

VILLAGE OF CLINTON, OHIO

ORDINANCE No. 2011- 2

LEVYING A TAX TO PROVIDE FUNDS FOR THE PURPOSE OF CAPITAL IMPROVEMENTS AND GENERAL VILLAGE OPERATIONS, ON ALL QUALIFYING WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY THE RESIDENTS OF THE VILLAGE OF CLINTON; ON ALL QUALIFYING WAGES, COMMISSIONS AND OTHER COMPENSATIONS EARNED BY NONRESIDENTS OF THE VILLAGE OF CLINTON FOR WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE VILLAGE OF CLINTON; ON THE NET PROFITS EARNED ON ALL BUSINESSES, PROFESSIONS AND OTHER ACTIVITIES CONDUCTED BY RESIDENTS OF THE VILLAGE OF CLINTON; ON THE NET PROFITS EARNED ON ALL BUSINESSES, PROFESSIONS, OR OTHER ACTIVITIES CONDUCTED IN THE VILLAGE OF CLINTON BY NONRESIDENTS, AND ON THE NET PROFITS EARNED BY ALL CORPORATIONS DOING BUSINESS IN THE VILLAGE OF CLINTON AS THE RESULT OF WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE VILLAGE OF CLINTON; PROVIDING FOR THE ADMINISTRATION, COLLECTION, AND ENFORCEMENT OF SAID TAX; DECLARING THE VIOLATION THEREOF TO BE A MISDEMEANOR AND IMPOSING PENALTIES

WHEREAS, the Village of Clinton Council desires to pass an Income Tax Ordinance authorizing a 1 % income tax as provided for under the Ohio Revised Code Chapter (Ohio R, C. Ch) 718; and,

WHEREAS, the Council of the Village of Clinton wishes to make the Income Tax Ordinance simple, fair and consistent with similar ordinances in neighboring communities; and,

WHEREAS, the Village Council wishes to incorporate appropriate findings and conclusions of the Finance Committee of the Village Council into the new Income Tax Ordinance; and,

WHEREAS, the proposed Income Tax Ordinance has been reviewed and is recommended by the Finance Committee of the Village Council and the Council as a whole.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF CLINTON THAT:

Section 1. EFFECTIVE PERIOD OF THIS LEGISLATION.

This Ordinance shall take effect on 10-18-11 for tax periods beginning on or after January 1, 2012. This Ordinance shall continue effective insofar as the levy of taxes is concerned from and after January 1, 2012, and thereafter until such time as the same may be repealed by a vote of the electors of the Village of Clinton, Ohio. Insofar as the collection of taxes levied in the

aforesaid period and actions and proceedings for collecting any tax so levied or enforcing any provisions of this Ordinance are concerned, it shall continue effective until all of said taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this Ordinance shall have been fully terminated, subject, however, to the remaining sections hereof with respect to any limitations of time within which an additional assessment shall be made. Provided, however, that should this Ordinance be repealed by the vote of the electorate of the Village of Clinton, Ohio, the annual returns for the year ending December 31st of the last year that this tax shall be imposed shall be filed on or before April 15th of the next year succeeding the termination of the tax, and any tax shown due thereon for the last year of the imposition of said tax ending December 31st of that year, which is not paid and collected under the provisions of Section 7 and/or 8 hereof shall be paid on said date, except in those cases in which the time for filing returns and/or payments of the tax due has been extended in accordance with the remaining sections hereof.

Section 2: PURPOSE

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, and capital improvements of the Village there shall be, and is hereby levied a tax on gross salaries, gross wages, commissions, and other compensation, and on the net profits as hereinafter provided.

Section 3: DEFINITIONS

- (a) As used in this chapter, the following words shall have the meanings ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning. The singular shall include the plural, and the masculine shall include the feminine and the neuter.
- (1) "Association" means a partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons.
 - (2) "Board of Review" means the Board created by and constituted as provided in Section 181.13.
 - (3) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, limited partnership, association, corporation or any other entity, including but not limited to the renting or leasing of property, real, personal or mixed.

