

ORDINANCE NO. 7347-04

AN ORDINANCE RESCINDING ORDINANCE NO. 7197-01 LEVYING A TAX TO PROVIDE FUNDS FOR THE PURPOSE OF GENERAL MUNICIPAL OPERATIONS AND OTHER MUNICIPAL PURPOSES, ON ALL SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY RESIDENTS OF THE CITY OF GIRARD, OHIO; ON ALL SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY NON-RESIDENTS OF THE CITY OF GIRARD FOR WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE CITY OF GIRARD; ON THE NET PROFITS EARNED ON ALL BUSINESS, PROFESSIONS OR OTHER ACTIVITIES CONDUCTED BY RESIDENTS OF THE CITY OF GIRARD; ON THE NET PROFITS EARNED ON ALL BUSINESSES, PROFESSIONS, OR OTHER ACTIVITIES CONDUCTED IN THE CITY OF GIRARD BY NON-RESIDENTS AND ON THE NET PROFITS EARNED BY ALL CORPORATIONS DOING BUSINESS IN THE CITY OF GIRARD AS THE RESULT OF WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE CITY OF GIRARD; REQUIRING THE FILING OF RETURNS AND FURNISHING OF INFORMATION BY EMPLOYERS AND ALL THOSE SUBJECT TO SAID TAX; IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING THE TAX AT THE SOURCE AND PAYING THE SAME TO THE CITY OF GIRARD PROVIDING FOR THE ADMINISTRATION, COLLECTION, AND ENFORCEMENT OF SAID TAX; DECLARING VIOLATION THEREOF TO BE A MISDEMEANOR, AND IMPOSING PENALTIES THEREFORE, AND RESCINDING ALL PAST INCOME TAX ORDINANCES IN THE CITY OF GIRARD.

WHEREAS, the Legislature of the State of Ohio has approved legislation requiring uniformity in Municipal Income Tax legislation; and

WHEREAS, Council of the City of Girard desires to implement said changes.

NOW, THEREFORE, BE IT ORDAINED BY THE FORTY-SECOND COUNCIL OF THE CITY OF GIRARD, OHIO;

SECTION 1: Repeal clause: This Ordinance hereby rescinds all past tax Ordinances of the City of Girard, Ohio but shall not affect collection of taxes due as a result of those Ordinances.

SECTION 2: Purpose: The purpose of this Ordinance is to provide funds for the purpose of general municipal operations; maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvement of this Municipality. There shall be, and is hereby levied, a tax on gross salaries, gross wages, commissions, and other compensation, and on net profits as hereinafter provided.

SECTION 3: DEFINITIONS:

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

- (a) "Association" means a partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons.
- (b) "Board of Review" means the board created by and constituted as provided in the Ohio Revised Code.
- (c) "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, fiduciary, trust, limited liability company, association, corporation or any other entity, including but not limited to the renting or leasing of property, real, personal or mixed.

- (d) "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.
- (e) "Domicile" means a place where a person has his true and permanent resident to which whenever absent from he intends to return. Actually or legally a person's permanent and principal home.
- (f) "Employee" means one who works for wages, salary, commission or other type of compensation in the service of and under the control of an employer. Any person upon whom an employer is required to withhold for either Federal Income Tax or Social Security, PERS or on whose account payments are made under the Worker's Compensation Law shall be an employee.
- (g) "Employer" means an individual, partnership, limited partnership, association, corporation, government body, unit or agency or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission, or other compensation basis.
- (h) "Tax Director" means the individual designated by the Ordinance to administer and enforce the provisions of the Ordinance.
- (i) "Fiscal Year" means an accounting period of twelve (12) months or less ending on any day other than December 31.
- (j) "Forms" means all income tax returns, reports or other documents required under this Chapter to be filed by the City of Girard. Those forms may be filed on the forms promulgated by the City of Girard or upon generic forms, if the generic forms once completed and filed, contain all the information required to be submitted with the City of Girard's prescribed returns, reports or documents and if the taxpayer or return preparer filing the generic form otherwise complies with this Municipality's rules or Ordinances governing the filing of returns, reports or documents.
- (k) "Gross Receipts" means the total income from any source whatsoever.
- (l) "Income Tax Administrator" means the individual appointed by the Mayor to administer and enforce the provisions of the Ordinance in the same manner and pursuant to the same authority as the Tax Director.
- (m) "Net Profits" means a net gain from the portion of a business, profession, enterprise or other activity after provision for all ordinary, reasonable 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 Ordinance, Federal, State and other taxes based on income exclusive of the amount of Ohio franchise tax computed on the net worth basis, 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 Ordinance.
- (n) "Nonresident" means an individual domiciled outside this Municipality.
- (o) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within this Municipality.
- (p) "Other compensation" means compensation, which includes, but is not limited to, tips, gratuities, fees, bonuses, incentive payments, prizes and awards.
- (q) "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 corporations, the officers thereof.

