

Ordinance No. 185 Passed December 7, ---2010
19

AN ORDINANCE DELETING SECTION 16(B)(1)(a), AMENDING SECTION 5(b), AMENDING SECTION 15 and AMENDING SECTION 99(a) OF THE INCOME TAX ORDINANCE #182

BE IT ORDAINED by the Council of the Village of Miller City, Ohio, a majority of members concurring hereto that:

SECTION 16(B)(1)(a) of Ordinance #182, which reads as follows:

SECTION 16(B)(1)(a). Employer contributions on behalf of an employee to a non-qualified deferred compensation plan, which may be considered wages subject to social security and Medicaid withholding, shall not be considered wages subject to the tax imposed by this chapter.

Shall be deleted.

SECTION 5(b) of Ordinance #182 shall be amended to include Section 5(b)(1) as follows:

SECTION 5(b)(1). Where necessary, an amended return shall be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements or limitations, or both, contained in Sections 1 through 5. Such amended return shall be on a form obtainable on request from the Tax Administrator. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the due date for filing the original return.

SECTION 15 of Ordinance #182 shall be amended to include Section 15(c) and Section 15(d) as follows:

SECTION 15(c). Any person dissatisfied with any ruling or decision of the Tax Administrator which is made under the authority conferred by this ordinance and the rules and regulations and who has filed the required returns or other documents pertaining to the contested issue may appeal therefrom to the Board within thirty days from the announcement of such ruling or decision by the Tax Administrator. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. The Board must schedule a hearing within forty-five (45) calendar days of receiving the appeal. The Board must issue a written decision within ninety (90) days after the final hearing and send a notice of its decision by ordinary mail to the taxpayer within fifteen (15) days after issuing the decision.

SECTION 15(d). Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefore to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

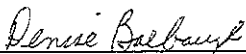
SECTION 99(a) of Ordinance #182 which reads as follows:

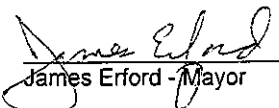
SECTION 99(a). ... shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00), or imprisoned not more than six months or both.

Shall be amended to read:

SECTION 99(a). ... shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1000.00), or imprisoned not more than six months or both.

Declared an Emergency Ordinance
and passed 12/07/2010


Denise Balbaugh - Fiscal Officer


James Erford - Mayor

Ordinance No. 182

Passed October 5, 2010

AN INCOME TAX ORDINANCE TO PROVIDE FUNDS FOR THE PURCHASE AND MAINTENANCE OF NEW EQUIPMENT AND FOR CAPITAL IMPROVEMENTS AND FURTHER TO PROVIDE FUNDS FOR THE GENERAL FUND

Be it ordained by the Council of the Village of Miller City, State of Ohio:

SECTION I. That the attached Income Tax Ordinance, Rules and Regulations be adopted.

SECTION II. That it is found and determined that all formal actions of this Council concerning or relating to the passage of this Ordinance were passed in an open meeting of this Council, and that all deliberations of this council and of any of its committees that 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 III. This ordinance shall take effect at the earliest time allowed by law.

First Reading: August 6, 2010
Second Reading: September 7, 2010
Third Reading and Passage: October 5, 2010

PASSED: October 5, 2010

ATTEST:

Denise Balbaugh
Denise Balbaugh, Fiscal Officer

APPROVED:

James Erford
James Erford, Mayor

APPROVED AS TO FORM:

Michael A. Brown
Solicitor

**AN INCOME TAX ORDINANCE TO PROVIDE FUNDS FOR
THE PURCHASE AND MAINTENANCE OF NEW
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James Erford, Mayor

APPROVED AS TO FORM:

Solicitor

INCOME TAX ORDINANCE

Rules and Regulations

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1) DEFINITIONS.

For purposes of this chapter, the following words and phrases shall have the following meanings ascribed to them respectively.

(a) "Tax Commissioner" means the individual designated by this chapter, whether appointed or elected, to administer and enforce the provisions of this chapter.

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

(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, association, corporation or any other entity, including but not limited to, the renting or leasing of property.

(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, foreign country or dependency.

(e) "Employee" means an individual whose earnings are subject to the withholding of federal income tax or social security tax.