- (4) **"Corporation"** means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.
- (5) **"Domicile"** means a place where a person has his true and permanent residence to which whenever absent from he intends to return. Actually or legally a person's permanent and principal home.
- (6) **"Employee"** means one who works for wages, salaries, commission or other type of compensation in the service and under the control of an employer.
- (7) **"Employer"** means an individual, partnership, limited partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who and that employs one or more persons on a salary, wage, commission or other compensation basis.
- (8) **"Fiscal year"** means an accounting period of twelve months or less ending on any day other than December 31.
- (9) **"Gross receipts"** means the total income from any source whatsoever.
- (10) **"Income Tax Administrator"** means the individual designated by this chapter, whether appointed or elected to administrate and enforce the provisions of this chapter. The Income Tax Administrator shall be responsible, subject to and controlled by the Clerk/Treasurer.
- (11) **"Net Profits"** means a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, without deduction of taxes imposed by this chapter, 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 chapter.
- (12) **"Nonresident"** means an individual domiciled outside the Village.
- (13) **"Nonresident unincorporated business entity"** means an unincorporated business entity not having an office or place of business within the Village.
- (14) **"Person"** means every natural person, partnership, limited partnership, fiduciary, association, corporation, or other entity. 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 corporation, the

officers thereof.

- (15) **"Place of business"** means any bona fide office, other than a mere statutory office, factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees in attendance.
- (16) **"Resident"** means an individual, partnership, limited partnership, association, corporation or other entity domiciled in the Village.
- (17) **"Resident unincorporated business entity"** means an unincorporated business entity having an office or place of business within the Village.
- (18) **"Taxable income"** means gross wages, gross salaries, commissions and any other compensation paid by an employer or employers before any deductions and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this chapter. Taxable income includes sums contributed by a taxpayer, directly or indirectly, to an Individual Retirement Account (IRA), self-employed pension plan (Keogh) or any deferred compensation program as defined by the United States Internal Revenue Code.
- (19) **"Taxable year"** means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter and in case of a return for a fractional part of a year, the period for which such return is required to be made.
- (20) **"Taxpayer"** means a person, whether an individual, partnership, limited partnership, contractor, sub-contractor, professional, broker, association, independent contractor, corporation or any other entity, required hereunder to file a return or pay a tax.
- (21) **"Generic form"** means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income.
- (22) **"Return preparer"** means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.

Section 4: IMPOSITION OF TAX.

(a) Subject to the provisions of Section 181.16, an annual tax for the purposes specified in Section 181.01 shall be imposed on and after, at the rate of one percent (1%) per annum upon the following:

- (1) On all gross salaries, gross wages, commissions, tips, gratuities and other compensation earned during the effective period of this chapter by residents of the Village.
- (2) On all gross salaries, gross wages, commissions, tips, gratuities and other compensation earned during the effective period of this chapter by nonresidents for work done or services performed or rendered in the Village.
- (3) On earnings, payments, bonuses, commissions, early retirement incentives, wage continuation plans, and/or fees received by professionals, brokers, and others who are independent contractors and not employees.
- (4) (A) On the portion attributable to the Village of the net profits earned during the effective period of this chapter of all resident unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business and other activities conducted in the Village.

(B) On the portion of the distributive share of the net profits earned during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to the Village and not levied against such unincorporated business activity.
- (5) (A) On the portion attributed to the Village of the net profits earned during the effective period of this chapter of all nonresident unincorporated businesses, professions or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in the Village, whether or not such unincorporated business entity has an office or place of business in the Village.

(B) On the portion of the distributive share of the net profits earned during the effective period of this chapter 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.
- (6) On the portion attributable to the Village of the net profits earned during the effective period of this chapter of 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.

