, until the same is paid to the Village, be deemed a trust fund in the hands of such employer, agent of any employer or other payer. Each employer, agent of any employer and other payer shall be liable for the payment of village income tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.
- (c) Each employer, agent of any employer or other payer who deducts and withholds village income tax of One hundred dollars (\$100.00) or more per month shall pay to the Tax Administrator before the twentieth (20th) of the following month the amount of taxes so deducted on a monthly basis beginning with the first month the employer, agent of any employer or other payer exceeds One hundred dollars (\$100.00) in village income taxes withheld.
- (d) Payments shall be reported on a form or forms prescribed by and obtainable upon request from the Tax Administrator.
- (e) No employer, agent of an employer or other payer shall be required to withhold the village income tax on qualifying wages or other taxable income paid to domestic servants employed by such employer or other payer exclusively in or about such employer or other payer's residence, even though such residence is in the Village, but such employee shall be subject to all of the requirements of this ordinance.
- (f)
 - (1) Any person who shall employ or contract for the services of any professional entertainer, entertainment act, sports event, promotional booth, special event, band, orchestra, rock group, theatrical performance, or
 - (2) Any person who, acting as a promoter, booking agent or employer, engages the services of, or arranges the appearance of any professional entertainer, entertainment act, sports event, band, orchestra, rock group, theatrical performance in the Village, and who makes any payment arising from said appearance in the Village shall be deemed to be an employer and shall, for purposes of the collection of the village income tax, be required to withhold, report and remit as required by this section to

the Tax Administrator the village income tax at the rate provided in Section C1 of this ordinance, on the gross amount so paid to the entertainer, athlete, etc., on completion of the engagement for the services performed in the Village. The reports required by this section shall be made and filed on forms prescribed by and obtainable from the Tax Administrator.

- (g) Any person, as defined in Section B25 of this ordinance, who rents facilities to any professional entertainer, entertainment act, sport event, promotional booth, special event, band, orchestra, rock group, theatrical performance for use in performing services in the Village, and who makes any payment arising from said use of facilities shall be deemed to be an employer and shall, for purposes of the collection of the village income tax, be required to withhold, report and remit as required by this section to the Tax Administrator the village income tax at the rate provided in Section C1 of this ordinance based on the gross amount so paid to the professional entertainer, athlete, etc., on completion of the engagement for the services performed in the Village. The reports required by this section shall be made and filed on forms prescribed by and obtainable from the Tax Administrator.
- (h) For taxable years beginning after 2005, no employer or agent of an employer or other payer shall be required to withhold tax with respect to any amount other than qualifying wages. Nothing in this Section prohibits an employer from withholding tax on a basis greater than qualifying wages.
- (i) Every employer, agent of an employer or other payer required to withhold and remit the village income tax in accordance with this ordinance, shall be directly liable to the Village for the payment of such tax, whether or not actually withheld or collected.
- (j) For taxable years beginning after 2005, no employer is required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.
- (k)
 - (1) An employee is not relieved from liability for paying the village income tax by the failure of the employer to withhold the tax as required by this Section G2 of this ordinance or the employer's exemption from the requirement to withhold the tax.
 - (2) The failure of an employer to remit to the Village the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.
- (l) In accordance with Section 718.051 of the Revised Code, the Rules and Regulations of the State Tax Commissioner, this Ordinance and the Rules and Regulations, any employer subject to this Section G2 of this ordinance may report the amount of village income tax withheld from qualifying wages and remit such amounts by using the Ohio business gateway.

3. Declarations of Income Not Collected at Source

Every person who anticipates earning and/or receiving any taxable income which is not subject to Section G2 of this ordinance, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section C1 of this ordinance shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any. However, if a person's income is wholly from qualifying wages from which the village income tax will be withheld and remitted to the Village in accordance with Section G2 of this ordinance, such person need not file a declaration.

