

Ordinance No. 1-2009

AN ORDINANCE AMENDING SECTION 33 OF THAT CERTAIN
ORDINANCE 1-2005 REGARDING CREDIT FOR INCOME TAX PAID IN
ANOTHER JURISDICTION AND DECLARING AN EMERGENCY.

WHEREAS, the Council of the Village of West Elkton, Ohio, has heretofore established, approved, and adopted Ordinance 1-2005, which, at Section 33, provided that no credit, or allowance shall be given for income tax paid in another jurisdiction; and,

WHEREAS, the Council has now determined that a credit for income tax paid in another jurisdiction should be granted;

NOW THEREFORE, be it Ordained by the Council of the Village of West Elkton, Ohio, three-fourths of all members elected thereto concurring, that:

Section One

It is hereby determined by the Council of the Village of West Elkton, Ohio, that every individual taxpayer who resides in the Village and who has income subject to taxation, if it be made to appear that such taxpayer has paid a municipal income tax on such income, taxable to the Village, to another municipality, shall be allowed a credit against the tax imposed by the Village so paid by the taxpayer, or on the taxpayer's behalf, to such other municipality. The credit shall equal the tax actually paid to such other municipality but shall not exceed the tax assessed by the Village on that income taxed by such other municipality.

Section Two

It is hereby determined that this Ordinance shall take effect, and be retroactive, to income subject to taxation from and after January 1st, 2009.

Section Three

This ordinance is declared to be an emergency measure necessary for the health, welfare and safety of the residents of the Village of West Elkton, Ohio, and therefore, shall be in full force and effect immediately from and after its passage and approval.

Adopted this 11 day of Aug., 2009.

Attest:

John Crawford
Clerk-Treasurer

Bill Bates
Mayor

VILLAGE OF WEST ELKTON ORDINANCE #01-2005

Date: 7-12-2005

(rev. 9-1-05)

Title: LEVYING A TAX ON CERTAIN INCOMES OF RESIDENTS AND NON-RESIDENT BUSINESS ENTITIES IN ORDER TO PROVIDE FUNDS FOR CAPITAL IMPROVEMENTS, CAPITAL OUTLAYS, FOR POLICE PROTECTION, CAPITAL OUTLAYS, AND FOR GENERAL MUNICIPAL FUNDING.

WHEREAS, the cost of meeting minimum requirements for capital improvements to maintain public facilities, and the cost of maintaining an acceptable level of public safety, and other city services continue to rise and,

WHEREAS, Federal and state financial assistance has been drastically reduced, and,

WHEREAS, the General Fund receipts from revenue sources other than income tax are not sufficient to support current costs of operation, and a capital improvement program.

NOW, THEREFORE, BE IT ORDAINED BY THE Council of the Village of West Elkton, Ohio that:

Section 1: PURPOSE, RATE, AND EFFECTIVE DATE

(a) There shall be, and is hereby levied an annual tax on and after January 1, 2006, at the rate of one percent (1.0%) upon those classes of earnings, and income set forth in Section 3 of this Ordinance to provide revenues for expenditure on police protection, capital outlays, and for general operation.

Section 2: DEFINITIONS

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

(a) 'Administrator' means the Regional Income Tax Agency (RITA), designated by the mayor to administer, and enforce the provisions of the municipal income tax.

(b) 'Local Administrator' means the individual appointed by the mayor to be the contact person within the village for the Administrator. (RITA)

(c) 'Association' means a partnership, limited partnership, or any other form of unincorporated enterprise owned by two or more persons.

(d) 'Board of Review' means the Board created by, and constituted as provided by a further section.

(e) '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.

(f) 'Corporation' means a corporation, or joint stock association organized under the laws of the U.T, the state of Ohio, or any other state, territory, or foreign country, or dependency.