- (b) The portion of the net profits attributed to the Village of a taxpayer conducting a business, profession or other activity both within and without the boundaries of the Village shall be determined as provided in Ohio R,C 718.02 in accordance with the rules and regulations adopted by Council.
- (c) In the computation of any tax due under this ordinance, a business loss of a previous tax year shall not be allowed or carried forward or back to reduce the tax in any subsequent tax year.
- (d) For no other reason may a business or rental loss be offset against salaries, wages, commissions or other personal service compensation.
- (e) Consolidated Returns.
 - (1) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by Council.
 - (2) In the case of a corporation that carried on transactions with its stockholders or with other corporations by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory, or activity within the Village constituting a portion only of its total business the Income Tax Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the Village. If the Income Tax Administrator finds net profits are not properly allocated to the Village by the reason of transactions with stockholders, or with other corporations related by stock ownership, interlocking directorates or transaction with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation of net profits to the Village.
- (f) Rentals.
 - (1) Rental income received by taxpayers shall be included in the computation of net profits from business activities under this section, only if and to the extent that the rental, ownership, management, or operations of the real estate, from which such rentals are derived, whether so rented, managed or operated by taxpayer individually or through agents or other representatives, constitutes a business activity of the taxpayer in whole or in part.
 - (2) Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of two hundred dollars (\$200.00) per month, it shall be prima facie evidence that the rental, ownership

management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to the tax, provided that in 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 the rental exceeds two hundred dollars (\$200.00) 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 the crops or when the rental is based on a percentage of the gross or net income exceeding two hundred dollars (\$200.00) 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 two hundred dollars (\$200.00) per month.

- (3) No taxpayer shall be entitled to claim any sums as a deductible expense from rentals received unless the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of two hundred dollars (\$200.00) per month.
- (g) Royalties are taxable.
- (h) Cumulative winnings over two thousand dollars (\$2,000) earned or derived from gaming, wagering, lotteries, (including any State Lottery) or games of chance, or any combination of these, are taxable.
- (i) Exception. The Municipal corporation shall NOT tax any of the following:
- (1) Any person under the age of eighteen years.
 - (2) The military payor allowances of members of the armed forces of the United States and of members of their reserve components, including the Ohio National Guard.
 - (3) Intangible income, except as otherwise provided.
 - (4) The income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax-exempt tangible property, or tax-exempt activities.
 - (5) Compensation paid under Ohio RC. 3501.28 to 3501.36 to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars (\$1,000) may be subjected to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(6) On or after January 1, 2012, compensation paid to an individual for personal services performed within the Municipal corporation, if the individual does not reside in the municipal corporation, performs such personal services in the municipal corporation on twelve or fewer days in the calendar year, and, if that individual is an employee, the principal place of business of the individual's employer is located outside the municipal corporation. This subdivision (i)(6) does not apply to professional entertainers or professional athletes or to promoters of professional entertainment or sports events and their employees, as reasonably defined by the municipal corporation.

Section 5: EFFECTIVE PERIOD.

Such tax shall be levied, collected and paid with respect to the gross salaries, gross wages, commissions, and other compensations and with respect to net profits of businesses, professions or other activities earned on or after January 1, 2012.

Section 6: RETURN AND PAYMENT.

- (a) Each taxpayer, except as herein provided, shall whether or not a tax be due thereon, make and file a return on or before April 15 of the year following the effective date of this chapter, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within 105 days from the end of such fiscal year or period. The Income Tax Administrator is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by such employer or employers from the salaries, wages, commission or other compensation of an employee, and paid by him or them to the Income Tax Administrator shall be accepted as the return required of any employee whose sole income, subject to tax under this chapter, is such salary, wages, commission, or other compensation.
- (b) The return shall be filed with the Income Tax Administrator on a form or forms furnished by or obtainable upon request from such Income Tax Administrator or a generic form of such a return, report, or document if the generic form, once completed and filed, contains all of the information required to be submitted with the Municipal Corporation's prescribed returns, reports, or document, and if the taxpayer, or return preparer filing the generic form otherwise complies with rules or ordinances of the Municipal Corporation governing the filing of returns, reports, or documents, setting forth:
- (1) The aggregate amounts of gross salaries, gross wages, commissions other compensations earned and gross income from business, profession or other activity, less allowable expense incurred in the acquisition of such gross income earned during the preceding year and subject to such tax.
 - (2) The amount of the tax imposed by this chapter on such earnings and profits.

