

**VILLAGE OF ARLINGTON HEIGHTS
INCOME TAX
CHAPTER 37: TAXATION**

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SECTION 37.01 PURPOSE

The purpose of this chapter is to provide funds for general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, and capital improvements of the Village. There is hereby levied a tax on income, salaries, wages, commissions, and other compensation and on net profits as hereinafter provided.

SECTION 37.02 DEFINITIONS

For the purpose of this subchapter the following definitions shall apply unless 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, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute “Adjusted Federal Taxable Income” as if the pass-through entity was a “C” corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) Section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

“Association” – A partnership, limited partnership, limited liability company, Chapter S Corporations as defined in the federal tax code, 26 U.S.C. 1361, limited liability company, or any other form of unincorporated enterprise.

“Board of Review” – The Board created by and constituted as provided in Section 37.13.

“Business” – An enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, fiduciary, trust, association, corporation or any other entity.

“Corporation” - A corporation (excluding Chapter S Corporations as defined in the federal tax code, 26 U.S.C. 1361) or joint stock association, organized under the laws of the United States, State of Ohio, or any other state, territory or foreign country of dependency.

“Domicile” - The permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

“Employee” – One who works for income, wages, salary commissions or other type of compensation in the service of and under the control of an employer.

“Employer” – An individual, partnership, association, corporation, governmental body, unit or agency or any other entity whether or not organized for profit, who or that employs one or more persons on an income, salary, wage, commission or other compensation basis.

“Fiscal year” – An accounting period of 12 months or less ending on any day other than December 31.

“Generic Form” - An electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or separate requests for refunds that contain all the information required on the Village of Arlington Heights’ regular tax return and estimated payment forms,

and are in a similar format that will allow processing of the generic forms without altering Arlington Heights' procedures for processing forms.

“Gross receipts” – The total income from any source what-so-ever revenue derived from sales, work done, or service rendered.

“Income” means All monies and compensation in any form, subject to limitations imposed by ORC 718, derived from any source whatsoever, including but not limited to:

(A) All income, qualifying wages, commissions, other compensation and other income from whatever source received by residents of Arlington Heights.

(B) All salaries, wages, commissions, other compensation and other income from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in Arlington Heights.

(C) The portion attributable to the city of the net profits of all businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in Arlington Heights.

“Net profits” – For taxable years prior to 2004, the net gain from the operation of a business, profession, (or) enterprise or other activity (whether or not such business, profession, enterprise or other activity is conducted for profit or is ordinarily conducted for profit) after provision for all ordinary and necessary expense either paid or accrued in accordance with the accounting system (i.e., cash or accrual) used by the taxpayer for federal income tax purposes without deduction of taxes imposed by this division, federal, state and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of this division. (For taxable years 2004 and later, see “adjusted federal taxable income”.)

“Nonresident” - An individual domiciled outside the Village of Arlington Heights.

“Nonresident unincorporated business entity” - An unincorporated business entity not having an office or place of business within the Village of Arlington Heights.

“Pass-through entity” - A partnership, S Corporation, Limited Liability Company, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code. Unless otherwise specified, for purposes of this ordinance the tax treatment for pass-throughs is the same as “Association”.

“Person” – Every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term “person” as applied to any unincorporated entity shall mean the partners or members thereof and as applied to corporations, the officers thereof.

“Place of business” – Any bona-fide office (other than a mere statutory office), factory, warehouse, or other place which is occupied and used by the taxpayer in carrying on any business activity individually or through any one or more of his regular employees regularly in attendance.

“Qualifying wage” - Wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. “Qualifying wage” represents employees’ income from which municipal tax shall be deducted by the employer, and any wages not considered a part of “qualifying wage” shall not be taxed by a Municipality. This definition is effective January 1, 2004, for taxable years 2004 and later.

“Resident individual” – Any individual who is domiciled in the Village of Arlington Heights.

“Resident unincorporated business entity” – An unincorporated business entity having an office or place of business within the Village of Arlington Heights.