Section 2 DEFINITIONS (cont)

- (g) Deferred Compensation means earned compensation the receipt of which is delayed to a later date.
- (h) 'Employee' means an individual who works for wages, a salary, a commission, or other type or compensation in the service of an employer.
- (i) 'Employer' means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit having a place of business, or doing business within the Village of West Elton, and who or that employs one (1) or more persons on a salary, wage, commission, or other compensation basis.
- (j) Fiscal Year means an account period of 12 months or less ending on any day other than December 1st.
- (k) 'Gross Receipts' means the total income from any source whatsoever required to be included in the return.
- (l) 'Net Profits' means the net gain from the operations of a business, profession, enterprise, or other activity, after provision for all ordinary, and necessary expense incurred in the conduct thereof, including reasonable allowance for depreciation, depletion, amortization, and reasonable additions to reserve for bad debts, either paid or accrued in accordance with recognized principles or accounting applicable to the method of accounting regularly employed, and without deduction of Federal, State, or other taxes based on income, and in the case of an association, without deduction of salaries paid to partners, and other owners. There shall be no deduction for dividends, or charitable contributions.
- (m) 'Non-Resident' means any individual who is domiciled outside the Village.
- (n) 'Non-Resident Unincorporated Business Entity' means an unincorporated business entity not having a place of business within the Village.
- (o) 'Other Activity' means any undertaking, not otherwise specifically defined herein which is normally entered into for profit, including, but not limited to, rental, or real, and personal property, and a business conducted by a trust or guardianship estate.
- (p) 'Person' means every natural person, partnership, fiduciary, association, or corporation. Whenever used in any section prescribing, and imposing a penalty, the term 'person' includes an officer, or employee of a corporation, or member or employee of an association, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.
- (q) 'Place of Business' means any bona fide (other than a 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.
- (r) 'Resident' means an individual domiciled in the Village. Any person who maintains a space of abode within the Village for a total of (183) days, or more within any (12) month period.
- (s) 'Resident Incorporated Business Entity' means an incorporated business entity having an office, place, or operations or business site is within the Village.
- (t) 'Resident Unincorporated Business Entity' means an unincorporated business entity having a place of business within the Village.
- (u) 'Taxable Income' means gross wages, salaries, and other compensation paid by an employer, or employers before any deductions, other than ordinary, and necessary business expenses in the same manner as provided by the Internal Revenue Code, and/or net profits as herein defined.

Section 2 – Definitions (cont)

- (u) 'Taxable Year' means the calendar year, or the fiscal year, upon the basis of which income is computed under this ordinance, and the period for which such return is required to be made, unless approved by the administrator, the taxable year of a wage earner shall be a calendar year.
- (v) 'Taxpayer' means a person, whether an individual, or other entity, required hereunder to file a return, or pay a tax.
- (w) 'Village' means the Village of West Elkton

Section 3: Imposition of Income Tax

An annual tax for the purposes specified in this Ordinance shall be imposed on, and after January 1, 2006, at the rate of 1% per annum upon the following:

- (a) On all salaries, wages, commissions, income, and other compensation earned on, and after January 1, 2006 by residents of the village.
- (b) On all salaries, wages, commissions, income and other compensation earned on, and after January 1, 2006, non-residents of the village for work done, or services performed or rendered within the village.
- (c) (1) On the portion attributable to the Village, on the net profits earned on and after January 1, 2006 of all resident unincorporated business entities, or professions, or other activities, derived from sales made, work done, services performed, or rendered, and business, or other activities conducted in the Village.
- (2) On the portion of the distributive share of the net profits earned on, and after January 1, 2006, of a resident, partner, or owner of a resident unincorporated business entity not attributable to Village, and not levied against such unincorporated business entity by the Village.
- (d) (1) On the portion attributable to the Village of the net profits earned on, or after January 1, 2006 of all nonresidents unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered, and business, and other activities conducted in the Village whether or not such unincorporated business entity has a office, or place of business in the Village.
- (2) On the portion of the distributive share of the net profits earned on or after January 1, 2006, of a resident, partner, or owner of a nonresident unincorporated business entity not attributable to the Village and not levied against such unincorporated business entity by the Village.
- (e) On the portion of the attributable to the Village of the net profits earned on and after January 1, 2006, or all corporations derived from sales made, work done, services performed, or rendered, and business, or other activities conducted in the Village, whether or not such corporations have an office or place of business in the Village.