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

(e) Amended Returns

- (1) Where necessary an amended return shall be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 181.11 and 181.15. Such amended return shall be on a form obtainable on request from the Income Tax Administrator. A taxpayer may not change the method of accounting or appointment 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, such taxpayer shall make and file an amended Village return showing income subject to the Village tax based upon such final determination of Federal tax liability, and any additional tax shown due thereon or make claim for refund of any overpayment.

Section 7: COLLECTION AT SOURCE.

- (a) In accordance with rules and regulations prescribed by Council, each employer within and doing business with the Village shall deduct at the time of the payment of such salary, wage, commission or other compensation the tax of one percent (1%) of the gross salaries, gross wages, commissions or other compensation due by the employer to the employee and shall, on or before the last day of the month following the close of the calendar quarter make a return and pay to the Income Tax Administrator the amount of taxes so deducted. Such returns shall be on a form or forms prescribed by or acceptable to the Income Tax Administrator (including a generic form) and shall be subject to the rules and regulations prescribed therefore by Council.
- (b) 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. Every employer or officer of a corporation is deemed to be a Trustee for this municipality in collecting and holding the tax required under this chapter to be withheld and the funds so collected by such withholdings are deemed to be trust funds, The officer or employee having control or supervision or charged with the responsibility of filing the return and making payment is personally liable for failure to file the return or pay the tax due as required by this section. The officer or employee shall be personally liable for the tax he failed

years is one hundred fifty dollars (\$150.00) or less, except as otherwise provided in subsection (g)(2) hereof.

(2) In an nonresident employer, agent of such an employer, or other payer that is not situated in the Municipality is required to deduct and withhold taxes for an ensuing year under subsection (g)(1) hereof, and the total amount of tax required to be deducted and withheld under that subsection in each of three consecutive ensuing years is one hundred fifty dollars (\$150.00) or less, the Municipality shall not require the employer, agent or other payer to deduct and withhold taxes in any year following the last of those consecutive years unless the amount to be deducted and withheld in any such following year exceeds one hundred fifty dollars (\$150.00).

(g) On January 31st of each year, a completed reconciliation form must be filed along with copies of all W-2 forms, or a list or printout including the same information as required on the W-2 form.

Section 8: DECLARATIONS.

- (a) Every person who anticipates any taxable income which is not subject to Section 181.06, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 181.03 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, if any, provided however, if a person's income is wholly from wages from which the tax will be withheld and remitted to the Village in accordance with Section 181.06, such person need not file a declaration. Every person who files an estimate pursuant to this chapter, shall make payment in the amount of ninety percent (90%) of the regular tax which would be due on the basis of the final return or tax for the year.
- (b) (1) Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or within 105 days of the date the taxpayer becomes subject to the tax for the first time.
- (2) Those taxpayers reporting on a fiscal year basis shall file a declaration within 105 days 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 Income Tax Administrator, provided however, credit shall be taken for the Village tax to be held from any portion of such income. In accordance with the provisions of Section 181.15, credit may be taken for tax to be paid or to be withheld and remitted to another taxing municipality.

to return or pay as well as any related interest and penalties, The dissolution of a corporation does not discharge an officer's or employee's liability for a prior failure of the corporation to pay the tax due.

- (c) Tax Shelter Plans-Contributions by employees to a retirement system are not deductible by such employee, if such contributions are deducted by an employer from the earnings of an employee, such amounts are subject to withholding,
 - (1) Contributions to a SEP/IRA or any deferred compensation program must be included with an employee's wages and compensation and such amount are subject to withholding.
 - (2) Early retirement incentives and wage continuation plans are taxable and subject to withholding.
- (d) Such employer who deducts the tax in the amount of two hundred dollars (\$200.00) or more per month shall, on or before the last day of the following month, pay to the Income Tax Administrator the amount of the taxes so deducted.
- (e) The payments shall be on form or forms furnished by or obtainable upon request from the Income Tax Administrator or an approved generic form setting forth the amount of tax deducted for the month. A receipted copy of such form shall be returned to the employer to be attached to and filed with the employer's quarterly return of income tax withheld.
- (f) As used in this subsection, "other payer" means any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent.
 - (1) Beginning January 1, 2012, the Municipality shall not require any nonresident employer, agent of such an employer or other payer that is not situated in the Municipality to deduct and withhold taxes from the taxable income of an individual unless the total amount of tax required to be deducted and withheld for the Municipality on account of all the employer's employees or all of the other payer's payees exceeds one hundred fifty dollars (\$150.00) for a calendar year beginning on or after that date. If the total amount of tax to be deducted and withheld on account of all the nonresident employer's employees or all of the other payer's payees exceed one hundred fifty dollars (\$150.00) for a calendar year beginning on or after January 1, 2012, the Municipality may require the employer, agent, or other payer to deduct and withhold taxes in each ensuing year even if the amount required to be deducted and withheld in each of those ensuing