“Tax Commissioner” - The individual or entity designated by Council to collect the moneys due under this chapter.

“Taxable income” –income minus the deductions and credits allowed by this chapter. (See “Income” definition.)

“Taxable year” – The calendar year or the fiscal year upon the basis of which the net profits are to be computed under this division and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

“Taxpayer” – A person whether an individual, partnership, limited partnership, corporation, association, or other entity, required hereunder to file a return or to pay a tax hereunder.

“Village” - The Village of Arlington Heights, Ohio.

SECTION 37.03 IMPOSITION OF TAX

(A) Subject to provisions of Section 37.16, an annual tax, for the purpose specified in section 37.01 hereof, is hereby levied on and after January 1, 1968 at the rate of 2.1% per annum upon the following:

(1) On all income, qualifying wages, including sick and vacation pay, commissions, and other compensation earned during the effective period of this chapter by residents.

(a) For further clarification "income" includes, but is not limited to, lottery, gambling and sports winnings, and games of chance. A deduction equal to the amount of up to \$1,000 of income combined from lottery, gambling, and sports winnings, and games of chance, or a deduction of \$1,000, whichever is less, shall be allowed, provided that in no case shall the deduction exceed the amount of combined income from lottery, gambling and sports winnings, and games of chance. If said income is payable to the taxpayer in more than one year, the deduction applies only in the first year in which the income is received.

(b) If the taxpayer is considered a professional gambler for federal income tax purposes, related deductions as permitted by the Internal Revenue Code shall be allowed against gambling and sports winnings.

(2) On all income, qualifying wages, including sick and vacation pay, commissions, and other compensation earned during the effective period of this chapter by non-residents for work done or service performed in the Village. Separation pay, termination pay, reduction-in-force pay, and other compensation paid as a result of an employee leaving the service of an employer shall be allocable only to the Village.

(a) Arlington Heights shall not, however, tax the compensation of a non-resident individual who will be deemed to be an occasional entrant if all of the following apply:

1. The compensation is paid for personal services performed by the individual in Arlington Heights on twelve or fewer days during the calendar year, in which case the individual shall be considered an occasional entrant for purposes of Arlington Heights income tax. A day is a full day or any fractional part of a day.

2. In the case of an individual who is an employee, the principal place of business of the individual's employer is located outside Arlington Heights and the individual pays tax on compensation described in Section 880.03(a)(2) to the municipality, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual.

3. The individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by Arlington Heights.

(b) Beginning with the thirteenth day an individual deemed to have been an occasional entrant to Arlington Heights performs services within Arlington Heights, the employer of said individual shall begin withholding Arlington Heights income tax from remuneration paid by the

employer to the individual, and shall remit the withheld income tax to Arlington Heights in accordance with the requirements of this ordinance. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in Arlington Heights by the individual for the first twelve days.

(c) If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to Arlington Heights.

(3) (a) On the portion attributable to the Village of the net profits, earned during the effective period of this chapter, of all resident associations, unincorporated businesses, professions, or other entities, derived from sales made, work done, or services performed or rendered, or business or other activities conducted in the Village.

(b) On a resident partner's or owner's share of the net profits, earned and/or received during the effective period of this chapter, of a resident association or other unincorporated entity not attributable to the Village and not levied against that association or other unincorporated entity.

(4) (a) On the portion attributable to the Village of the net profits, earned during the effective period of this chapter, of all non-resident associations, unincorporated businesses, professions, or other entities, derived from sales made, work done, or services performed or rendered or business or other activities conducted in the Village, whether or not the association or other unincorporated entity has an office or place of business in the Village.

(b) On a resident partner's or owner's share of the net profits, earned and/or received during the effective period of this chapter, of a non-resident association or other unincorporated entity not attributable to the Village and not levied against that association or other unincorporated entity.

(5) On the net profits, earned during the effective period of this chapter, or all corporations derived from sales made, work done, or services performed or rendered and business or other activities conducted in the Village, whether or not those corporations have an office or place of business in the Village.