Section 4: Effective Period

(1) Such tax shall be levied, collected, and paid with respect to the salaries, wages, commissions, other compensation, and with respect to the net profits of businesses, professions, or other activities earned on and after January 1, 2006.

Section 5: Determination of Allocation of Tax-Method of Determination

(1) In the taxation of income which is subject to municipal income taxes, if the books, and records of a taxpayer conducting a business or profession both within, and without the boundaries of the Village shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business, or profession conducted within the boundaries of the municipality, then only such portion shall be considered as having taxable situs in the Village for the purposes of Village income taxation. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the Village, in the absence of actual records thereof, shall be determined as follows:

(a) Multiply the entire net profits by a business allocation percentage to be determined by a three-factor formula of property, payroll, and sales, each of which shall be given equal weight, as follows:

- (1) The average net book value 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 net book value 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 the preceding paragraph, '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.

- (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.
- (3) Gross receipts of the business or profession from sales made, and services performed during the taxable period in the municipality to gross receipts of the business, or profession during same period from sales, and services, wherever made or performed.

In the event that the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result.

Section 6: Sales Made in the Village:

As used in subsection (3) above, 'sales made in the Village' means:

(a) All sales of tangible personal property which is delivered within the Village regardless of where title passes if shipped, or delivered from a stock of goods within the Village.

Section 6: Sales Made in Village (cont)

(b) All sales of tangible personal property which is 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 it's own employees in the solicitation, or promotion of sales within the Village , and the sales result from such solicitation or promotion.

(c) All sales of tangible personal property which is shipped from a place within the Village to purchasers out-side of the Village regardless of where title passes, if the taxpayer is not, through it's own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

Section 7: Total Allocation

(a) Add together the percentages determined in accordance with Subsections (a), (b), and (c) above, 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 such total in order to obtain the business allocation percentage referred to above. A factor is applicable even though it may be allocable entirely in or outside the Village.

Section 8: Rentals

(a) Rental income received by a taxpayer shall be included in the computation of net profits from business activities under Subparagraphs above, only if, and to the extent that the rental, ownership, management. Or operation of the real estate from which such rentals are derived (whether so rented, managed, or operated by 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, aggregate in excess of Two Hundred Fifty, and 00/100 Dollars (\$250.) 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; provided that 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 \$250.00 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 said \$250. per month, and provided further that the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds \$250. per month.

Section 9: Operating Loss Carry Forward

(a) The portion of a net operating loss sustained in any taxable year subsequent to 1-1-06, 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 operation 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 Administrator shall provide by rules, and regulations the manner in which such net operating loss carry-forward shall be determined.

Section 10: Exemptions-Sources of Income Not Taxed:

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

- (a) Pay or allowances of active members of the Armed Forces of the United States, or 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.
- (b) Poor relief, unemployment insurance benefits, old age pensions, or similar payment, including disability benefits received from local, state, or federal governments, or charitable, religious, or educational organizations.
- (c) 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.
- (d) Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from casual entertainment, amusements, sport events and health and welfare activities conducted by bona fide charitable, religious and educational organizations and associations
- (e) Alimony received.
- (f) Earning and income for all individuals under eighteen (18) years of age, whether residents or non residents.
- (g) Compensation for personal injuries, or for damages to property by way of insurance, or other wise.
- (h) Interest, dividends, and other revenue from intangible property.
- (i) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, 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).
- (j) 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.
- (k) Salaries, wages, commissions, and other compensation, and net profits, the taxation of which is prohibited by the Constitution for the State of Ohio, or any act of the Ohio General Assembly limiting the power of the Village to impose net income taxes.
- (l) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The minister must be duly ordained commissioned, or licensed by a religious body constituting a church or church denomination.
- (m) Compensation paid under section 3501.28, or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually

Section 11: Returns:

(1) When Return Required to be Made

(a) Each taxpayer shall, whether or not a tax be due thereon, make and file a return on or before April 15th of the year following the effective date of this ordinance, and on or before April 15th of each year thereafter. When the return is made for fiscal year, or other period different from the calendar year, the return shall be filed within four (4) months from the end of such fiscal year or period.