- (r) "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.
- (s) "Resident" means an individual, partnership, limited partnership association, corporation or other entity domiciled in this Municipality.
- (t) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within this Municipality.
- (u) "Taxable Income" means gross wages, gross salaries, commissions, and 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 the Ordinance.
- (v) "Taxable Year" means the calendar year, or the fiscal year upon the basis of which net profits are to be computed under this Ordinance 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.
- (w) "Taxpayer" means a person, professional, broker, contractor, subcontractor, independent contractor and others whether an individual, partnership, limited partnership, association, or any corporation or other entity, required hereunder to file a return or pay a tax.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

SECTION 4: IMPOSITION OF TAX

- (a) Subject to the provision of Section 17 of this Ordinance, an annual tax for the purpose specified in Section 2 hereof shall be imposed at the rate of two percent (2%) per annum upon the following:
 1. On all gross salaries, gross wages, commissions, tips, gratuities, and other compensation earned during the effective period of the Ordinance by residents of the Municipality.
 2. On all gross salaries, gross wages, commissions, tips, gratuities, and other compensation earned during the effective period of the Ordinance by non-residents who are employees of a resident unincorporated business entity or resident incorporated business entity.
 3. On earnings, payments, bonuses, commissions and/or fees received by professionals, brokers and others who are independent contractors and not employees.
 4. Employees who report to a business location within this Municipality and are under the supervision from said location within this city and return to said location in this city at the end of the business day are considered to have worked the full day in this Municipality for income tax collection purposes.
 5. A. On the portion attributed to this Municipality of the net profits earned during the effective period of this Ordinance of all resident unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in or for this Municipality.
 - B. On the portion of the distributive share of the net profits earned during the effective period of this Ordinance of a resident partner or owner of a resident unincorporated business entity not attributable to this Municipality and not levied against such unincorporated business entity by this Municipality.

6. A. On the portion attributed to this Municipality of the net profits earned during the effective period of this Ordinance of all non-resident unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in or for this Municipality, whether or not such unincorporated business entity has an office or place of business in this Municipality.
B. On the portion of the distributive share of the net profits earned during the effective period of this Ordinance of a non-resident partner or owner of a non-resident unincorporated business entity not attributable to this Municipality and not levied against such unincorporated business entity by this Municipality.
 7. On the portion attributable to this Municipality, of the net profits earned during the effective period of this Ordinance of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in or for this Municipality, whether or not such corporations have an office or place of business in this Municipality.
- (b) The portion of the net profits attributable to this Municipality of a taxpayer conducting a business, profession or other activity both within and without the boundaries of the Municipality shall be determined as provided in Section 718.02 of the Revised Code of Ohio and in accordance with the Rules and Regulations adopted by the Tax Director pursuant to this Ordinance.
- (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 to reduce the tax due in any subsequent year.
- (d) For no reason may a business loss be offset against salaries, wages, commissions or other personal service compensation.
- (e) Consolidated Returns
1. Filing of consolidated returns may be permitted, required or denied in accordance with Rules and Regulations prescribed by the Tax Director.
 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 this Municipality constituting a portion only of its total business the Tax Director shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to this Municipality. If the Tax Director finds net profits are not properly allocated to this Municipality 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 some other method, he shall make such allocations as he deems appropriate to produce a fair and proper allocation of net profits to this Municipality.
- (f) Other Taxable Income
1. Contributions to an IRA, SEP IRA, H.A. 10 Plan or any other deferred plan are taxable.
 2. Income from Subchapter S corporation are taxable to a resident shareholder to the extent not subject to Girard Corporate Income Tax. If you are a shareholder in a Subchapter S corporation, you must include in your income your share of the corporation's taxable income whether or not the amount was actually distributed to you.