4. Filing of Declaration

- (a) For taxable years beginning after 2005, the declaration required by Section G3 of this ordinance shall be filed on or before April 15 of each year during the effective period set forth in Section C2 of this ordinance or on or before the fifteenth (15th) day of the fourth (4th) month following the date the taxpayer becomes subject to tax for the first time.
- (b) For taxable years beginning after 2005, for those taxpayers reporting on a fiscal year or period other than a calendar year, the declaration required by Section G3 of this ordinance shall be filed on or before the fifteenth (15th) day of the fourth (4th) month after the beginning of each fiscal year or period.
- (c) In accordance with Section 718.051 of the Revised Code, the Rules and Regulations of the State Tax Commissioner, this Ordinance, and the Rules and Regulations, any taxpayer subject to the village income tax on the net profits from a business or profession may file declarations of estimated net profits and pay estimated village tax due thereon by using the Ohio business gateway.

5. Form of Declaration

- (a) The declaration required by Section G3 of this ordinance shall be filed upon forms prescribed by and obtainable from the Tax Administrator, or acceptable generic form, and credit shall be taken for Village income tax to be withheld from any portion of such income. In accordance with the provisions of Section J1 of this ordinance, credit may be taken for village income tax to be paid to or withheld and remitted to another taxing municipality.
- (b) The original declaration, or any subsequent amendment thereof, may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.

6. Payment to Accompany Declaration

- (a) For taxpayers who are individuals, the declaration of estimated village income tax required by Section G3 of this ordinance, shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of such taxpayer's estimated village income tax for the taxable year, and at least twenty-two and one-half percent (22.5%) of such estimated village income tax shall be paid on or before each of the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year.

- (b) For taxpayers that are not individuals, the declaration of estimated village income tax required by Section G3 of this ordinance, shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of such taxpayer's estimated village income tax for the taxable year, and at least twenty-two and one-half percent (22.5%) of such estimated village tax shall be paid on or before each of the fifteenth (15th) day of the sixth, ninth and twelfth months after the beginning of the taxable year.
- (c) No declaration shall be deemed filed unless accompanied by the required payment of estimated village income tax.
- (d) Declarations required to be filed by Section G3 of this ordinance, shall be deemed filed when the declaration with required payment are postmarked by the United States Postal Service or the date of receipt recorded by authorized delivery service as defined in Section 5703.056 of the Revised Code. Declarations otherwise delivered with the required payment to the Tax Administrator during normal business hours shall be deemed filed on the date received.
- (e) A declaration of estimated village income tax may be amended at any time, in accordance with the Rules and Regulations. In the event that an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates set forth in this Section.

7. Annual Return

For taxable years beginning after 2005, the annual village income tax return required to be filed after filing such declaration or amended declaration shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the end of the taxpayer's taxable year (calendar or fiscal year). Any balance of village income tax remaining due in accordance with Section G1 of this ordinance shall be remitted with the village income tax return.

SECTION H. INTEREST AND PENALTIES

1. Interest on Unpaid Tax

All village income 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 and one half percent (1½%) per month or fraction thereof.

2. Penalties on Unpaid Tax

In addition to interest as provided in Section H1 of this ordinance, penalties are imposed on all village income tax remaining unpaid after it becomes due as follows:

- (a) For failure to pay village income taxes due other than taxes withheld: one and one half percent (1½%) of such outstanding tax per month for each month that the tax remains outstanding or fraction thereof;

- (b) For failure to file an annual village income tax return by the due date or extended due date: a minimum of fifty dollars (\$50.00);
- (c) For failure to remit village income taxes withheld or required to be withheld from employees: Three percent (3%) of the outstanding unremitted tax per month or fraction thereof for each month that the unremitted tax remains outstanding; and
- (d) In accordance with the Rules and Regulations, the Tax Administrator may impose such other interest and penalty assessment as the Tax Administrator deems necessary for the administration and enforcement of the provisions of this ordinance.

3. Exceptions to Penalties

A penalty shall not be assessed on an additional tax assessment made by the Tax Administrator when a village income tax return has been filed in good faith and the tax paid thereon within the time prescribed by Section F1 of this ordinance provided that the additional tax assessment shall be paid within the time prescribed by the Tax Administrator for payment of such additional tax; and provided further, that in the absence of fraud, neither penalty nor interest shall be assessed on any additional village income tax assessment resulting from a federal audit, providing an amended village income tax return is filed and the additional village income tax is paid within three months after a final determination of the federal income tax liability.