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

(1) The average original cost of the real and tangible personal property owned or used in the business and situated within the Village, during the period covered by the return, is of the average original cost of all the real and tangible personal property owned or used in the business, wherever situated during that period.

(2) Ascertaining the percentage, which the gross receipts of the business from sales made and services performed in the Village, during the period covered by the return, are of the total gross receipts from all sales and services, wherever made or performed, during that period. As used in this section, real property includes property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

(3) Ascertaining the percentage which the total wages, salaries, commissions and other compensation paid, during the period covered by the return, to employees for services performed in the Village is of the total wages, salaries, commissions and other compensation paid, during that period, to all employees within and outside the Village. For tax year 2004 and subsequent tax years, wages, salaries, and other compensation shall be included to the extent that they represent qualifying wages.

(4) Add together the percentages determined in accordance with division (B) (1), (2) and (3) 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 the total. A factor is applicable even though it may be allocable entirely in or outside the Village.

(5) In the event that the foregoing allocation in (B)(1) - (4) formula does not produce an equitable result, another basis (including the books and records method) may, under uniform regulations, be substituted so as to produce such result.

(C) Operating loss carry forward.

(1) The portion of a net operating loss sustained in any taxable year, allocable to the Village, may be applied against the portion of the profit of succeeding tax years, allocable to the Village, until exhausted, but in no event for more than five taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

(2) The portion of a net operating loss sustained shall be allocated to the Village in the same manner as provided herein for allocating net profits to the Village.

(3) The Tax Commissioner shall provide by rules and regulations the manner in which the net operating loss carry forward shall be determined.

(D) Consolidated returns.

(1) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Tax Commissioner. Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the Municipality.

(2) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership,

interlocking directorates, or some other method, the Tax Commissioner shall require that information, in addition to the return hereinafter provided for, as he may deem necessary to ascertain whether net profits are properly allocated to the Village. If the Tax Commissioner finds 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 some other method, he may require the filing of a consolidated return or adjust the transactions so as to produce a fair and proper allocation of net profits to the Village.

(E) Capital gains.

For tax years prior to 2004, capital gains from the sales of depreciable property shall be taxable to the extent of the aggregate amount of the depreciation taken on the property for the Village income tax purposes.

(F) Exceptions.

The tax provided for herein shall not be levied upon:

(1) The Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the National Guard.

(2) The 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 and only to the extent that the said income is exempt from federal income tax.

(3) Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from seasonal or casual entertainment, amusement, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations and only to the extent that the said income is exempt from Federal Income Tax.

(4) Social security benefits, unemployment compensation (excluding supplemental unemployment compensation), payments from pension plans or similar payments, including disability payments received from private industry, or local, state, or federal governments, or from charitable, religious or educational organizations, and the proceeds of sick, accident, or liability insurance policies. The disability benefits excludable must be a permanent nature as determined by a physician or government entity.

(5) Proceeds of insurance paid by reason of the death of the insured; pensions, annuities or gratuities not in the nature of compensation for services rendered, from whatever sources derived.

(6) Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exclusion does not apply to compensation paid for lost salaries or wages or to compensation from punitive damages.

(7) Gains from involuntary conversions, cancellation of indebtedness, items of income already taxed by the State of Ohio from which the Municipality 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).

(8) Compensation paid to a precinct election official, to the extent that such compensation does not exceed \$1,000 annually.

(9) Income of all individuals under 18 years of age, whether residents or nonresidents.

(10) Alimony received.

(11) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained clergy's compensation. The clergy must be duly ordained, commissioned, or licensed by a religious body constituting a religious denomination, and must have authority to perform all sacraments of the religious body.

(12) Expenses deductible on federal form 2106 in accordance with federal guidelines, and subject to audit and approval by the Tax Commissioner.

(13) Income, salaries, wages, commissions and other 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, and/or is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of a municipality to impose net income taxes.

37.04 EFFECTIVE PERIOD

This Ordinance, no. _____, passed _____, replaces Ordinance 15-1967 and all supplements and amendments thereto. Any provisions herein that were effective at an earlier date under Ohio Revised Code 718 shall be considered to be effective on the earlier date.