(f) "Employers" means an individual, partnership, limited partnership, association, corporation, governmental body, unit or agency, or any other entity who or that employs one or more persons on a salary, wage, commission or other compensation basis.

(g) "Gross receipts" means the total income from any source whatsoever.

(h) "Net profit" means the net gain from the operation of a business, profession or enterprise, after provisions for all ordinary and necessary expenses paid or incurred in the conduct thereof, except taxes imposed by this chapter and the Federal taxes based on income, less costs and expenses incurred in the conduct thereof, including reasonable allowance for depreciation, depletion, amortization and reasonable additions to reserve for bad debts, either paid or accrued in accordance with recognized principles of accounting applicable to the method of accounting regularly employed, and without deducting taxes imposed by this chapter.

(i) "Nonresident" means an individual, partnership, limited partnership, corporation, association or other entity domiciled outside the Village.

(j) "Other entity" means any person or unincorporated body not previously named or defined including, inter alia, fiduciaries located within the village.

(k) "Person" means every natural person, partnership, limited partnership, corporation, fiduciary or association. whenever used in any clause prescribing and imposing a penalty, "person," as applied to any association, means the partners or members thereof, and as applied to corporations, the officer thereof.

(l) "Resident" means an individual, partnership, limited partnership, corporation, association or other entity domiciled in the Village.

(m) "Taxpayer" means a person, whether an individual, partnership, limited partnership, corporation, association or other entity, required hereunder to file a return or to pay a tax hereunder.

(n) "Third party sick pay" means payments received by an employee from either an individual, partnership or corporation who or that has received a premium or other payment from the employer to insure that such payments be made to the employee for periods of time such employee was sick or on temporary disability and not physically working for the employer and the payments are to be considered either wages, salary or other compensation and taxable under this chapter.

(o) "Village" means the Village of Miller City.

(p) The singular shall include the plural and the masculine shall include the feminine and the neuter.

2) PURPOSE

To provide revenue for the general operation of the Village for the purchase and maintenance of new and additional equipment for the additional Village departments, extension and enlargement of municipal services and facilities, street improvements and repairs, construction, remodeling or enlargement of public buildings, capital improvements and retirement of notes and bonded indebtedness.

3) IMPOSITION

(a) To accomplish those purposes set forth above, there shall be and is hereby levied a tax rate of one percent (1 %) per annum upon the following:

(1) On all salaries, wages, commissions and other compensation earned, on or after the effective date of this Ordinance, by residents of the Village. For the purposes of determining the tax on gross income of resident taxpayers, the source of earnings and the place of places in or at which the services were rendered are immaterial. All such earnings, wherever earned, are taxable. The locations of the place from which payment is made or where payment is received is immaterial.

The following items are subject to the tax imposed by this section:

(A) Salaries, wages, bonuses and incentive payments (any income earned by an individual whether directly or through and agent and whether in cash or in property for services rendered during the tax period year) as;

1. An officer or employee of a corporation (including charitable and other non-profit organizations).
2. An employee (as distinguished from a partner or member) of a partnership, limited partnership, fiduciary or any form of unincorporated enterprise owned by two or more persons.
3. An employee (as distinguished from a proprietor) of a

- business, trade or profession conducted by an individual owner.
4. An officer or employee (whether elected, appointed or commissioned) of the United States Government or of a corporation created and owned or controlled by the United States Government, or any of its agencies, or any foreign country or dependency, except military pay exempted for Federal Income Tax Purposes or Ohio State Income Tax Purposes.
 5. An employee of any other entity or person, whether based on hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece-work rates.
- (2) Commissions earned by a taxpayer whether directly or through an agent and whether in cash or in property for services rendered during the effective period of the Ordinance, regardless of how computed or by whom or wheresoever paid.
 - (A) If amounts received as a drawing account exceed the commissions earned and the excess is not subject to the demand of the employer for repayment, the tax is payable on the amounts received as a drawing account (but not then on the commissions also).
 - (B) Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expenses or advances as such from his gross income for the purposes of determining his net profits taxable under federal law and the employee is not required to include such receipts as income (or has directly offsetting business expenses) on his federal income tax return.
 - (C) If commissions are included in the net earnings of the trade, business, profession, enterprise or activity, carried on by an unincorporated entity of which the individual receiving such commissions is owner or part owner and, therefore, subject to the tax on the net profits provisions of the Ordinance, they shall not be taxed under the provisions relating to salaries, wages of commissions earned.
 - (3) Fees, including Director's fees, unless fees are properly includable as part of the net profits of a trade, business, profession or enterprise regularly carried by an incorporated entity owned or partly owned by said individual and such net profits are subject to the tax under the net profits provision of the Ordinance.
 - (4) On all salaries, wages, commissions and other compensation earned on or after the effective date of the Ordinance, by nonresidents of the Village for work done or services rendered or performed within the Village, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made or where payment is received is immaterial.
 - (5) On the net profits earned on and after the effective date of the Ordinance, of all unincorporated businesses, professions, or other activities, whether located in or outside the Village: on sales made, work done or services performed or business or other activities conducted in the Village.
 - (6) On that portion of the income of a resident of the Village representing his distributive share of the net profits, earned on and after the effective date of the Ordinance of an unincorporated