- (2) The original declaration, or any subsequent amendment thereof, may be increased or decreased on or before any subsequent quarterly payment dates as provided for herein.
- (d) Such declaration, of estimated tax to be paid the Village shall be accompanied by a payment of at least one-fourth of the estimated annual tax and at least a similar amount shall be paid on or before the fifteenth day of the sixth, ninth and twelfth months after the beginning of the taxable year. Provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereof shall be paid in equal installments on or before the remaining payment dates.
- (e) 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 the Village shall be paid therewith in accordance with the provisions of Section 181.05.

Section 9: DUTIES OF INCOME TAX ADMINISTRATOR.

- (a)
 - (1) It shall be the duty of the Income Tax Administrator 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 Income Tax Administrator to enforce payment of all taxes owing the Village, to keep accurate records for a minimum of five years showing the amount due for each taxpayer required to file a declaration and/or make any return, including all taxes withheld, and to show the dates and amounts of payments thereof.
- (b) The Income Tax Administrator is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt and to promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the reexamination and correction of returns. The Income Tax Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has provided to the Income Tax Administrator that, due to certain hardships 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 chapter. Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 181.11 and 181.12 shall apply.

- (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 tax due, the Income Tax Administrator may determine the amount of the tax appearing to be due the Village from the taxpayer and shall send to such a taxpayer a written statement showing the amount of tax so determined together with interest and penalties therein, if any.
- (d) Subject to the consent of the Board of Review or pursuant to regulations approved by such Board, the Income Tax Administrator shall have the power to compromise any interest or penalty or both, imposed by Section 181.10.

Section 10: INVESTIGATIVE POWERS; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

- (a) The Income Tax 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 Income Tax Administrator believes is subject to the provisions of this chapter, for the purpose of verifying accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer, or supposed taxpayer is hereby directed and required to furnish upon written request by the Income Tax Administrator or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.
- (b) The Income Tax Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been 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.
- (c) The refusal to produce books, papers, records and Federal income tax returns, or the refusal to submit to such examination by an 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 an order or subpoena of the Income Tax Administrator authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 181.12,

- (d) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this chapter, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500.00) or six months in jail or both. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the Village who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.
- (e) 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 11: INTEREST AND PENALTIES.

- (a) All taxes imposed and all moneys withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of one percent (1%) per month or fraction thereof.
- (b) In addition to interest as provide in subsection (a) hereof, penalties based on the unpaid tax are hereby imposed as follows:
 - (1) For failure to pay taxes due other than taxes withheld: One percent (1 %) per month or fraction thereof.
 - (2) For failure to remit taxes withheld from employees: Three percent (3%) per month or fraction thereof, or ten dollars (\$10.00) whichever is greater.
- (c) Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Income Tax Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Income Tax Administrator, and provided further, that in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the Federal tax liability.
- (d) Upon recommendation of the Income Tax Administrator, the board of Review may abate penalty or interest or both, or upon an appeal from the refusal of the Income Tax Administrator, to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest, or both.

Section 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. Except in the case of fraud, omission of a substantial portion of income subject to this tax, or 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 limitation, the period within which an additional assessment may be made by the Administrator shall be one year from the time of the final determination of Federal tax liability.
- (b) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date which such payment is made or the return was due, or within three months after final determination of the Federal tax liability, whichever is later.
- (c) Amounts of less than one dollar (\$1.00) shall not be collected or refunded.

Section 13: VIOLATIONS; PENALTIES.

