

ORDINANCE NO. 2010 - 083

AN ORDINANCE AMENDING FAIRPORT HARBOR ORDINANCES  
171.08(b) IN ORDER TO PROVIDE FOR A PENALTY FOR FAILING  
TO FILE AN INCOME TAX RETURN AND DECLARING AN EMERGENCY

WHEREAS, the Fairport Harbor Income Tax Ordinances currently do not provide a penalty for failing to file an income tax return when a person is required to do so; and

WHEREAS, Fairport Harbor Ordinance 171.08(b) Penalties on Unpaid Tax currently provides as follows:

"(b) Penalties on Unpaid Tax. In addition to interest as provided in Section 171.08(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-half of one percent per month or fraction thereof.

(2) For failure to remit taxes withheld from employees; three percent per month or fraction thereof."

WHEREAS, Council and the Administration believe that a penalty should be incorporated into the Village Ordinances for taxpayers who do not file a tax return when due and are not otherwise exempt.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF FAIRPORT HARBOR, COUNTY OF LAKE, STATE OF OHIO, AS FOLLOWS:

Section 1. That Section 171.08(b) is amended and that Section 171.08(b) as amended reads as follows:

(b) Penalties on Unpaid Tax; Late Filing Penalty. In addition to interest as provided in Section 171.08(a) hereof, penalties based on the following are hereby imposed:

(1) For failure to pay taxes due other than taxes withheld; one-half of one percent per month or fraction thereof.

(2) For failure to remit taxes withheld from employees; three percent per month or fraction thereof.

(3) For failure to file the tax return when due, and if the taxpayer is not otherwise exempt from the filing requirement, the Tax Administrator may impose a penalty

of twenty-five dollars (\$25.00) for each offense, in addition to any other penalties which may otherwise be imposed.

Section 2. That all formal actions of this Council concerning the passage of this Ordinance were adopted in an open meeting, and that all deliberations of this Council, or any of its Committees, which resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3. That this Ordinance is hereby declared to be and is passed as an emergency measure, the emergency being the need to ensure that all income taxes that are due to the Village are paid and that the tax laws are administered in an efficient manner. Said Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the Village of Fairport Harbor.

WHEREFORE, this Ordinance shall be in full force and effect as provided by law.

Passed by Council this 2nd day of November, 2010

  
MAYOR FRANK SAROSY

ATTEST:

  
FISCAL OFFICER

ADOPTED 11/2/10

TITLE NINE - Taxation  
Chap. 171. Income Tax.

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CHAPTER 171  
Income Tax

171.01	Purpose of levy of tax.	171.09	Collection of unpaid taxes and refunds of overpayments.
171.02	Definitions.	171.10	Credit for tax paid to another Municipality.
171.03	Imposition of income tax.	171.11	Disbursement of receipts of tax collection.
171.04	Determination of allocation of tax.	171.12	Duties and authority of the Administrator.
171.05	Exemptions; sources of income not taxed.	171.13	Board of Review.
171.06	Returns.	171.14	Other provisions.
171.07	Payment of tax.		
171.08	Interest and penalties.		

CROSS REFERENCES

Power to levy income tax - see Ohio Const., Art. XVIII, Sec. 3  
Payroll deductions - see Ohio R.C. 9.42  
Municipal income taxes - see Ohio R.C. Ch. 718

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**171.01 PURPOSE OF LEVY OF TAX.**

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

(Ord. 74-72. Passed 9-3-74.)