3. The premium value of group term life insurance coverage in excess of \$50,000.00, which is purchased with employer contributions, is taxable. This income is referred to as "imputed income".
4. The ordinary income portion of a stock option or employee stock purchase plan is subject to the tax.
5. Supplemental Unemployment Benefit payments (SUB Payments) are subject to the tax.
6. Winnings over \$5,000.00 earned or derived from gaming, wagering, lotteries (including, but not limited to, the Ohio State Lottery) or games of chance.
7. Early retirement incentives and wage continuation plans are taxable.
8. Executor, administration and trustee fees are taxable.
9. Royalties re taxable.

(g) Exemptions

The provisions of this Ordinance shall not be construed as levying a tax upon the following:

1. Fund received from local, state or federal governments because of service in the armed forces of the United States by the person rendering such service or as a result of another person rendering such service.
2. Alimony payments, child support, poor relief, pensions, social security, unemployment compensation (but not including Supplemental Unemployment Benefits) and disability benefits received from private industry or local, state or federal governments or from charitable, religious or educational organizations.
3. Dues, contributions and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges and similar organizations.
4. Receipts from casual entertainment, amusements, sports events, and health and welfare activities conducted by bona fide charitable religious and educational organizations and associations.
5. Any association, organization, corporation, club or trust, which is exempt from federal taxes on income by reason of its charitable, religious, educational, literary, scientific, et cetera, purpose.
6. Gains from involuntary conversions, cancellation of indebtedness, interest on federal obligations and income of a decedent's estate during the periods of administration (except such income from the operation of a business).
7. Compensation paid to an individual for personal services performed in this Municipality.
 - A. If the individual does not reside in this Municipality; and
 - B. If they perform such personal services in this Municipality on twelve (12) or fewer days in the calendar year; and
 - C. If this individual is an employee and the principle place of business of the individual's employer is located outside this Municipal corporation, and the individual pays taxes on this compensation to the municipal corporation in which the employer's principal place of business is located and that no portion of that tax is returned to this individual.

SECTION 5: 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 income tax on the same income greater than the tax imposed at the higher rate.
- (b) Every individual taxpayer who resided in this Municipality who receives net profits, salaries, wages, commissions or other personal service compensation for work done or services performed or rendered outside of this municipality, 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 in 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.

SECTION 6: EFFECTIVE PERIOD

Said tax shall be levied, collected and paid with respect to the gross salaries, gross wages, commissions and other compensation, and with respect to the net profits of businesses, professions or other activities earned on and after January 1, 2002.

SECTION 7: RETURN AND PAYMENT OF TAX

- (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 Ordinance, 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 four (4) months from the end of such fiscal year or period. Mailed returns must have a postal date no later than April 15.
- (b) The return shall be filed with the Tax Director on a form setting forth:
 - 1. The aggregate amounts of gross salaries, gross wages, commissions and other compensation earned, including, but not limited to, earnings, payments, bonuses, and fees received by a person, professional, broker contractor, subcontractor, independent contractor and gross income from business, profession or other activity, less ordinary, reasonable, and necessary expenses incurred in the acquisition of such gross business income earned during the preceding year and subject to said tax.
 - 2. The amounts of the tax imposed by this Ordinance on such earnings and profits; and
 - 3. Copies of all W-2 forms, 1099 Miscellaneous Income Forms, Page One of Form 1040, Page One and Two of Forms 1120, 1120s (including K-1) 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, and any other Federal Schedules if applicable. The taxpayer, in the event he or she does not wish to submit Page 1 of Form 1040, may use the alternative form prepared by the City of Girard Income Tax Department.
 - 4. Such other pertinent statements, information returns, or other information as the Tax Director may require.
- (c) The Tax Director shall extend the time for filing of the annual City return upon the filing of a copy of the taxpayer's request for a Federal filing extension. No extension may exceed six (6) months or one (1) month beyond the extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income Tax return and will not be approved for a period less than the Federal extension request. The request for extension shall be filed no later than the last day for filing the Municipal income tax return as prescribed by Ordinance or rule of the City of Girard Income Tax. The City 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. The City of Girard may deny a