4. Abatement of Interest and Penalty

Upon recommendation of the Tax Administrator, the Board of Review may abate penalty or interest, or both, or upon a written appeal by the taxpayer upon the refusal of the Tax Administrator to recommend abatement of penalty, interest, or both, the Board may nevertheless abate penalty or interest, or both, for reasonable cause shown.

The Rules and Regulations may authorize the Tax Administrator to abate penalty, interest, or both, for reasonable cause shown in certain circumstances.

5. Violations

No person shall:

- (a) Fail, neglect, or refuse to make any return or declaration required by this ordinance; or
- (b) Knowingly make any incomplete, false, or fraudulent return; or
- (c) Willfully fail, neglect, or refuse to pay the tax, penalties or interest imposed by this ordinance; or
- (d) Fail, neglect, or refuse to withhold village income tax from his employees; or

- (e) Refuse to permit the Tax Administrator 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
- (f) Fail to appear before the Tax Administrator 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 Administrator; or
- (g) Refuse to disclose to the Tax Administrator any information with respect to such person's income or net profits or, in the case of a person responsible for maintaining information relating to his employers' income or net profits, such person's employer's income or net profits; or
- (h) Fail to comply with the provisions of this ordinance or any order or subpoena of the Tax Administrator authorized hereby; or
- (i) To avoid imposition or collection of village income tax, willfully give to an employer or prospective employer false information as to his true name, correct social security number and residence address, or willfully fail to promptly notify an employer or a prospective employer of any change in residence address and date thereof; or
- (j) Fail, as an employer, agent of an employer, or other payer, to maintain proper records of employees' residence addresses, total wages paid and village tax withheld, or to knowingly give the Tax Administrator false information; or
- (k) Fail to remit or cause to be remitted the village income tax withheld from all qualifying wages of employees to the Village as required by Section G2 of this ordinance; or
- (l) Willfully fail, neglect, or refuse to make any payment of estimated village income tax for any taxable year or part of any taxable year in accordance with Section G6 of this ordinance; or
- (m) 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.

For purposes of this Section H5 of this ordinance, any violation that does not specify a culpable mental state or intent, shall be one of strict liability and no culpable mental state or intent shall be required for a person to be guilty of that violation.

For purposes of this Section H5 of this ordinance, the term "person" shall, in addition to the meaning prescribed in Section B25 of this ordinance, include in the case of a corporation, association, pass-through entity or unincorporated business entity not having any resident owner or officer within the village, any employee or agent of such corporation, association, pass-through entity or unincorporated business entity who has control or supervision over or is charged with the responsibility of filing the village income tax returns and making the payments of the village income tax as required by Sections F1, G2, and Section G6 of this ordinance.

6. Limitation of Prosecution

Prosecutions for an offense made punishable under this ordinance shall be commenced within three (3) years after the commission of the offense, except that in the case of fraud, failure to file a return, or the omission of twenty-five (25%) or more of the taxable income required to be reported, prosecutions shall be commenced within six (6) years after the commission of the offense.

7. Failure to Procure Tax Forms

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

SECTION I. UNPAID TAXES AND REFUNDS

1. Unpaid Taxes Recoverable as Other Debts

All taxes imposed by this ordinance shall be collectible, together with any interest and penalties thereon, as other debts of like amount are recoverable, including, but not limited to, collection by suit. Any suit shall be brought within three (3) years after the village income tax was due or the return was filed, whichever is later. Except in the case of fraud, of omission of twenty-five (25%) or more of taxable income required to be reported, or of failure to file a return, no additional assessment shall be made after three (3) years from the time the village income tax was due or the village income tax return was filed, whichever is later.

2. Refund of Taxes Erroneously Paid

- (a) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made or the return was due, or within three (3) months after the final determination of the federal tax liability, whichever is later.
- (b) No interest shall be paid by the Village on any refunded overpayment of village income tax if the overpayment is refunded within ninety (90) days after the due date for filing the village income tax return or ninety (90) days after the complete return is filed, whichever is later. For purposes of computing the payment of interest on overpayments, no amount of village income tax for any taxable year shall be treated as having been paid before the date on which the village income tax return for that taxable year was due, without regard to any extension of time for filing that return. Interest on any overpayment of village income tax shall be paid at the rate of interest prescribed by Sections 718.12 and 5703.47 of the Revised Code.