37.05 RETURN AND PAYMENT OF TAX.

(A) Each person who engaged in business, or whose income, salary, wage, commission or other compensation are subject to the tax imposed by this subchapter shall, whether or not a tax be due thereon, make and file, on or before April 15 in each year, a return with the Tax Commissioner. A taxpayer on a fiscal year accounting basis for federal income tax purposes shall, beginning with his first fiscal year, any part of which falls within the effective period of this subchapter, file his return on or before the 15th day of the fourth month from the end of the fiscal year or period.

(B) The return shall be filed with the Tax Commissioner on a form furnished by or obtainable upon request from the Tax Commissioner, or on an acceptable generic form as defined in this Chapter, setting forth:

(1) The aggregate amounts of income, salaries, wages, commissions, and other compensation earned and/or received, and gross receipts from any business, profession or other activity, less allowable expenses incurred in the acquisition of the gross receipts, earned during the preceding year and subject to the tax;

(2) The amount of the tax imposed by this subchapter on earnings and profits; and

(3) Any other pertinent statements, information returns or other information as the Tax Commissioner may require, including a statement that the figures used in the return are the figures used in the return for federal income tax, adjusted to set forth only that income as is taxable under the provisions of this subchapter, and including but not limited to copies of all W-2 forms, 1099 Miscellaneous Income Forms, page one of form 1040, Page One and Two of Form 1120, 1120S (including (K-1), 2106, 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, schedule F and any other Federal Schedules, if applicable..

(C) For tax years prior to 2004, the Tax Commissioner may extend the time for filing of the annual return upon the request of the taxpayer for a period of not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the federal income tax return. for taxable years 2004 and later, the extended due date for individuals shall be the last day of the month following the month to which federal income tax due date has been extended. For businesses, if the extension is filed through the Ohio Business Gateway the extended due date shall be the last day of the month to which the due date of the federal income tax return has been extended. If not filed through the Ohio Business gateway 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. The Tax Commissioner may deny the extension if the taxpayer fails to file the request timely, fails to file a copy of the federal extension request, or if the taxpayer's income tax account with the Municipality is delinquent in any way. The Tax Commissioner may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

(D) (1) The taxpayer making a return shall at the time of the filing thereof, pay to the Tax Commissioner the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source, pursuant to the provisions of Section 37.06 or where any portion of the tax shall have been paid by the taxpayer, pursuant to the provisions of Section 37.07; or where an income tax, creditable against the

Village tax pursuant to Section 37.15 thereof, has been paid to another municipality, credit for the amount so paid shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return.

(2) A taxpayer who has overpaid an amount of tax to which the Village is entitled under the provisions of this subchapter may have overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, the overpayment, or part thereof, shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1) shall be collected or refunded.

(E) Amended returns.

(1) Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and limitations contained in Section 37.12 and 37.15. The amended returns shall be on a form obtainable on request from the Tax Commissioner. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the due date for filing the original return.

(2) Within three months from the final determination of any federal tax liability affecting the taxpayer's Village tax liability, the taxpayer shall make and file an amended Village return showing income subject to the Village tax based upon the final determination of federal tax liability and pay any additional tax shown due thereon or make claim for refund of any overpayment

(F) Retirees having no income taxable to Arlington Heights shall be exempt from these filing requirements and any subsequent penalties. A retiree shall file an annual return for the year in which the retirement occurred, indicating that no tax is, or will be, due Arlington Heights as a result of their retirement, and also indicating the date of retirement. Such exemption shall be in effect until that time in which the retiree receives taxable income for Arlington Heights income tax purposes, at which time the retiree shall be required to comply with the provisions of this chapter, including the filing requirements.