**171.02 DEFINITIONS.**

For the purposes of this chapter the terms, phrases, words and their derivatives shall have the meanings given in the next succeeding sections. The singular shall include the plural, and the masculine shall include the feminine and the neuter, as follows:

- (a) "Administrator" means the individual designated to be appointed by the Mayor subject to confirmation by a majority of the members of Council, to administer and enforce the provisions of the Village income tax.
- (b) "Association" means any partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
- (c) "Board of Review" means the Board created by and constituted as provided in Section 171.13(a).
- (d) "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, excluding however all nonprofit corporations which are exempt from the payment of Federal income tax.
- (e) "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.
- (f) "Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.
- (g) "Employer" means an individual, partnership, association, corporation, government body, unit or agency, or other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other basis of compensation.
- (h) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.
- (i) "Gross receipts" means the total income from any source whatever.
- (j) "Manager" means any of the employer's officers, responsible persons, employees having control or supervision and employees charged with the responsibility of filing the return, paying taxes, and otherwise complying with this chapter.
- (k) "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.
- (l) "Nonresident" means an individual domiciled outside the Village.
- (m) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Village.
- (n) "Person" means 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.
- (o) "Place of business" means any bona fide office, other than a mere statutory office, factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity, individually or through one or more of his regular employees regularly in attendance.
- (p) "Resident" means an individual domiciled in the Village.

- (q) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Village.
- (r) "Taxable income" means wages, salaries, commissions, other compensation paid by an employer before any deduction, net profits from the operation of a business or profession or other enterprise or activity, adjusted in accordance with the provisions of this chapter, and other compensation, including, but not limited to, income derived from gaming, wagering, lotteries or schemes of chance.
- (s) "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 the case of a return for a fractional part of a year, the period for which such return is required to be made.
- (t) "Taxpayer" means a person, whether an individual, partnership, association or any corporation or other entity, required hereunder to file a return or pay a tax. (Ord. 2009-063. Passed 8-18-09.)

#### 171.03 IMPOSITION OF INCOME TAX.

(a) Rate and Income Taxable. An annual tax for the purposes specified in Section 171.01 hereof shall be imposed on and after January 1, 1997 at the rate of two percent (2%) per annum upon the following:

- (1) On all salaries, wages, commissions and other compensation earned on and after January 1, 1997, by residents of the Village.
- (2) On all salaries, wages, commissions and other compensation earned on and after January 1, 1997, by nonresidents of the Village for work done or services performed or rendered within the Village.
- (3) A. On the portion attributable to the Village on the net profits earned on and after January 1, 1997, of all resident unincorporated business entities or professional or other activities, derived from sales, made, work done, services performed or rendered and business or other activities conducted in the Village.  
B. On the portion of the distributive share of the net profits earned on and after January 1, 1997, of a resident partner or owner of a resident unincorporated business entity not attributable to the Village and not levied against such unincorporated business entity.
- (4) A. On the portion attributable to the Village of the net profits earned on or after January 1, 1997, of all nonresident unincorporated business entities, professional 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 an office or place of business in the Village.  
B. On the portion of the distributive share of the net profits earned on or after January 1, 1997, 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.

- (5) On the portion attributable to the Village of the net profits earned on and after January 1, 1997, of all corporations derived from the 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) Effective Period. The tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of businesses, professional or other activities earned on and after January 1, 1997. (Ord. 1996-64. Passed 7-16-96.)

#### 171.04 DETERMINATION OF ALLOCATION OF TAX.

(a) Method of Determination. In the taxation of income which is subject to the Village 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 Village, then only such portion shall be considered as having a taxable situs in the Village for the purposes of municipal 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:

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 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 Village to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.  
In the event that the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result.

(b) Sales Made in the Village. As used in Section 171.04(a)(3) hereof, "sales made in the Village" means:

- (1) 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.
- (2) 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 its own employees in the solicitation or promotion of sales within the Village and the sales result from such solicitation or promotion.
- (3) All sales of tangible personal property which is shipped from a place within the Village to purchasers outside the Village regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(c) Total Allocation. Add together the percentages determined in accordance with Sections 171.04(a)(1), (2) and (3), or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving the total in order to obtain the business allocation percentages referred to in Section 171.04(a).

A factor is applicable even though it may be allocable entirely in or outside the Village.