3. Limitation on Collection and Refunds

Amounts of less than One dollar (\$1.00) shall not be collected or refunded.

SECTION J. TAXPAYER RELIEF AND RECIPROCITY

1. Village Resident Subject to Income Tax in Other Municipality and/or County Tax of a County located in the State of Indiana

It is the intent of this section that a taxpayer who is a resident of the Village, but who is subject to tax in another municipality and/or county tax of a county located in the State of Indiana on the same income, and who has complied with the provisions hereof, shall be entitled to a credit for said tax paid the other municipality and/or county tax paid in the county in the State of Indiana but limited to a tax rate of one-half percent ($\frac{1}{2}\%$). Accordingly, notwithstanding any other provisions of this ordinance:

- (a) When a resident of the Village is subject to and has paid, or has acknowledged liability for, a municipal income tax in another municipality and/or county tax of a county located in the State of Indiana on the same income taxable under this Ordinance, and such other municipality and/or county in the State of Indiana does not allow a credit to its non-residents, for taxes paid or due the Village of Antwerp, such Village resident may claim as a credit, the amount of such tax paid to such other municipality and/or county in the State of Indiana. The credit is limited to one-half percent ($\frac{1}{2}\%$) of the income subject to tax in such other municipality and/or county located in the State of Indiana. The credit allowed by this section shall not be allowed unless the same is claimed in a timely return on forms acceptable to and filed with the Tax Administrator. In the event a taxpayer fails, neglects or refuses to file such timely return or form, including authorized extensions, said taxpayer shall not be entitled to such credit and shall be liable for the full amount of tax assessed by this Ordinance, together with such interest and penalties, both civil and criminal, as are prescribed by this Ordinance.
- (b) In the event a resident is entitled to credit for taxes paid another municipality and/or county tax of a county located in the State of Indiana, such resident is required to file a return on a form in such manner as the Tax Administrator may prescribe.
- (c) Assignment of any claim for refund to which a resident may be entitled from another municipality and/or county tax of a county located in the State of Indiana shall be tentatively accepted as payment of that portion of village income tax represented by such assignment. However, if satisfactory evidence is offered that the taxpayer is entitled to the claim covered by the assignment, such taxpayer shall not be deprived of credit therefor because of fault or neglect on the part of either municipality and/or county located in the State of Indiana.
- (d) In the event such resident fails, neglects or refuses to file such return or form as is prescribed by the Tax Administrator, such resident shall not be entitled to such credit and shall be considered in violation of this ordinance for failure to file a return and make payment of taxes due hereunder.
- (e) A resident owner of a pass-through entity that does not conduct business in the Village and that has paid an income tax to another municipality and/or county tax of a county located in the State of Indiana may claim a credit equal to the lesser of (i) the resident owner's

proportionate share of the amount, if any, of income tax paid by the pass-through entity to another municipality in the State of Ohio and/or county tax of a county located in the State of Indiana; or (ii) the resident owner's proportionate share of the amount of village income tax that would be imposed on the pass-through entity if the pass-through entity conducted business in the Village.

- (f) In no case shall the amount of the credit allowed under division (e) of this Section exceed the tax assessed by this ordinance on the resident owner's taxable income subject to tax by another municipality and/or county tax of a county located in the State of Indiana.
- (g) The credits provided in Section 718.021 and 718.121 shall be available to residents, if applicable.
- (h) Except as otherwise provided in Sections 718.021; 718.121 and 718.14 of the Revised Code, this ordinance and the Rules and Regulations, where a nonresident is subject to the tax imposed by this ordinance and is subject to tax on the same taxable income in the municipality where such nonresident resides, no credit against the village income tax levied by this ordinance shall be allowed.