Section 12: Form and Contents of Return

(1) The return shall be filed with the Administrator on a form or forms furnished by, or obtainable upon request from such Administrator, setting forth:

(a) The aggregate amounts of salaries, wages, commissions, and other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year, and subject to such tax.

(b) The amount of the tax imposed by this Ordinance on such earnings, and profits; and

(c) Such other pertinent statements, information returns, or other information as the Administrator may require.

Section 13: Extension of Time for Filing Returns

(1) The Administrator 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. The Administrator 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 case in which the return is filed, and the final tax paid with the period as extended.

Section 14: Consolidated Returns

(1) Filing of consolidated returns may be permitted, or required in accordance with rules, and regulations prescribed by the Administrator.

(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, or in the case any person operates a division, branch, factory, office, laboratory, or activity within the Village constituting a portion only of its total business, the Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the Village. If the 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, he shall make such allocation as he deems appropriate to produce a fair, and proper allocation of net profits to the Village.

Section 15: 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 over paid, subject to the requirements, limitations, or both contained in appropriate sections of this Ordinance. Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting, or apportionment of net profits after the due date for filing the original return.

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

Section 16: Payment of Tax on Filing of Returns

(1) The taxpayer making a return shall, at the time of filing thereof, pay to the Administrator the amount of taxes shown as due thereon; provided, however, that: (a) Where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of the Ordinance; or (b) Where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of this Ordinance.

(2) A taxpayer who has overpaid the amount of tax to which the Village is entitled under the provisions of this Ordinance may have such overpayment applied against any subsequent liability hereunder, or at this election, indicated on the return, such overpayment (or any part thereof) shall be refunded, provided that no additional taxes, or refunds of less than (\$1.00) shall be collected, or refunded.

Section 17: Collection at Source

(1) In accordance with rules, and regulations prescribed by the Administrator, each employer within, or doing business within the Village shall deduct, at the time of the payment of such salary, wages, commission, or other compensation, the tax of 1% per annum of the gross salaries, wages, commissions or other compensation due by the said employer to said employee, and shall, on or before the last day of each month, make a return, and pay to the Administrator the amount of taxes so deducted during the previous month; provided, however, that if the amount of the tax so deducted by any employer in any one month is less than \$100., the employer may defer the filing of a return, and payment of the amount deducted until the last day of the month following the end of the calendar quarter in which such month occurred.

(2) Said returns shall be on a form or forms prescribed or acceptable to the Administrator, and shall be subject to the rules, and regulations prescribed therefore by the Administrator. 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.

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

(3) No person shall be required to withhold the tax on wages, or other compensation paid 'domestic servants' employed by him exclusively in, or about such person's residence, even though such residence is in the Village, but such employee shall be subject to all of the requirements of the Ordinance.

Section 17A: Declarations of Income not Collected at Source

(1) Any person whose income tax is not fully withheld in the Village or in another municipality in which taxes are withheld at a rate the same as, or higher than the rate provided in this ordinance hereof shall file a declaration setting estimated taxable income, including distributive shares of net profits or unincorporated business entities estimated to be earned by the taxpayer during the current tax year, together with the estimated tax due thereon.

Section 18: Filing of Declaration

(1) The declaration required by this Ordinance shall be filed on or before April 15th of each year during the effective period set forth in this Ordinance, or within four months of the date the taxpayer becomes subject to tax for the first time. Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year, or period.

Section 19: Form of Declaration

(1) The declaration required by this ordinance shall be filed upon a form furnished by, or obtainable from the Administrator, as provided for in this ordinance, credit shall be taken for the Village tax to be withheld from any portion of such income, and credit shall be taken for tax to be paid, or withheld, and remitted to another taxing municipality, in accordance with the provisions of this ordinance.