- business, profession or other activity whether located in or outside the Village, attributable to the Village under the formula or separate accounting method provided for herein.
- (7) On the net profits earned after the effective date of the Ordinance by all corporations on sales made, work done and services performed or business or other activities conducted in the Village, whether or not such corporations have an office of place of business in the Village.
- (8) Other compensation shall include:
- (A) Tips received by waiters and others.
 - (B) Bonuses
 - (C) Gratuities and prizes in connection with employment
 - (D) Dismissal or severance pay or other form of termination pay.
 - (E) Retirement and Other Plans - Employee, Partners
contributions to retirement plans are neither excludable nor deductible by the employee. Withholding applies to the employee's full compensation unreduced by an employee's contribution to a retirement plan. The same rules apply with respect to other amounts withheld from employees and contributed to other types of plans.
 - (F) Contributions made by, or on behalf of employees to "cafeteria" plans and other similar employee benefit plans.
 - (G) Income from Pass Through Entities. In addition a distribution from a Subchapter S Corporation will be treated as earned income (wages) if it was for services performed. If a taxpayer does not claim such compensation as wages, the Village will treat distribution as earned income to the extent that it is a fair wage for the services performed.
 - (H) Royalty Income - Income earned by a taxpayer from a royalty interest in the production of an oil or gas well, whether managed, extracted or operated by the taxpayer individually or through an agent or other representative, shall be included in the computation of net profits from a business activity to the extent that such royalty interest constitutes a business activity of the taxpayer. Where the gross income received by a taxpayer from royalty interest in the production of an oil or gas well in a taxable year exceed \$3,000.00, it shall be prima facie evidence that the income was derived from a business activity of such taxpayer and the net income from such royalty interest shall be subject to tax.
 - (I) Deferred compensation.
 - (J) Profit-Sharing plans.
 - (K) Supplemental unemployment benefit pay.
 - (L) If the income appears on Form W-2 and is considered income for Federal Income Tax Purposes or Ohio State Income Tax Purposes, it shall be considered other compensation and, therefore, taxable to a resident individual.
 - (M) The employer's income derived from finance and carrying charges associated with their consumers' accounts receivable.
 - (N) Lottery/gambling winnings.
 - (O) Third-party sick pay.

(b) Allocation of Net Profits. The portion of the entire net profits of a taxpayer to be allocated as having been made within the Village may be determined from taxpayer's records, if taxpayer has actual and bona fide

records showing net profits from business done in the Village or at the option of taxpayer may be determined as follows:

(1) Multiply the entire net profits by a business allocation percentage to be determined by:

- (A) Ascertaining the percentage which the average value of the taxpayer's real and tangible personal property within the Village during the period covered by its return bears to the average value of all the taxpayer's real and tangible personal property wherever situated during such period.
 - (B) Ascertain the percentage which the gross receipts of the taxpayer derived from business within the Village during the period covered by the return bears to the total gross receipts wherever derived.
 - (C) Ascertain the percentage which the total wages, salaries, commissions and other compensations, during the period covered by the report, of employee within the Village bears to the total wages, salaries, commissions and other compensation during such period of all the taxpayer's employees within and without the Village.
 - (D) Adding together the percentages determined in accordance with subsections (c)(1)A., B., and C. hereof, or such of the aforesaid percentages as shall be applicable to the particular taxpayer and dividing the total sum obtained by the number of percentages used in deriving such total.
- (2) Income from finance, investment or construction activities shall be allocated to the Village by means of separate accounting; provided, however, that there shall be an adjustment for the contributions made to the production of such net income by headquarters activities. Such adjustment shall be made by deducting from such net income allocated to the Village an amount obtained by multiplying such net income allocated to the Village by the percentage headquarters payroll is of total payroll, and by adding to such income allocated to the Village an amount obtained by multiplying such net income allocated to the Village by the percentage headquarters payroll within the Village is of total payroll.
- (3) Provided, however, that in the event a just and equitable result cannot be obtained under the formula and separate accounting method provided for herein, the Income Tax Review Board upon application of the taxpayer or the Tax Commissioner, shall have the authority to substitute other factors or methods calculated to effect a fair and property allocation.
- (4) Operating loss carry-forward.
- (A) The portion of a net operating loss sustained in any taxable year allocable to this municipality may be applied against the portion of the total income as reported in said taxable year on a separate or joint village income tax return and the total income as reported in succeeding years on a separate or joint village income tax return, until exhausted but in no event for more than five taxable years. No portion of the net operation loss shall be carried back against net

- profits of any prior year.
- (B) The portion of a net operating loss sustained shall be allocated to this municipality in the same manner as provided herein for allocating net profits to this municipality.
 - (C) If deemed necessary, the Tax Commissioner shall create rules and regulations establishing the manner in which such net operating loss carry-forward shall be determined.

4) EFFECTIVE DATE.

(a) The tax shall be levied, collected and paid with respect to salaries, wages, commissions and other compensation earned on and after January 1, 2011, and with respect to the net profit of businesses, professions and other activities earned on and after January 1, 2011 for an indefinite period and until repealed. Where the fiscal year of the businesses, professions or other activity differs from the calendar year, the tax shall be applied to that part of the net profits for the fiscal year as shall be earned on and after January 1, 2011, to the close of the taxpayer's fiscal year basis.

(b) If by operation of law, the commencement date for the levy, collection and payment of the tax provided for this chapter is postponed, the alternate date for the commencement of the levy, collection and payment of the tax shall be the beginning of the first month after the legal impediment is removed.

5) RETURN AND PAYMENT.

(a) Each taxpayer whose earnings or profits are subject to the tax imposed by this chapter shall, whether or not a tax is due thereof, on or before April 15, 2012, and on or before April 15 of each year thereafter, make and file a final return with the Tax Commissioner on a form obtainable from the Tax Commissioner, setting forth the aggregate amount of gross salary, wages or other compensation, and gross and net profits earned by the taxpayer during the preceding year or period and subject to the tax, together with other pertinent information as the Tax Commissioner may require. However, when the final return is made for a fiscal year or other period different from the calendar year, the return shall be made within 90 days from the end of the fiscal year or other period. The final return shall include W-2 forms and other documentation which may be required by the Tax Commissioner to determine if the proper amount of tax is being paid on the income subject to the municipal income tax.

Returns may be filed with the Tax Commissioner in a form differing from the forms prescribed by the Tax Commissioner provided the reported document contains all the information required to be submitted on forms already provided by the Tax Commissioner.

(1) Tax imposed pass-through entity. A tax shall also be imposed on income in the hands of the entity of or from a pass-through entity and not on income in the hands of the owner of the entity.

(b) The return shall also show the amount of the tax imposed on the earnings and profits. The taxpayer making the return shall, at the time of

the filing thereof, however, pay to the Tax Commissioner the amount of taxes shown as due thereon. However, where any portion of the tax has been paid by the taxpayer pursuant to the provisions of this section and the section addressing Collection at the Source, credit for the amount paid shall be deducted from the amount shown to be due, and only the balance, if any, shall be due and payable at the time of filing the final return.

Should it then appear and the taxpayer has paid more than the amount of tax to which the Village is entitled under the provisions of this ordinance such overpayment shall be applied against any subsequent tax liability of the taxpayer, or at the election of the taxpayer and so indicated on the return, such overpayment shall be refunded; provided, however, that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

(c) Upon written request of the taxpayer, the Tax Commissioner may extend the time for filing of the annual return for a period of not to exceed thirty days, or to thirty days beyond any extension granted by the Bureau of Internal Revenue for the filing of the taxpayer's Federal Income Tax Return, provided a tentative return, accompanied by payment of the amount of tax shown to be due thereon, shall be filed 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 final tax paid within the period as extended.