37.06 COLLECTION AT SOURCE

(A) Each employer within, or doing business within, the Village who employs one or more persons on an income, salary, wage, commission, or other compensation basis shall deduct at the time of the payment of the income, salaries, qualifying wages, commissions or other compensation, the tax of 2.1% of the income, salaries, qualifying wages, commissions or other compensation due by the employer to each employee, and shall, on or before the last day of the month following the close of each calendar quarter, make a return and pay to the Tax Commissioner the amount of taxes so deducted. Such returns shall be on a form or forms prescribed by or acceptable to the Tax Commissioner and shall be subject to the rules and regulations prescribed therefore by the Tax

Commissioner. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

(B) Such employer in collecting such tax is deemed to hold the same, until payment is made by such employer to this M Village, as a Trustee for the benefit of this Village and any such tax collected by such employer from his or her employees shall, until the same is paid to this Village, be deemed a trust fund in the hands of such employer.

(C) On or before February 28 of each year, beginning with the year 1986, each employer shall file a withholding return setting forth the names, addresses, and social security numbers of all employees from whose compensation the tax was withheld during the preceding calendar year, the amount of tax withheld from his or her employees and such other information as may be required by the Tax Commissioner. All payments not subject to withholding shall be reported on a form required by the Tax Commissioner.

(D) On or before February 28 of each year all individuals, businesses, employers, brokers or other who engage persons, either on a fee or commission basis or as independent contractors and not employees (those who are not subject to withholding) must provide the Village with copies of all 1099 Miscellaneous Income Forms and/or a list of names, addresses, Social Security numbers or federal identification numbers and a total amount of earnings, payments, bonuses, commissions and/or fees paid to each person.

(E) All employers that provide any contractual service within the Village, and who employ subcontractors in conjunction with that service shall, prior to commencement of the service, provide the Village the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax employer requirements under this chapter.

(F) The Tax Commissioner, for good cause, may require immediate returns and payments to be submitted to his or her office.

(G) The officer or employee having control or supervision, or charged with the responsibility of withholding the tax, filing the return and/or making the payment, shall be personally liable for the failure to file the return or pay the tax due as required herein. The dissolution, bankruptcy, or reorganization of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to file a return or pay taxes due.

37.07 DECLARATIONS.

(A) Every person who anticipates any taxable income which is not subject to Section 37.06 and/or from which tax will not be fully withheld, or who

engages in any business, profession, enterprise or activity subject to the tax imposed by Section 37.03, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity, together with the estimated tax due thereon in accordance with the provisions of the Section. However, if the estimated non-withheld and/or under-withheld estimated tax is less than \$400 per year, such person need not file a declaration.

(B) (1) Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or on or before the fifteenth day of the fourth month of the date the taxpayer becomes subject to tax for the first time.

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.

(C) (1) Such declaration shall be filed upon a form furnished by or obtainable from the Tax Commissioner. Credit shall be taken for this Village's income tax to be withheld from any portion of such income. In accordance with the provisions of Section 37.15, credit may be taken for tax to be paid or to be withheld and remitted to another taxing municipality.

(2) 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.

(D) Such declaration or estimated tax to be paid this Village shall be accompanied by a payment of at least one-fourth of the estimated non-withheld and/or under-withheld tax due.

(1) If the taxpayer is an individual, at least a similar amount shall be paid on or before the last day of the seventh (7th), tenth (10th), and thirteenth (13th) months after the beginning of the taxpayer's taxable year, provided that in case an amended declaration has been filed, or the taxpayer is taxable for a portion of the year only, the unpaid balance shall be paid in equal installments on or before the remaining payment dates.

(2) If the taxpayer is a corporation or association, at least a similar amount shall be paid on or before the fifteenth day of the sixth, ninth, and twelfth months of the taxable year; provided, however, that in case 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.

(E) No penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the Village of Arlington Heights on the first day of January in the year in which they became subject to estimated payments, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period and the taxpayer filed a return for that year, nor shall penalties or interest be assessed on estimated payments if the taxpayer

has remitted an amount equal to ninety percent of the final tax liability for the tax year due on or before April 15th of the current year.

(F) On or before the fifteenth day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due this Village shall be paid therewith in accordance with the provisions of Section 37.05.

37.08 TAX COMMISSIONER; DUTIES.

(A) (1) It shall be the duty of the Tax Commissioner to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, to keep an accurate record thereof and to report all moneys so received.