(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.

Section 20: Payment to Accompany Declaration

(1) Such declaration of estimated tax to be paid to the Village, shall be accompanied by a payment of at least one-fourth (.25) of the estimated annual tax, and at least a similar amount shall be paid on, or before the last day of the seventh, and tenth months after the beginning of the taxable year, and on or before the last day of the first month of the succeeding year following the taxable year. Provided, however, that in case an amended declaration has been filed, the unpaid balance shown due there on shall be paid in equal installments on, or before the remaining payment date or dates.

Section 21: Annual Return

(1) On or before the 15th day of the fourth month of the year following that for which such declaration, or amended declaration was filed, and annual return shall be filed, and any balance which may be due the Village shall be paid therewith in accordance with the provisions of this ordinance. Provided, however, that any taxpayer may file, or before the last day of the first month of the year following that for which such declaration, or amended declaration was filed, and annual return, and pay any balance due at such time in lieu of filing such declaration, or any amended declaration, and in lieu of paying the final quarterly installment based upon a declaration, or amended declaration of estimated tax.

Section 22: Extensions

(1) The Administrator may extend the time of filing any return required, of making any payment, or performing any other act required by this ordinance for a period not to exceed six months beyond the original required date.

Section 23: Interest on Unpaid Tax

(1) All taxes imposed, and all monies withheld, or required to be withheld by employers, and all installments of estimated taxes required to be paid under the provisions of this Ordinance of the Village, and remaining unpaid after they become due, shall bear interest at the rate of six percent (6%) per annum.

Section 24: Penalties on Unpaid Tax

(1) In addition to interest as provided in this Ordinance, penalties based on the unpaid tax, or installments of estimated tax are hereby imposed as follows:

(a) For failure to pay taxes, or estimated taxes due, other than taxes withheld: ten percent (10%) per annum, but not less than \$5.00.

(b) For failure to remit taxes withheld from employees; ten percent per month or fraction thereof, but accumulated penalty shall not exceed fifty percent upon any unpaid amount, and shall not be less than \$5.00.

Section 25: Exceptions

(1) A penalty shall not be assessed on any additional tax assessment made by the Administrator when a return has been filed in good faith, and the tax paid thereon within the time prescribed by the Administrator; and provided further that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment against a taxpayer by the Administrator resulting from a federal audit, providing an amended return is filed, and the additional tax is paid within three months after a final determination of the federal tax liability.

Section 26: Abatement of Interest and Penalty

(1) Either the Administrator hereunder, or the Board of Review may abate penalty, or interest, or both, for good cause shown.

Section 27: Violations:

Any person who shall:

- (a) Fail, neglect or refuse to make any return or declaration required by this Ordinance; or
- (b) Make any incomplete, false or fraudulent return; or
- (c) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this Ordinance; or
- (d) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
- (e) Refuse to permit the 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 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 of subpoena of the Administrator; or
- (g) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
- (h) Fail to comply with the provisions of this Ordinance or any order or subpoena of the Administrator authorized hereby; or
- (i) Give to any employer false information as to this true name, correct social security number, and resident address, or fail to promptly notify an employer of any change in resident address, and date thereof; or
- (j) Fail to use ordinary diligence in maintaining proper records of employees' resident addresses, total wages paid, and municipal tax withheld or knowingly give the Administrator false information; or
- (k) 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;

Section 27: Violations (cont)

Shall be guilty of a misdemeanor, and shall be fined not more than \$500.00 or imprisoned not more than six months or both, for each offense. A second offense shall be a Misdemeanor of the 1st degree.

Section 28: Limitation on Prosecution

(1) All prosecutions under this section must be commenced within five years from the time of the offense complained or, 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.