- (a) Any person who shall:

 - (1) Fail, neglect or refuse to make any return or declaration required by this chapter; or
 - (2) Make any incomplete, false or fraudulent return; or
 - (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
 - (4) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Income Tax Administrator; or
 - (5) Refuse to permit the Income Tax Administrator or any duly authorized agent or employee to examine his books, records, papers, and Federal income tax returns relating to the income or net profits of a taxpayer; or
 - (6) Fail to appear before the Income tax Administrator and to produce the books, records, papers or Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of Income Tax Administrator; or
 - (7) Refuse to disclose to the Income Tax Administrator any information with respect to the income or net profits of a taxpayer; or

- (8) Fail to comply with the provisions of this chapter or any order or subpoena of the Income Tax Administrator authorized hereby; or**
 - (9) Give to an employer false information as to his true name, correct social security number, and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or**
 - (10) Fail to use ordinary diligence in maintaining proper records of employee's residence addresses, total wages paid and Village tax withheld, or to knowingly give the Income Tax Administrator false information; or**
 - (11) Attempt to do anything whatever to avoid payment of the whole or any part of the tax, penalties or interest imposed by this chapter; shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months.**
- (b) All prosecution under this section shall be commenced within three 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 shall be commenced shall be three years from the date the return was due or the false or fraudulent return was filed.**
- (c) The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return, return or declaration, from filing such form or from paying the tax.**

Section 14: BOARD OF REVIEW.

- (a) A Board of review, consisting of a Chairman and two (2) other individuals each to be appointed by the mayor and confirmed by Council is hereby created. A majority of the members of the Board shall constitute a quorum, Any hearing by the Board may be conducted privately and the provisions of Section 181.09 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.**
- (b) All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this chapter 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, as set forth below, and, at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.**

- (c) Whenever the Administrator issues a decision regarding a municipal income tax obligation that is subject to appeal as provided in this section the Administrator shall notify the taxpayer at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.
- (d) Any person who is aggrieved by a decision of the Administrator and who has filed with the Municipality the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the board created pursuant to this section by filing a request with the board. The request shall be in writing, shall state why the decision should be deemed incorrect or unlawful, and shall be filed within thirty days after the Municipality issues the decision complained of.
- (e) The Board shall schedule a hearing within forty-five days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant, or other representative.
- (f) The Board may affirm, reverse, or modify the Administrator's decision or any part of that decision. The Board shall issue a decision on the appeal within ninety days after the board's final hearing on the appeal, and send notice of its decision by ordinary mail to the petitioner within fifteen days after issuing the decision.
- (g) The Board shall adopt rules governing its procedures and shall keep a record of its transaction. Such records are not public records available for inspection under Ohio RC. 149.43. Hearings requested by a taxpayer before the Board are not meetings of a public body subject to Ohio R.C. 121.22.

Section 15: ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter, or such part thereof; as may be appropriated by Council, shall be paid into the Clinton Income Tax Fund and shall be applied as Council shall direct.

Section 16: CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

No credit shall be given for municipal income tax paid to another municipality.

Section 17: SAVING CLAUSE.

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.

Section 18: COLLECTION OF TAX AFTER CHAPTER TERMINATION.

- (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 of proceeding for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Sections 181.11 and 181.12.
- (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 181.05 and 181.06 as though the same were continuing.

Section 19: ADOPTION OF RITA RULES AND REGULATIONS

The Village hereby adopts the Regional Income Tax Agency (R.I.T.A.) Rules & Regulations, including amendments that may be made from time to time, for use as the Village's Income Tax Rules and Regulations. In the event of a conflict with any provision(s) of the Village's Income Tax Ordinance and the R.I.T.A. Rules & Regulations, the Ordinance will supersede. Until and if the contractual relationship between the Village and R.I.T.A. ceases, this Section will supersede all other provisions within this Ordinance regarding promulgation of rules and regulations by the Tax Administrator and approve of the same by the Board of Review.

Section 19: This Ordinance shall take effect and be in force from and after 10-18-11, 2011.

Passage: Yeas 4 Nays 0 2 abstain

10-18-11
Date of Passage

C. Coley
Clerk of Council

Janice C. Godwin
President of Council