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

(B) The Tax Commissioner is charged with the enforcement of the provisions of this chapter, and is empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations authorized or required by this chapter, relating to any matter or thing pertaining to the collection and payment of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns. Taxpayers are hereby required to comply with the requirements of this chapter and the rules and regulations.

(C) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of due tax, the Tax Commissioner may determine the amount of tax appearing to be due the Village from the taxpayer and may send to the taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any. Such determination may be modified or amended based upon information or data subsequently secured by or made available to the Tax Commissioner. If the taxpayer fails to respond to the assessment within 30 days, the tax, penalties, and interest assessed shall become due and payable and collectible as are other unpaid taxes, penalty, and interest.

(D) Subject to the consent of the Board of Review or pursuant to regulations approved by the Board of Review, the Tax Commissioner shall have the power to compromise any liability imposed by this chapter.

37.09 INVESTIGATIVE POWERS OF THE TAX COMMISSIONER.

(A) The Tax Commissioner, or any of his authorized agents, is authorized to examine the books, papers, records, and federal and State income tax returns of any employer, or taxpayer or any person subject to, or whom the Tax Commissioner believes is subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax or withholdings due under this chapter. Every employer, supposed employer, taxpayer or supposed taxpayer is directed and required to furnish, within ten (10) calendar days following a written request of the Tax Commissioner, or his duly authorized agent or employee, the means, facilities, and opportunity for making examinations and investigations as are authorized.

(B) The Tax Commissioner is authorized to order any person, presumed to have knowledge of the facts, to appear at the office of the Tax Commissioner and to examine that person, under oath, concerning any income which was or should have been returned for taxation, or withheld, or any transaction tending to affect the income, and for this purpose may compel the production of books, papers, records, and federal and/or State income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes those persons have knowledge of the income or information pertinent to the inquiry.

(C) The refusal to produce books, papers, records, and federal and/or State income tax returns, or the refusal to submit to the examination by any employer or person subject, or presumed to be subject, to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this section or with any order or subpoena of the Tax Commissioner authorized hereby shall be deemed a violation of this chapter punishable as provided in Section 37.99 hereof.

(D) Every taxpayer shall retain all records necessary to compute his tax liability for a period of six (6) years from the date his return is filed, or the taxes required to be withheld are paid.

37.10 DIVULGING CONFIDENTIAL INFORMATION PROHIBITED.

Any information gained as a result of any returns, investigations, hearings, or verifications required or authorized by this chapter shall be confidential and no disclosure thereof shall be made except to municipal, county, state or federal taxing agencies, or, except for official tax purposes, or except in accordance with proper judicial order. Any person divulging any information shall be in violation of this section. (See Section 37.99 for penalties related to divulging confidential information.)

37.11 INTEREST AND PENALTIES.

(A) All taxes imposed, including estimated payments, and moneys withheld or required to be withheld by employers, under the provisions of this chapter, remaining unpaid after they become due shall bear interest at the rate of 1% per month or fraction of a month thereof.

(B) In addition to interest as provided in division (A) hereof, penalties for failure to pay taxes and to withhold and remit taxes pursuant to the provisions of this chapter are imposed as follows:

(1) In the case of taxpayers failing to pay the full amount of tax due, a penalty of 5% per month, or fraction of a month thereof, of the amount of the unpaid tax.

(2) In the case of employers who fail to withhold and remit to the Tax Commissioner the taxes to be withheld from employees, or who withhold but fail to remit the withheld taxes, a penalty of 520% per month, or fraction of a month thereof, of the unpaid withholding taxes.

(C) For any taxpayer required to file an annual return, a failure-to-file fee of twenty-five dollars (\$25.00) shall be assessed on any taxpayer who fails to file the annual tax due as required by Section 37.05, regardless of whether or not a tax liability remains due.