taxpayer's request for extension only if the taxpayer fails to timely file the request, fails to file a copy of the request for the Federal extension, owes this Municipality any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or non-payment of income tax or has failed to file any required income tax return, report or other related document for a prior tax period. The granting of an extension for filing this Municipality's income tax return does not extend the last date for paying the tax without penalty unless this Municipality grants an extension of that date.

- (d) (1) The Taxpayer making a return shall, at the time of filing thereof, pay to the Tax Director the amount of taxes shown as due thereon.

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

- (e) (1) AMENDED RETURNS: Where necessary, an amended return must be filed in order to report additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 13. Such amended returns shall be on a form obtainable on request from the Tax Director. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(2) Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's tax liability to this Municipality, such taxpayer shall make and file an amended return showing income subject to the tax of this Municipality based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

SECTION 8: COLLECTION AT SOURCE

- (a) Except as provided in Section (b) below each employer within or doing business within this Municipality shall deduct at the time of payment of such salary, wage, commission or other compensation, the tax of two percent (2%) per annum of the gross salaries, gross wages, commissions or other compensation due by said employer to said employee and shall, on or before the last day of the month following the close of each calendar quarter make a return and pay to the Tax Director the amount of taxes so deducted, less any payment required by Subsection (f) hereof. Said returns shall be on a form or forms prescribed by or acceptable to the Tax Director and shall be subject to the rules and regulations prescribed therefore by the Tax Director. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

- (b) Beginning January 1, 2002, non-resident employers, agents of such employers or other payers that are not situated in this Municipality shall not be required 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 this

Municipality on account of all of the employer's employees or all of the other payer's payees exceeds \$150.00 for any calendar year beginning on or after that date.

If the total amount of tax required to be deducted and withheld on account of all of the non-resident employer's employees or all of the other payer's payees exceed \$150.00 for a calendar year beginning on or after January 1, 2002, the City of Girard 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 years is \$150.00 or less, except as provided herein.

If a non-resident employer, agent or such employer or other payer that is not situated in the City of Girard is required to deduct and withhold taxes for an ensuing year under this Section, and the total amount of tax required to be deducted and withheld under that division in each of three (3) consecutive ensuing years is \$150.00 or less, the City of Girard 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 required to be deducted and withheld in any such following year exceeds \$150.00.

- (c) Tax Shelter Plans-contributions by employees to a retirement system are not deductible by such employee. If such contributions are deducted by any employer from the earnings of an employee, such amounts are subject to withholdings.

Contributions to a SEP/IRA or any other deferred compensation program must be included with an employee's wages and compensation and such amounts are subject to withholdings.

Early retirement incentives and wage continuation plans are taxable and are subject to withholdings.

- (d) The officer or employee having control or supervision of or charged with the responsibility of filing the report and making payments, is personally liable for failure to file the report or pay the tax due as required by this Ordinance. The dissolution of a corporation does not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or pay tax due.
- (e) Such employer in collecting said tax shall be deemed to hold same, until payment is made by such employer to this Municipality, as a Trustee for the benefit of this Municipality and any such tax collected by such employer from his employees, shall, until the same is paid to this Municipality, be deemed a trust fund in the hand of such employer.
- (f) An employer who withholds \$100.00 or more in any month pursuant to this Section shall be required to remit such amount with the forms so prescribed, on or before the last day of the month following the close of the calendar month within which the tax was withheld.

- (g) On February 28 of each year a completed reconciliation form must be filed along with copies of all W-2 forms including name, address, Social Security number, gross compensation, and City of Girard tax withheld or a list or printout including the same information as required on the W-2 form.

If for any reason the 2% tax was not withheld from all compensation, it must be explained in writing as to why the 2% was not withheld from each individual.