(d) The Tax Commissioner is hereby authorized to provide by regulation, approved by the Board of Review, that the return of any employer or employers showing the amount of tax deducted by such employer or employers from the salaries, wages, commissions or other compensation of an employee to be paid by him or them, to the Tax Commissioner, shall be accepted as the return required of any employee whose sole income, subject to the tax or taxes under this chapter is such salary, wages, commissions or other compensation.

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

(f) A corporation which owns or controls at least fifty-one percent (51%) of the common stock of another corporation or corporations may at its option make a consolidated return, provided, however, that affiliated corporations which do no business within the United States shall not be included in such consolidated return.

(g) Consolidated income tax returns for any affiliated group or corporation subject to the municipal income tax may be filed provided said affiliated group or corporation files a income tax return for federal income tax purposes.

(h) The Tax Commissioner is hereby authorized to provide by regulation, approved by the Board of Review, that any taxpayer subject to the provisions of this chapter may in lieu of a detailed return prescribed by such Tax Commissioner, file a statement, under oath, of the salaries, wages, commissions or other compensation, or of net profits or taxes and

dividends paid or declared and reported on his Federal Income tax return for the period involved, adjusted so as to set forth only such income as is taxable under this chapter.

(i) Nonresident Employed in Municipal Corporation. A municipal income tax does not apply to compensation paid to an individual for personal services performed within a municipal corporation if:

- (1)** The individual does not reside in the municipal corporation, and
- (2)** The individual performs such services in the municipal corporation on 12 or fewer days in a calendar year, and
- (3)** The individual is an employee and the principal place of business of the individual's employer is located outside the municipal corporation. The individual's employer is not required to include the individual's compensation in the payroll factor used to allocate the employer's income to the municipal corporation. In such case, the exemption does not apply to professional entertainers, professional athletes, or promoters or professional entertainment of sports events and their employees.

(j) Parsonage Allowance Exemption. Village income tax does not apply to a parsonage allowance paid to a minister of the gospel in the form of a rental allowance or the rental value of a home furnished as compensation.

6) FILING EXTENSIONS.

(a) A taxpayer who requests an extension for filing a Federal income tax return may request an extension for filing a Village income tax return by filing a copy of the request for a Federal filing extension with the individual or office charged with administering of the municipal income tax. The request must be filed no later than the last day for filing the Village income tax return and does not extend the date for paying the tax without penalty unless the municipal corporation grants an extension of that date.

(b) The request will be granted for at least the same period as the Federal extension.

(c) The request may be denied if the taxpayer:

- (1)** Does not file the request in time;
- (2)** Fails to file a copy of the Federal extension request;
- (3)** Owes the municipality any delinquent income tax, penalty, interest, assessment, or charge; or
- (4)** Has failed to file any required income tax return for a period.

7) COLLECTION AT SOURCE.

(a) Each employer within the Village who employs one or more persons at a salary, wage, commission or other compensation basis, excluding exempted incomes set forth in the EXEMPTIONS Section 16, shall deduct at the time of this payment of such salary, wage, commission or other compensation, the tax levied under the IMPOSITION Section 3 on the gross salaries, wages, commissions, or other compensation due by the employer to the employee and shall make a return and pay to the Tax Commissioner the amount of tax so deducted during the preceding quarter.

(b) If withholding tax withheld by employer is less than Ten Dollars (\$10.00) per month for employees, employer may elect to remit the tax withheld 30 days after the close of each calendar quarter, on or before April 30, July 31, October 31 and January 31. Over Ten Dollars (\$10.00) per month remittance shall be made within 31 days after each calendar month.

(c) The employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not the taxes have in fact been withheld.

(d) The return shall be on a form prescribed by the Tax Commissioner. The employer, in collecting the tax, shall be deemed to hold the same as trustee for the benefit of the Village until payment is made by the employer to the Village, and any tax collected by the employer from his employees shall, until the same is paid to the Village, be deemed a trust fund in the hands of the employer.

(e) However, no person shall be required to withhold the tax on the wages or other compensation paid to domestic servants employed exclusively in or about the person's residence.