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

37.12 COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENTS.

(A) All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit as other debts of like amount are recoverable. No additional assessment shall be made after three years from the time of payment of any tax due or the return was filed, whichever is later hereunder. However, In the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover Municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. In those cases in which the Commissioner of the Internal Revenue Service and the taxpayer have executed a waiver of the federal statute of limitations the period within which an additional assessment may be made by the Tax Commissioner shall be extended one year from the time of the final determination of the federal tax liability.

(B) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which the payment was made or the return was due, or within three months after final determination of the

federal tax liability whichever is later. In addition, the following shall apply regarding refunds of tax withheld from non-qualified deferred compensation plans (NDCP):

(1) A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.

(2) A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.

(3) Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified compensation.

(C) Income tax that has been deposited with the Village of Arlington Heights, but should have been deposited with another municipality, is allowable by the Village of Arlington Heights as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with the Village of Arlington Heights, but was deposited with another municipality, shall be subject to recovery by the Village of Arlington Heights. The Village of Arlington Heights will allow a non-refundable credit for any amount owed the Village of Arlington Heights that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than the Village of Arlington Heights's tax rate. If the Village of Arlington Heights's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the Village of Arlington Heights.

(D) Overpayments of withheld tax that have resulted due to incorrect withholding of an employee by an employer, and are not due as a result of excess withholding requested by the employee, shall be refunded to the employer. It shall be the responsibility of the employer, and not the Village of West Alexandria, to refund such overpayment to the employee. However, nothing in this subparagraph shall affect the right of a nonresident employee to apply directly to the Village of Arlington Heights for refund of income tax withheld for days worked out of Arlington Heights.

(E) Payments on delinquent amounts shall be applied in the following manner:

(1) To unpaid penalty and interest assessments in the order in which such assessments became due.

(2) To the taxes owed for any previous year in the order in which such taxes became due.

(3) To the taxpayer's current estimated tax liability.

37.13 BOARD OF REVIEW.

(A) A Board of Review consisting of three persons, appointed by the Mayor with the approval of the Council is hereby created. Board members shall receive compensation as Council may determine.

(B) A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. All hearings by the Board shall be conducted privately unless the taxpayer requests a public hearing. The provisions of Section 37.10 hereof with reference to the confidential character of information required to be disclosed by this chapter shall apply to those matters as may be heard before the Board on appeal.

(C) Any person dissatisfied with any ruling or decision of the Tax Commissioner, which is made under the authority conferred by this chapter and the rules and regulations, and who has filed the required returns or other documents pertaining to the contested issue, may appeal therefrom to the Board of Review within thirty (30) days from the announcement of the ruling or decision by the Tax Commissioner. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any ruling or decision or any part thereof. The Board must schedule a hearing within forty-five (45) calendar days of receiving the appeal. The Board must issue a written decision within sixty (60) days after the final hearing and send a notice of its decision by ordinary mail to the taxpayer within 15 days after issuing the decision.

(D) Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

37.14 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be deposited in the General Fund.

37.15 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

(A) Where a resident of the Village is subject to a municipal income tax in another municipality he shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.

(B) Every individual taxpayer who resides in the Village and who receives income, salaries, wages, commissions or other compensation or net profits from sales made, work done, or services performed or rendered outside of the Village, if it be made to appear that he has paid a municipal income tax on that income, taxable under this chapter, to another municipality, shall be allowed a credit against the tax imposed by this chapter in the amount of the tax so paid by him or in his behalf to another municipality. The credit shall not exceed the tax assessed by this chapter on the income earned in any other municipality where the tax is paid.

(C) Notwithstanding the provisions contained in Section 37.12 hereof, or any other provisions inconsistent herewith, a claim for refund or credit under this section shall be made in a manner as the Tax Commissioner may by regulation provide.

37.16 EXCEPTIONS.

(A) This chapter 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.