2. Claim for Credit

Any claim for credit for taxes paid by a resident to another municipality and/or county tax of a county located in the State of Indiana on the same income taxable under this ordinance or claim for or assignment of any refund due to the credit provided for in Section J1 of this ordinance, must be filed with the Tax Administrator on a form acceptable to the Tax Administrator within three (3) years from the due date of the village income tax return. If the resident, fails, neglects, or refuses to file such claim for refund or credit within the time prescribed by this section, such failure, neglect, or refusal shall render such credit, claim for refund, or assignment null and void and the resident shall be liable for the full amount of tax assessed by this ordinance, together with interest and penalties.

SECTION K. FUND DEPOSIT AND DISBURSEMENT

1. Deposit of Funds

All monies collected by the Tax Administrator under the provisions of this ordinance shall be kept in the General Fund of the Village of Antwerp, Ohio..

2. Disbursement of Funds Collected

The funds collected under the provisions of this ordinance shall be disbursed in the following manner: Twenty five (25%) percent of the total income tax collected shall be transferred out of the

General Fund to emergency services, which include police, fire and emergency medical services. Seventy five (75%) percent of the total income tax collected shall be transferred out of the General Fund for maintenance of equipment, new equipment, extension, enlargement and improvement of municipal services and facilities, and capital improvements of the municipality and the debt reduction (loans, notes, and/or bonds) for the Village of Antwerp.

SECTION L. DUTIES AND AUTHORITY OF ADMINISTRATOR

1. Receipt and Records of Tax

The Tax Administrator shall collect and receive the tax imposed by this ordinance in the manner prescribed herein from the taxpayers, keep an accurate record thereof, and report all monies so received.

2. Enforcement of Collection

The Tax Administrator shall enforce payment of all income taxes owing to the Village, keep accurate records for a minimum of five years (5) years, showing the amount due from each taxpayer required to file a declaration of estimated municipal income tax and make any return, or both, including returns of taxes withheld and show the dates and amounts of payments thereof.

3. Authority to Make and Enforce Regulations

- (a) The Tax Administrator is hereby charged with the enforcement of the provisions of this ordinance and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce and interpret rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this ordinance, including provisions for the re-examination and correction of returns.
- (b) Upon the request of a taxpayer or employer subject to this ordinance, the Tax Administrator is empowered to issue Administrative Rulings interpreting this ordinance and the Rules and Regulations. Those Administrative Rulings shall be binding and effective upon issuance as to the taxpayer or employer requesting the Ruling. Administrative Rulings may be appealed to the Board of Review.

4. Authority to Arrange Installment Payments

- (a) The Tax Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, not to exceed twelve (12) months, when the taxpayer has proved to the Tax Administrator 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 this ordinance.

- (b) Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand, and the provisions of Sections II and C1 of this ordinance shall apply.

5. Authority to Determine Amount of Tax Due

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

6. Investigations

The Tax Administrator, or any authorized agent, representative or employee, is authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or any person subject to, or whom the Tax Administrator believes is subject to the provisions of this ordinance, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax or withholding due under this ordinance. Every such employer, supposed employer, taxpayer or supposed taxpayer is directed and required to furnish within fifteen (15) days upon written request by the Administrator, or his duly authorized agent, representative, or employee, the means, facilities and opportunities for making such examinations and investigations as are hereby authorized.

7. Authority to Compel Production of Records

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

8. Refusal to Produce Records

The refusal to produce books, papers, records and federal income tax returns, or the refusal to submit to such examination by any employer or persons subject or presumed to be subject to the village income tax or by any officer, agent or employee of a person subject to the village income tax or required to withhold such tax or the failure of any person to comply with the provisions of this ordinance, including this section, or with an order or subpoena of the Tax Administrator is a violation of this ordinance punishable in accordance with Section O of this ordinance.

9. Confidential Nature of Information; Disclosure of Returns and Return Information

- (a) Any information gained as a result of returns, investigations, hearings or verifications required or authorized by this ordinance or Chapter 718. of the Revised Code shall be confidential and no person shall disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the Village as authorized by this ordinance.
- (b) The Tax Administrator may furnish copies of returns filed under this ordinance to the Internal Revenue Service and to the State Tax Commissioner.

10. Taxpayer Required to Retain Records

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

11. Withholding Taxes from Federal Employees

The Tax Administrator is authorized to enter into an agreement on behalf of the Village with the United States Secretary of the Treasury for the purpose of withholding village income or employment taxes from the compensation of federal employees whose regular place of federal employment is within the territorial jurisdiction of the Village.