8) DECLARATION OF ESTIMATED TAX.

(a) Any taxpayer who anticipates taxable income which is not subject to the COLLECTION AT THE SOURCE Section or who engages in any business, profession, enterprise or activity subject to the tax imposed by the IMPOSITION Section, shall file a declaration setting forth the estimated profit from the business activity, 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 the COLLECTION AT THE SOURCE Section, the person need not file a declaration.

(b) The declaration shall be filed on a form approved by the Tax Commissioner. The form may simply state that the figures used in making the declaration are the figures used in making the estimate declaration for Federal income tax, provided it is understood that the figures may be modified so that the declaration required by this section shall set forth only such income as is taxable under the provisions of this chapter.

(c) The declaration, to be filed on the thirtieth day of the fourth month of the tax year, shall be accompanied by payment of at least 22.5% of the estimated annual tax, and at least a 45% must be paid on or before the thirty-first day of the seventh month, 67.5% on or before the thirty-first day of the tenth month of the tax year, and 90% on or before the thirty-first day of the first month of the subsequent tax year. The estimate may be amended at any time. A final return must be filed and any balance which may be due must be paid on or before the due date set forth in the RETURN AND PAYMENT Section. If the taxpayer has paid more than the amount of tax to which the Village of Miller City is entitled, a refund of the amount so overpaid shall be made, or the same may be applied toward the declaration of tax due for the ensuing year. Claims for refunds shall be made on forms approved by the Tax Commissioner.

(d) In any case where a taxpayer has failed to file a declaration, the Tax Commissioner, or his duly authorized agent, may estimate the income on

behalf of the taxpayer and shall send to the taxpayer a statement of said estimate.

(e) A taxpayer who will owe One Hundred Dollars (\$100.00) or less at the end of any taxable year shall not be liable for the payment of estimated tax pursuant to this Chapter.

9) ADMINISTRATION.

(a) There is created the position of Income Tax Commissioner who is designated to administer and enforce the provisions of this chapter. The position of Income Tax Commissioner shall be appointed by the Mayor subject to confirmation by a majority of the members elected to Council. The office of Income Tax Commissioner shall be under the Mayor's office, and shall report directly to the Mayor and the Village Income Tax Review Board as provided in this chapter. The Income Tax Commissioner shall enforce payment of all taxes owing the Village, shall keep accurate records for a minimum of six years showing the amount due from each taxpayer required to file declaration or make any return, including taxes withheld, and shall show the dates and amounts of payments thereof. Removal of the Income Tax Commissioner shall be by an affirmative vote of a majority of the members elected to Council, and only on receiving a recommendation for removal by the Mayor.

(b) The Tax Commissioner shall attend all meetings of the Village Income Tax Review Board when requested by any member of the Board, and further shall provide any information requested by the Board that may be deemed necessary by the Board in order to make an accurate appraisal of the operations of the Tax Department to the Village Council. Information provided to the Board shall be subject to the provisions of the INVESTIGATIVE POWERS OF THE INCOME TAX COMMISSIONER, Section 10.

(c) The Tax Commissioner is charged with the enforcement of the provisions of this tax and is empowered to adopt, promulgate and 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. NO rule or regulation as adopted or promulgated by the Tax Commissioner shall become effective until the rule or regulation has been approved by the Village Income Tax Review Board and Council. After approval of rules and regulations by the Village Income Tax Review Board, it shall submit the same in writing to the Clerk of Council, and no such rule or regulation shall become effective until approved by Council, or until sixty days after the rule or regulation has been submitted to the Clerk of Council, and during the sixty-day period, Council has not disapproved the rule or regulation.

(d) 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 Commissioner may determine the amount of tax appearing to be due the Village from the taxpayer, and shall send to the taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

10) INVESTIGATIVE POWERS OF THE INCOME TAX COMMISSIONER.

(a) The Income Tax Commissioner, or his duly authorized agent or employee, is authorized to examine the books, papers, records and Federal or state income tax returns of any employer, or any taxpayer or person subject to the tax, for the purpose of verifying the accuracy of any return made, or if, no return was made, to ascertain the tax due. Every employer, supposed employer, taxpayer or supposed taxpayer is directed and required to furnish to the Tax Commissioner, or his duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations as are authorized.