Section 29: Failure to Procure Forms not an Excuse

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

Section 30: Collection of Unpaid Taxes and Refunds of Overpayments

(1) All taxes imposed by this Ordinance shall be collectible, together with any interest, and penalties thereon, by suit, as other debts of the like amount are recoverable. Except in the case of fraud, of omission of a substantial portion of income subject to the tax, or of failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later, provided, however, in those cases in which a Commissioner of Internal Revenue, and the taxpayer have executed a waiver of the Federal Statute of Limitations, the period with which an additional assessment may be made by the Administrator shall be one year from the time of the final determination of the federal tax liability. Amounts of less than one dollar shall not be collected, or refunded.

Section 31: Refunds of Taxes Erroneously Paid

(1) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date which such payment was made or the return was due, or within three months after the final determination of the federal tax liability, whichever is later.

Section 32: Duty to Receive Tax Imposed

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

Section 33: Credit for Income Tax Paid in Another Jurisdiction

(1) No credit, or allowance shall be given for income tax paid in another jurisdiction.

Section 35: Duty to Enforce Collection

(1) It shall be the duty of the Administrator to enforce payment of all taxes owing to the Village, to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration, and make any return, or both, including taxes withheld, and to show the dates, and amount payment thereof.

Section 36: Authority to Make and Enforce Regulations

(1) The 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 rules, and regulations relating to any matter or thing pertaining to the collection of taxes, and the provisions for the re-examination, and correction of returns.

Section 37: Authority to Arrange Installment payments

(1) The Administrator is authorized to arrange for the payment of unpaid taxes, interest, and penalties on a schedule of installment payments, when the taxpayer has proved to the 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.

(2) Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty, and interest, to become payable on demand.

Section 38: Authority to Determine amount of Tax Due

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

Section 39: Authority to Make Investigation

(1) The administrator, or any authorized employee, is hereby authorized to examine the books, papers, records, and federal income tax returns of any employer, or of any taxpayer, or person subject to, or whom the 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 due under this Ordinance. Every such employer, supposed employer, taxpayer, or supposed taxpayer is hereby directed, and required to furnish upon written request by the Administrator, or his duly authorized agent, or employee, the means, facilities, and opportunity for making such examinations, and investigations as are hereby authorized.

Section 40: Authority to Compel Production of Records

(1) The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before hi, and may examine such person, under oath, concerning any income which was, or should have been returned for taxation, 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.

Section 41: Refusal to Produce Records

(1) 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 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 ordinance, or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this Ordinance punishable as provided in this Ordinance.

Section 42: Confidential Nature of Information

(1) Any information gained as the result of any returns, investigations, hearings, or verifications required, or authorized by this ordinance shall be confidential except for official purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this section shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be subject to a fine, or penalty of not more than \$1000, or imprisoned for not more than six month, or both. Each disclosure shall constitute a separate offense.

Section 43: Taxpayer Required to Retain Records

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

Section 44: Authority to contract from Central Collection Facilities.

The Village of West Elkton, having intended to enter into an agreement for the establishment of a Regional Council of Governments pursuant to Ordinance number 01-2005, which Council has organized a municipal tax collection agency known as 'Regional Income Tax Agency', the Board of Trustees of said Regional Income Tax Agency is authorized to administer, and enforce the provisions of this ordinance as the agent of the Village, and the duties, and authority of the Administrator hereunder may be performed by the Board of Trustees of said agency through the Administrator of said agency. Provided, however, the Administrator of said agency shall have no authority to abate penalties, or interest provided for in this ordinance.

Section 45: Board of Review

(1) A Board of Review, consisting of the Mayor, and an elector appointed by the Council of the Village, and an elector appointed by the Mayor is hereby created. The Board shall select, each year for a one-year term, one of it's 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 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.

Section 46: Duty to Approve Regulations and to Hear Appeals

(1) All rules, and regulations, and amendments, or changes thereto which are adopted by the 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 ruling, or decision of the Administrator, and at the request of the taxpayer, or Administrator, is empowered to substitute alternate methods of allocation.

Section 47: Right of Appeal

(1) Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this Ordinance may⁷ appeal there from to the Board of Review within thirty days from the announcement of such ruling or decision by the Administrator, and the Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any such ruling or decision, or any part thereof.

Section 48: Declaration of Legislative Intent

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