(d) Rentals. Rental income received by a taxpayer shall be included in the computation of net profits from business activities under Section 171.03(a)(3) to (a)(5) hereof, only if and to the extent that the rental, ownership, management or operations of the real estate from which such rentals are derived, whether so rented, managed or operated by a taxpayer individually or through agents or other representatives, constitutes a business activity of the taxpayer in whole or in part.

Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of one hundred twenty-five dollars (\$125.00) per month, it shall be prima-facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax; 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 one hundred twenty-five dollars (\$125.00) 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 the one hundred twenty-five dollars (\$125.00) 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 one hundred twenty-five dollars (\$125.00) per month.

(e) Operating Loss-Carry Forward.

- (1) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1975, 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 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 Administrator shall provide by the rules and regulations the manner in which such net operating loss carry-forward shall be determined.

(f) Rental List Required.

- (1) It shall be mandatory for every taxpayer subject to this section and to Chapter 171, personally or through a management agent, to submit a list to the Administrator of names and addresses of all tenants. The required list shall be prepared and submitted on or before January 31, 2010 and at such other times as the Administrator may prescribe.
- (2) Beginning on February 1, 2010 and thereafter, and subject to subsection (f)(4) below, within thirty days after a new tenant occupies residential rental property of any kind within the Village, the property owner of rental or leased residential property shall file with the Administrator a report showing the name, social security number and address of each tenant who occupies a residential premises within the corporate limits of the Village.
- (3) Beginning on February 1, 2010 and thereafter, within thirty days after a tenant vacates residential rental property of any kind within the Village, the property owner of rental or leased residential property shall file with the Administrator a report identifying a vacating tenant and stating the date of vacating from the rental or leased residential property.
- (4) Any tenant whose social security number is required to be reported by the landlord to the Administrator, pursuant to the subsections above, may report such social security number directly to the Administrator when the tenant desires, for any reason whatsoever, not to reveal his or her social security number to the landlord. The tenant shall provide the social security number or other required information within the time required above.
- (5) The owner of rental or leased residential property whose tenant and/or lessee elects the procedure set forth in subsection (f)(4) is exempted from the requirement of reporting the tenant's social security number to the Village. (Ord. 2009-070. Passed 10-6-09.)

**171.05 EXEMPTIONS; SOURCES OF INCOME NOT TAXED.**

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

- (a) Pay or allowance 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 payments 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 from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations.
- (e) Alimony received.
- (f) Personal earnings of any natural person under eighteen years of age.
- (g) Compensation for personal injuries or for damages to property by way of insurance or otherwise.
- (h) Interest, dividends and other revenue from tangible property.
- (i) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State from which the Village is specifically prohibited from taxing, and income of a decedent's estate during the period of administration, except such income from the operation of a business.
- (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 subdivision 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 of the State or any act of the Ohio General Assembly limiting the power of the Village to impose net income taxes.

(Ord. 74-72. Passed 9-3-74.)

## 171.06 RETURNS.

(a) When Return Required to be Made. Each taxpayer, except as herein provided, shall, whether or not a tax is due thereon, make and file a return on or before April 15 of each year. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth day of the fourth month following the end of such fiscal year or period. Any person who has no income need not file an annual return. Any person who has exempt income must file a return and declare to the Administrator the nature of his or her exemption. Any person who has taxable income must file a tax return with the Administrator.

If a taxpayer's entire income is exempt from taxation by the Village, the taxpayer, in lieu of filing a return, shall file a one-time individual declaration of exemption stating the reasons the taxpayer is exempt. If at any time thereafter the taxpayer once again earns and/or receives income taxable to the Village, the Taxpayer must reactivate his Village tax account by informing the Administrator and/or the Fiscal Officer within thirty days after earning or receiving such income. (Ord. 2009-105. Passed 12-1-09.)

(b) Form and Content of Return. The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from such Administrator, setting forth:

- (1) The aggregate amounts of salaries, wages, commissions and other compensation earned and gross income from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to the tax;
- (2) The amount of the tax imposed by this chapter on such earnings and profits; and
- (3) Such other pertinent statements, information, returns or other information as the Administrator may require.