- (h) On February 28 each year all individuals, businesses, employers, brokers or others who engage persons, either on fee or commission bases or as independent contractors and not employees (those who are not subject to withholdings) must provide the City Income Tax Department with copies of all 1099 Miscellaneous Income Forms and/or a list of names, addresses, Social Security numbers and total amount of earnings, payments, bonuses, commissions and/or fees paid to each person.
- (i) The Tax Director for good cause shall require immediate returns and payments to be submitted to his office.

SECTION 9: DECLARATION

- (a) Every person who anticipates any taxable income, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 4 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.
- (b) (1) Such declaration shall be filed on or before April 15 each year during the life of this Ordinance, or within four (4) months of the date the taxpayer becomes subject to tax for the first time.
(2) Those taxpayers reporting on fiscal year basis shall file a declaration within four (4) months after the beginning of each fiscal year or period.
- (c) Such declaration shall be filed upon a form furnished by, or obtainable from the Tax Director, provided, however, credit shall be taken for this Municipality's income tax to be withheld pursuant to Section 8 of this Ordinance.
- (d) 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.
- (e) An amended declaration must be made by December 31 if it appears that the original declaration underestimated the income for the year by more than 20% or if the original declaration is not equal to the taxpayer's prior year tax liability.
- (f) Such declaration of estimated tax to be paid this Municipality shall be accompanied by a payment of twenty-two and one-half percent (22.5%) of the estimated annual tax on or before the Fifteenth day of April. A similar amount shall be paid on or before the last day of June, September, and December. A taxpayer reporting on a fiscal year shall make a payment of twenty-two and one-half percent (22.5%) of the estimated annual tax on the Fifteenth day of the fourth month of the taxpayer's taxable year. A similar amount shall be paid on or before the fifteenth day of the sixth, ninth and twelfth month of the taxpayer's taxable year. Provided, however, that in case an amended declaration

has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

- (g) 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 this Municipality shall be paid therewith in accordance with the provisions of Section 7.

SECTION 10: DUTIES OF THE TAX DIRECTOR

- (a) (1) It shall be the duty of the Tax Director to receive the tax imposed by this Ordinance in the manner prescribed herein from the taxpayers to keep an accurate record thereof, and report all monies so received.
- (2) It shall be the duty of the Tax Director to enforce payments of all taxes owed this Municipality to keep accurate records for the minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and show the dates and amount of payments thereof.
- (b) Said Tax Director is hereby charged with the enforcement of the provisions of this Ordinance and is hereby empowered subject to the approval of the Board of Review to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this Ordinance, including provisions for the re-examination and correction of returns.

The Tax Director is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has proved the Tax Director that due to certain hardship conditions, he is unable to pay the full amount to the tax due. Such authorizations shall not be granted until proper returns are filed by the taxpayer for all amount owed by him under the ordinance.

Failure to make any deferred payment when due shall cause the total unpaid amount including penalty and interest, to become payable on the demand and the provisions of Section 13 and 19 of the Ordinance 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 Tax Director may determine the amount of a tax appearing to be due this Municipality from the taxpayer and shall send such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.
- (d) Subject to the consent of the Board of Review or pursuant to regulations approved by said Board, the Tax Director shall have the power to compromise any interest and penalty, or both, imposed by Section 12 of this Ordinance.

SECTION 11: INVESTIGATE POWERS OF THE TAX DIRECTOR - PENALTY CONFIDENTIAL INFORMATION

- (a) The Tax Director, any other authorized employer, or agent 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 Tax Director believes is subject to the provisions of this Ordinance for the purpose of verifying the accuracy of any return

made, or, if no return was made, to ascertain the tax due under this Ordinance. Every such employer, supposed employer, taxpayer, or supposed taxpayer is hereby directed and required to furnish upon written request by the Tax Director or his duly authorized agent or employee, the means, facilities, and opportunities for making such examinations and investigations as are hereby authorized.