(B) If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups 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 chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

37.17 VIOLATIONS.

- (A) No person shall:
- (1) Fail, neglect, or refuse to make any return or declaration required by this chapter;
 - (2) Make an incomplete, false, or fraudulent return;
 - (3) Fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this chapter;

(4) Fail, neglect, or refuse to withhold the tax from his employees and remit the withholding tax to the Tax Commissioner;

(5) Refuse to permit the Tax Commissioner or any duly authorized agent or employee to examine his or his employer's books, records, papers, and federal and/or State income tax returns;

(6) Fail to appear before the Tax Commissioner and to produce his or his employers books, records, papers, or federal and/or State income tax returns upon order or subpoena of the Tax Commissioner;

(7) Refuse to disclose to the Tax Commissioner any information with respect to the person's or the person's employer's income or net profits;

(8) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Commissioner;

(9) Fail, neglect, or refuse to make any payment on the estimated tax for any year as required by Section 37.07;

(10) Fail, as president or treasurer of a corporation, to cause the tax withheld from the wages of the employees of that corporation pursuant to this chapter to be paid to the Village in accordance with the provisions of Section 37.06 hereof; 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 chapter.

(B) Prosecutions for an offense made punishable under this chapter or any other provision of this chapter 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 or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense. Penalties shall be assessed as specified in subchapter 37.99.

(C) The failure of any employer, taxpayer, or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return, return, or declaration, from filing that form, or from paying the tax under this chapter.

37. 18 OWNERS OF RENTAL PROPERTY TO FURNISH TAX COMMISSION WITH INFORMATION ABOUT TENANTS.

(A) For the purposes on this section, "tenant" means:

(1) If there is a written lease or rental agreement, the person or persons who signs the written lease or rental agreement with the owner.

(2) If there is an oral lease or rental agreement, the person or persons with whom the owner enters into the oral lease or rental agreement.

(B) Beginning October 1, 1974, and thereafter, on or before the end of the month following the end of each calendar quarter, all property owners of rental property who rent to tenants of houses, apartments, rooms, stores, trailer parks, or any type of rental unit or units, shall file with the Tax Commissioner of the Village a report showing the names, addresses, and telephone numbers, if available, of such tenant who occupies a house, apartment, a room in a rooming house, stores, space in a trailer park, or any type of rental unit or units (including residential, commercial, and industrial property) within the corporate limits of the Village.

(C) Beginning October 1, 1974, and thereafter, on or before the end of the month following the end of each calendar quarter, the property owner of the vacated rental property shall file with the Tax Commissioner of the Village a report showing the date of vacating from the residential, commercial, and industrial property rental property (including houses, apartments, a room in a rooming house, stores, and space in a trailer park) and identifying each vacating tenant.

(D) For a taxable year, whether calendar or fiscal, failure to timely file the required tenant reports shall, for the first instance, result in a fine of ten dollars (\$10). The fine shall double for each subsequent instance of failure to timely file the required tenant reports during the taxable year. Failure to file all four quarterly reports required during a taxable year will result in a cumulative fine of one hundred fifty dollars (\$150).

37.19 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER

(A) This chapter shall continue effective, insofar as the levy of taxes is concerned, until repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provision of this chapter are concerned, it shall continue effective until all of the taxes levied hereunder are fully paid and until any and all suits and prosecutions for the collection of the taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Sections 37.12 and 37.17.

(B) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 37.05 and 37.06 as though the same were continuing.

37.20 RULES AND REGULATIONS

The Council adopts the Regional Income Tax Agency (RITA) Rules & Regulations for use as the Arlington Heights Income Tax Rules and Regulations, and they are hereby incorporated by reference as part of this Ordinance. In the event of a conflict with any provision(s) of the Arlington Heights Income Tax Ordinance and the RITA Rules & Regulations, the Ordinance will supersede.

37.99 PENALTY

(A) Whoever violates Sections 37.01 through 37.17 shall be guilty of a misdemeanor of the first degree and shall be fined not more than \$1,000 or imprisoned not more than six months, or both. In addition, any employee of the Village who violates Section 37.10 shall be guilty of an offense punishable by immediate dismissal.

(B) All prosecutions under this division must be commenced within five years from the time of the offense complained of except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution must be commenced shall be ten years from the date the return was due or the date the false or fraudulent return was filed.