(c) Extension of Time for Filing Returns. 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 cases in which the return is filed and the final tax paid within the period as extended.

(d) 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 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. (Ord. 74-72. Passed 9-3-74.)

(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, limitations, or both, contained in Sections 171.09(a), (b) and (c) and Section 171.10 hereof. 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. (Ord. 1984-09. Passed 1-3-84.)
- (2) Within three months from the final determination of any Federal 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 pay any additional tax shown due thereon or make claim for refund of any overpayment. (Ord. 74-72. Passed 9-3-74.)

## 171.07 PAYMENT OF TAX.

(a) Payment of Tax on Filing of Return.

- (1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as due thereon. However, where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of subsection (b) hereof, or where any portion of the tax shall have been paid by the taxpayer pursuant to the provisions of subsection (c) hereof, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 171.10(a) or (b) hereof, 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 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.  
(Ord. 74-72. Passed 9-3-74.)

(b) Collection at Source.

- (1) In accordance with the rules and regulations prescribed by the Administrator, each employer within or doing business with the Village shall deduct at the time of the payment of such salary, wage, commission or other compensation, the tax of two percent (2%) per annum of the gross salaries, 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 each calendar quarter make a return and pay to the Administrator the amount of taxes so deducted, subject to the provisions of paragraphs (3), (4), and (5) hereof. The returns shall be on a form or forms prescribed by or acceptable to the Administrator and shall be subject to the rules and regulations prescribed therefor 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 been withheld.
- (2) The employer in collecting the 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) An employer who deducts the tax in an amount of two hundred fifty dollars (\$250.00) or more in the first or second month of a calendar quarter shall, on or before the twentieth day of the following month, pay to the Administrator the amount of taxes so deducted.

- (4) An employer who makes such payments on a monthly basis for the first two months of a calendar quarter shall pay such tax deducted for the third month of a calendar quarter at the regular time for filing the employer's quarterly return of income tax withheld.
- (5) Payments shall be on a form or forms furnished by or obtainable upon request from the Administrator, 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.
- (6) 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 this chapter.
- (7) Manager's obligations.
  - A. Every manager is deemed to be a trustee of this Municipality in collecting and holding the tax required under this chapter to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every manager is liable directly to this Municipality for payment of such trust funds, whether actually collected by such employee or not. Any tax deducted and withheld is to be considered paid to the Municipality, whether or not the employer actually remits the tax to this Municipality, for purposes of determining employee payments or credits only.
  - B. All managers shall be personally liable to the extent of the tax, interest and penalty, jointly and severally, for failure to file the employer's return or to pay the employer's tax, interest and penalty as required under this chapter.
  - C. No change in structure by an employer, including a fundamental change, discharges its managers from liability for the employees' or manager's failure to remit funds held in trust, to file a tax return or to pay taxes.  
(Ord. 2009-063. Passed 8-18-09.)

(c) Declarations of Income Not Collected at Source. Every person who anticipates any taxable income which is not subject to Section 171.07(b) hereof, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 171.03 hereof, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any. However, if a person's income is wholly from wages from which the tax will be withheld and remitted to the Village in accordance with Section 171.07(b) hereof, such person need not file a declaration.

(d) Filing of Declaration.

- (1) The declaration required by Section 171.07(c) shall be filed on or before April 30 of each year during the effective period set forth in Section 171.03(b) or within four months 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 four months after the beginning of each fiscal year or period.

(e) Form of Declaration.

- (1) The declaration required by Section 171.07(c) shall be filed upon a form furnished by, or obtainable from, the Administrator, provided, credit shall be taken for the Village tax to be withheld from any portion of such income. In accordance with the provisions of Sections 171.10(a) or (b) hereof, 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.

(f) Payment to Accompany Declaration. The declaration of estimated tax to be paid to 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 last day of the sixth, ninth and twelfth months after the beginning of the taxable year. However, 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.