- (b) The Tax Director is hereby authorized to order any person presumed to have knowledge of the fact 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 witness, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.
- (c) The refusal to produce books, papers, records, or federal income tax returns or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of the person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this Section or with any order or subpoena of the Tax Director authorized hereby shall be deemed a violation of this Ordinance punishable as provided in Section 19 hereof.
- (d) Any information gained as a result of any returns, investigations, hearings, or verifications required or authorized by this Ordinance shall be confidential except for official purposes or except in accordance with proper judicial order. Any person divulging such information in violation of this Ordinance shall upon conviction hereof, be deemed guilty of a misdemeanor of first-degree and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six (6) months or both for each offense. Each disclosure shall constitute a separate offense.

In addition to the above penalty any employee of this Municipality 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 the records necessary to compute its tax liability for a period of five years from the date his return is filed or the withholding taxes are paid.

SECTION 12: INTEREST AND PENALTIES

- (a) All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this Ordinance and remaining unpaid after they become due shall bear interest at the rate of one and one-half percent (1.5%) per month or any fraction thereof.
- (b) In addition to interest as provided in Paragraph (a) hereof, penalties based on the unpaid tax are hereby imposed as follows:
 - a. For failure to pay taxes due, other than taxes withheld, one and one-half percent (1.5%) per month or fraction thereof, or twenty dollars (\$20.00) whichever is greater.
 - b. For failure to remit taxes withheld from employees; five percent (5%) per month or fraction thereof, or twenty dollars (\$20.00) whichever is greater.

- (c) The minimum penalty for failure to file a complete a timely tax return as specified in Section 7 of this Ordinance shall be twenty dollars (\$20.00) whether or not the tax is due.
- (d) EXCEPTIONS: a penalty shall not be assessed on an additional tax assessment made by the Tax Director when a return has been filed in good faith and the tax paid thereon, within the time prescribed by the Tax Director; 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 (3) months after final determination of the Federal tax liability.
- (e) The Tax Director may abate and waiver any penalty imposed by this Ordinance. Only the Board of Review may waive applicable interest charges. Upon appeal from the refusal of the Tax Director to recommend abatement of penalty, the Board may nevertheless abate the penalty or interest, or both.

SECTION 13: COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

- (a) All taxes imposed by this Ordinance shall be collectible, together with any interest and penalties thereon, by a civil action of law. All additional assessment shall be made and all civil actions to recover Municipal income taxes and penalties and interest thereon, shall be brought within five (5) years after the tax was due or the return was filed, whichever is later.
- (b) Taxes erroneously paid shall not be refunded unless a claim for a refund is made. Claim for refund of municipal income taxes must be brought within time limitation provided in Division (a) of this Section.
- (c) Amounts of less than One Dollar (\$1.00) shall not be collected or refunded.

SECTION 14: CHECK CHARGES

- (a) A charge of twenty-five dollars (\$25.00) shall be added to any taxes due when any check in payment of taxes, penalties or interest is returned unpaid by the bank or respective financial institution. Such charge shall offset the cost of additional bookkeeping and processing and shall be levied regardless of any charge, which may be levied against the maker by his/her bank or respective financial institution. Notice by Tax Director or his duly authorized employee to the taxpayer that a check has been returned unpaid is not required nor is notice of the above charge required. The tender of payment of tax, penalties, fees, charges, or interest shall not be considered as received as long as such charge remains unpaid.

SECTION 15: BOARD OF REVIEW

- (a) A Board of Review, consisted of the Mayor, Treasurer and Law Director is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep records of its transactions. Any hearing by the Board will be conducted privately and the provisions of Section 11 hereof with reference to the confidential character of information required to be disclosed by this Ordinance shall apply to such matters as may be heard before the Board on Appeal.