SECTION M. BOARD OF REVIEW

1. Board of Review Established

A Board of Review, consisting of three (3) persons, that must be appointed by the Village Council and approved by the Mayor within one hundred eighty (180) after passage of this ordinance, is hereby created and shall be maintained to hear appeals by taxpayers of decisions and Administrative Rulings issued by the Tax Administrator regarding a municipal income tax obligation that is subject to appeal as provided in Section 718.11 of the Revised Code, this ordinance or the Rules and Regulations. The Board shall select, each year for a one (1) year term, one of its members to serve as Chairman and one to serve as Secretary. 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 L9 of this ordinance with reference to the confidential character of information required to be disclosed by this ordinance shall apply to such matters as may be heard before the Board on appeal.

2. Board to Approve Regulations and Hear Appeals

All Rules and Regulations and amendments or changes thereto, which are adopted by the Tax Administrator under the authority conferred by this ordinance, must be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any Administrative Ruling or decision issued by the Tax Administrator.

3. Right of Appeal

In accordance with Section 718.11 of the Revised Code and Rules and Regulations, any person dissatisfied with any Administrative Ruling or decision of the Tax Administrator that is made under the authority conferred by this ordinance may appeal the decision to the Board of Review within thirty (30) days from the announcement of such Administrative Ruling or decision by the Tax Administrator. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. Such appeal shall be deemed filed when postmarked by the United States Postal Service or the date of receipt recorded by authorized delivery service as defined in Sections 5703.056 of the Revised Code. Appeals otherwise delivered to the Tax Administrator during normal business hours shall be deemed filed on the date received.

In accordance with the procedures set forth in Section 5717.011 of the Revised Code, for matters relating to taxable years beginning after 2005, the taxpayer or Tax Administrator may appeal decisions of the Board of Review to the State Board of Tax Appeals or a court of common pleas as otherwise provided by law.

SECTION N. INTENT AND TAX CONTINUATION

1. Declaration of Legislative Intent

If any sentence, clause, section or part of this ordinance, or any tax imposed against, or exemption from tax granted to, any taxpayer or forms of income specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this ordinance so found and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this ordinance. It is hereby declared to be the intention of Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included in this ordinance. If any provision of this ordinance conflicts with Chapter 718. of the Ohio Revised Code, then the provisions of Chapter 718. of the Ohio Revised Code shall govern the village income tax imposed herein as to those conflicting provisions. It is the intent of the Council that Chapter 718. of the Ohio Revised Code should supplement the provisions of this ordinance.

2. Collection of Tax after Termination of Ordinance

- (a) This Ordinance shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions and proceedings for collection any tax so levied or enforcing any provisions of this ordinance are concerned, it shall continue effective until all of the taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of taxes or for the punishment of violations of this ordinance have been fully terminated, subject to the limitations contained in Sections I and H5; H6; H7 of this ordinance.
- (b) Annual returns due for all or any part of the last effective year of this ordinance shall be due on the date provided in Sections F1 and G2 of this ordinance, as though the same were continuing.

SECTION O. PENALTY

1. Penalty

- (a) Whoever violates any of the provisions of Sections H5 or L8 of this ordinance shall be guilty of a misdemeanor of the first degree for each violation. Each violation constitutes a separate offense.
- (b) Whoever violates Section L9 of this ordinance shall be guilty of a misdemeanor of the first degree for each such disclosure. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the Village who violates Section L9 of this ordinance shall be guilty of an offense punishable by immediate dismissal.

SECTION P. EMERGENCY MEASURE

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of the Village in that it is necessary for the provisions of funds for emergency services, maintenance of equipment, new equipment, extension, enlargement and improvement of municipal services and facilities, and capital improvements of the municipality and the debt reduction for the Village to impose a municipal income tax, and this Ordinance shall be in full force and effect immediately after its passage; otherwise, it shall take effect and be in force after the earliest period allowed by law.

DATED: 09/11/04

Margaret Womack
Margaret Womack, Mayor

ATTEST:

Shirley Heaton
Fiscal Officer