(g) Annual Return. On or before the last 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 171.07(a) hereof.

(h) Extensions. The Administrator may extend the time of filing any return required, of making any payment or performing any other act required by this section for a period not to exceed six months beyond the original required date.  
(Ord. 74-72. Passed 9-3-74.)

## 171.08 INTEREST AND PENALTIES.

(a) Interest on Unpaid Tax. 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 and one-half percent (1-1/2 %) per month or fraction thereof.  
(Ord. 1984-09. Passed 1-3-84.)

(b) Penalties on Unpaid Tax. In addition to interest as provided in Section 171.08(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-half of one percent per month or fraction thereof.
- (2) For failure to remit taxes withheld from employees; three percent per month or fraction thereof.  
(Ord. 74-72. Passed 9-3-74.)

(c) Exceptions. A penalty shall not be assessed on an 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 resulting from a Federal audit, provided that an amended return is filed and the additional tax is paid within three months after final determination of the Federal tax liability.

(d) Abatement of Interest and Penalty. Upon recommendation of the Administrator, the Board of Review may abate the penalty or interest, or both; or, upon an appeal from the refusal of the Administrator to recommend abatement of the penalty and/or interest, the Board may nevertheless abate the penalty or interest, or both.  
(Ord. 1984-09. Passed 1-3-84.)

- (1) For good reason shown, Council may abate penalty and interest on the late payment of the Village income tax for non-resident contractors for whom there is no proof that they were notified of the existence of the tax, and who, upon being notified of the nonpayment of Village income tax, submit their payment in full within ninety days of notification.  
(Ord. 1995-53. Passed 6-6-95.)

(e) Violations. Whoever:

- (1) Fails, neglects or refuses to make any return or declaration required by this chapter; or
- (2) Makes any incomplete, false or fraudulent return; or
- (3) Fails, neglects or refuses to pay the tax, penalties or interest imposed by this chapter; or
- (4) Fails, neglects or refuses to withhold the tax from his employees or remit such withholding to the Administrator; or
- (5) Refuses 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
- (6) Fails 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 or subpoena of the Administrator; or
- (7) Refuses to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
- (8) Fails to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby; or

- (9) Gives to an employer false information as to his true name, correct social security number and residence address, or fails to promptly notify an employer of any change in residence address and date thereof; or
- (10) Fails to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and Village tax withheld, or to knowingly give the Administrator false information; or
- (11) Attempts to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter; shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months or both, for each offense.  
(Ord. 74-72. Passed 9-3-74.)

(f) Limitation on Prosecution. All prosecutions under this section must 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 must be commenced shall be six years from the date the return was due or the date the false or fraudulent return was filed.  
(Ord. 1984-09. Passed 1-3-84.)

(g) Failure to Procure Forms Not Excuse. 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. (Ord. 74-72. Passed 9-3-74.)

#### 171.09 COLLECTION OF UNPAID TAXES AND REFUNDS OR OVERPAYMENTS.

(a) Unpaid Taxes Recoverable as Other Debts. 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, of omission of a substantial portion of income subject to this 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. 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 the Federal tax liability.

(b) Refunds of Taxes Erroneously Paid. Taxes erroneously paid shall not be refunded unless a claim for refund is made within the time prescribed in Ohio R.C. 718.06.

(c) Amounts of Less than One Dollar. Amounts of less than one dollar (\$1.00) shall not be collected or refunded.  
(Ord. 74-72. Passed 9-3-74.)

171.10 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

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

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

(c) A claim for refund or credit under this section shall be in such manner as the Administrator may by regulations provide.  
(Ord. 1984-09. Passed 1-3-84.)

171.11 DISBURSEMENT OF RECEIPTS OF TAX COLLECTION.

(a) Allocation of Funds. The funds collected under the provisions of this chapter shall be disbursed in the following manner:

- (1) Such part thereof as shall be necessary to defray all expenses of collecting the tax and of administering and enforcing the provisions of this chapter shall be paid.
- (2) The balance remaining after payment of the expenses referred to in paragraph (1) above, shall be deposited in the General Fund for municipal purposes.  
(Ord. 74-72. Passed 9-3-74.)