- (b) All rules and regulations or changes thereof which are adopted by Tax Director under the authority conferred by this Chapter must be approved by the Board of Review before the same become effective.
- (c) Whenever the Tax Director issues a decision regarding a Municipal income tax obligation that is subject to appeals provided in this Section or in an Ordinance or Regulation of this Municipality, the Tax Director shall notify the taxpayer at the same time of the taxpayer's rights to appeal the decision and of the manner in which the taxpayer may appeal the action. Any person who is aggrieved by a decision by the Tax Director and who has filed with this Municipality the required returns or other documents pertaining to this 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 (30) days after the Tax Director issues the decision complained of. The Board shall schedule a hearing within forty-five (45) days after receiving the request unless the taxpayer waives a hearing. If the taxpayer does not waive a hearing, the taxpayer may appeal before the Board and may be represented by an attorney-at-law, certified public accountant, or other representative.
- (d) The Board may affirm, reverse or modify the Tax Director's decision or any part of that decision. The Board shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal and send notice of its decision by ordinary mail to the taxpayer within fifteen (15) days after issuing decision.

SECTION 16: ALLOCATION OF FUNDS

Revenues collected under the provisions of this Ordinance shall be deposited in the General Fund and shall be used for general Municipal operations, maintenance, new equipment, extension and enlargement of Municipal services and facilities, and capital improvements of this Municipality or shall be transferred to other funds at the discretion of Council.

SECTION 17: SAVING CLAUSE

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

SECTION 18: COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE

This Ordinance shall continue effective insofar as the levy of taxes is concerned until rescinded and insofar as the collection of taxes levied here under and actions or 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 to the limitations contained in Section 13 and 19.

Annual returns due for all or any part of the last effective year of this Ordinance shall be due on the date provided in Sections 6 and 7 as though the same were continuing.

SECTION 19: VIOLATIONS- PENALTIES

(a) Any person, firm or corporation who shall:

1. Fail, neglect, or refuse to make any return, questionnaire or declaration required by this Ordinance; or
2. Make any incomplete, false or fraudulent return or declaration; or
3. Fail, neglect, or refuse to pay the tax, penalties or interest imposed by this Ordinance; or
4. Fail, neglect, or refuse to withhold the tax from his employees or remit such withholding to the Tax Director; or
5. Refuse to permit the Tax Director 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 Tax Director and to produce his books, records, papers, or Federal Income Tax returns relating to the income or net profits or a taxpayer upon order or subpoena of the Tax Director; or
7. Refuse to disclose to the Tax Director any information with respect to the income or net profit of the taxpayer; or
8. Fail to comply with the provisions of this Ordinance or any other or subpoena of the Tax Director authorized hereby; or
9. Give to an employer false information as to his true name, correct Social Security number and residents address 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 or employees' residents address, total wages paid and this Municipality's income tax withheld, or to knowingly give the Tax Director false information; or
11. Do anything whatsoever to avoid payment of whole or any part of the tax, penalties or interest imposed by this Chapter;

Shall be guilty of a misdemeanor of the first degree and shall be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned not more than six (6) months or both for each offense.

(b) Prosecutions for an offense made punishable under this Section or any other provision of this Chapter shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.

(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 20: EFFECTIVE DATE OF THIS ORDINANCE

This Ordinance to take effect January 1, 2005.

SECTION 21:

That this Ordinance and all deliberations relating to the passage of this Ordinance were held in open meeting of this Council all pursuant to Section 121.22 of the Ohio Revised Code.

PASSED IN COUNCIL THIS 25 DAY OF Oct., 2004

Reginald J. Dine
President of Council

ATTEST:

James J. Dine
MAYOR

ATTEST:

Sam Mayors
CLERK OF COUNCIL

Approval Date: 10-25-04
First Reading: 10-25-04
Second Reading: 10-25-04
Third Reading: 10-25-04

Motioned By: _____
Seconded By: _____
Date: 9-27-04

I hereby certify that the foregoing Ordinance was published in the Trumbull County Legal News on the dates herein below set forth and posted on the Girard City Bulletin Board on the day herein below set forth:

DATES OF PUBLICATION:

____ DAY OF _____, 2004
____ DAY OF _____, 2004

POSTED:

____ DAY OF _____, 2004

CLERK OF COUNCIL

THIS INSTRUMENT PREPARED BY:

MARK M. STANDOHAR
LAW DIRECTOR

PAOLONE
CHRISTOPHER —
MOLITERNO —
LAMBERT 2—
J. WILLIAMS —
SEIDLER 1—
L WILLIAMS —
MIGLIOZZI —

7-0
Pass.