171.12 DUTIES AND AUTHORITY OF THE ADMINISTRATOR.

(a) Duty to Receive Tax Imposed. The Administrator shall receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; keep an accurate record thereof; and report all moneys so received.

(b) Duty to Enforce Collection. The Administrator shall enforce payment of all taxes owing to the Village, 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 show the dates and amounts of payments thereof.

(c) Authority to Make and Enforce Regulations. The 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 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 re-examination and correction of returns.

(d) Authority to Arrange Installment Payments. 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 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 171.08(e) and 171.09(a) of this chapter shall apply.

(e) Authority to Determine Amount of Tax Due. 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 Village 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.

(f) Authority to Make Investigations. 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 chapter, for the purpose of verifying the 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 Administrator, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(g) Authority to Compel Productions of Records. The 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.

(h) Refusal to Produce Records. The refusal to produce books, papers, records and Federal income tax returns, or the refusal to submit to such examination by any employer or persons subject or presumed to be subject to the 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 Administrator authorized hereby shall be deemed a violation of this section, punishable as provided in Section 171.08(e).

(i) Confidential Nature of Information Obtained. 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 section, shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, 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 disclosures of confidential information shall be guilty of an offense punishable by immediate dismissal.

(j) Taxpayer Required to Retain Records. 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.

(k) Authority to Contract for Central Collection Facilities. The Administrator may and is authorized to enter into an agreement, subject to agreement of Council, on behalf of the Village, with any other municipal corporation to permit such other municipal corporation to act as agent for the Village for the purpose of administering the income tax laws of the Village and of providing a central collection facility for the collection of the income tax on behalf of the Village.

(l) Assignment of Duties and Authority. In the event the Administrator, on behalf of the Village, enters into an agreement with any other municipal corporation to act as agent of the Village for the purpose of administering the income tax laws of the Village and of providing a central facility for the collection of the income tax, as provided in Section 171.12(k) hereof, then all or part of the duties and authority of the Administrator may be assigned by such agreement to such municipal corporation. (Ord. 74-72. Passed 9-3-74.)

(m) Deputy Tax Administrator. There is hereby established the position of Deputy Tax Administrator and such Deputy Tax Administrator shall have all of those duties and authority given the Administrator under this chapter. The Deputy Tax Administrator shall be appointed by the Mayor subject to the confirmation by a majority of the members of Council. The Deputy Tax Administrator shall be designated a part-time position and shall work that number of hours as the Mayor shall from time to time determine and the person filling such position shall be paid at the rate of five dollars (\$5.00) per hour. (Ord. 80-47. Passed 7-21-80.)

#### 171.13 BOARD OF REVIEW.

(a) Board of Review Established. A Board of Review consisting of the Mayor, the president of Council and one resident of the Village to be appointed by the Mayor, subject to confirmation by a majority of members of Council, is hereby created.

The term of office shall be for a period of one year or through December 31, 1975, whichever date occurs last and thereafter for a one year term. The Board shall select, each year, for a one year term, one of its members to serve

as chairman and one to serve as secretary. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and provisions of Section 171.12(i) hereof with reference to the confidential information to be required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(b) Duty to Approve Regulations and to Hear Appeals. 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 they 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.

(c) Right of Appeal. Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal therefrom 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.  
(Ord. 74-72. Passed 9-3-74.)

#### 171.14 OTHER PROVISIONS.

(a) Separability. 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 the Council of the Village that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

(b) Collection of Tax After Termination of Chapter.

- (1) 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 and proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of the taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of the taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Sections 171.08(e) through (g) and 171.09(a) through (c).
- (2) 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 171.06(a) and 171.07(b) of this chapter as though the same were continuing. (Ord. 74-72. Passed 9-3-74.)