(b) The Income Tax Commissioner, or his duly authorized agent or employee, is authorized to examine any person, employer or employee under oath concerning any income which was or should have been returned for taxation, and for this purpose, may compel the production of books, papers and records, and the attendance of all persons before him, whether as parties or witnesses, wherever he believes such persons have knowledge of such income.

(c) The refusal of an examination by any employer, employee or person subject or presumed to be subject to the tax shall be deemed a violation of this chapter.

(d) Tax returns and all audit papers and information connected therewith are confidential, and shall be carefully preserved so that they shall not be available for inspection by anyone other than the proper agents of the Village for official purposes.

(e) Any information gained as a result of the filing of any tax returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes, and except in accordance with proper judicial order. Any person divulging such information shall be guilty of a misdemeanor of the first degree. Each disclosure shall constitute a separate offense. In addition to the above penalties, any employee of the Village who violates the provisions of this section relative to the disclosures of confidential information shall be immediately dismissed from the service of the Village.

11) INVESTIGATION AT THE SOURCE, MANAGER'S OBLIGATION.

The officer or employee having control or supervision of or charged with the responsibility of filing any return or declaration required by this chapter and making payment, or any officer of a corporation who is responsible for execution of the corporation's fiscal responsibilities, shall be personally liable for failure to file any return or declaration or pay the tax or employer withholding due by the provisions of this chapter. The dissolution, termination or bankruptcy of a corporation does not discard a responsible officer's or employee's liability for a failure of the corporation to file returns or declarations or pay tax or employer withholding due.

12) INTEREST AND PENALTIES.

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

(b) In addition to interest as provided in subsection (a) hereof, penalties based on the unpaid tax are imposed as follows:

- 6) For failure to pay taxes due, other than taxes withheld, ten dollars (\$10.00) or one and one-half percent (1 ½%) per month or fraction thereof, whichever sum is greater. In addition to any other interest or penalties, there shall be a penalty of \$10.00 imposed for failure to file a return whether or not tax is due.**
- 7) For failure to remit the taxes withheld from employees, five percent (5%) per month or twenty-five dollars (\$25.00), whichever is greater.**

(c) Exceptions: A penalty shall not be assessed on an additional tax assessment made by the Tax Commissioner when a return has been filed in good faith, and the tax paid within the time prescribed by the Tax Commissioner; and provided, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, provided an amended return is filed, and the additional tax is paid within three months after the final determination of the Federal tax liability.

(d) On recommendation of the Tax Commissioner, the Board of Review may abate the penalty or interest, or both, and on an appeal from the refusal of the Tax Commissioner to recommend abatement of the penalty or interest, the Board may nevertheless abate the penalty or interest, or both.

13) COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

(a) All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by a civil action at law. All additional assessments shall be made and all civil actions to recover municipal income taxes and penalties and interest thereon shall be brought within three 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. Claims for refund of municipal income taxes shall be brought within the time limitation provided in subsection (a) hereof.

(c) Amounts of less than one dollar (\$1.00) shall not be collected or refunded.

14) ALLOCATION OF FUNDS.

Effective January 1, 2011, funds collected under the provisions of this chapter shall be deposited in the Village's General Fund.

(a) The part necessary to defray all costs of collecting the taxes, and the cost of administering and enforcing the provisions hereof.

(b) The Fiscal Officer shall make a separate line item within said fund for allocation of income tax monies for income tax refunds, if they become necessary.

15) INCOME TAX REVIEW BOARD.

(a) There is established the Village Income Tax Review Board comprised of the following individuals: One appointee shall be made by the Mayor of the Village of Miller City, and two appointees shall be selected by Council, among its

Members. The Board's functions and duties shall be to make a quarterly review for the performance of the Village Income Tax Department to Council including, but not limited to, collections, estimates, delinquencies, legal actions in process and contemplated, and budget. The Board shall also make an annual review of the income tax ordinance and rules and regulations, and make recommendations as to needed changes. The Board shall also perform other duties as delineated herein.

(b) The Village Income Tax Review Board shall have the power to compromise any interest or penalty, or both, imposed by this chapter.

16) EXEMPTIONS.

The provisions of this chapter shall not be construed as levying a tax on the following:

(a) Funds received from local, state or Federal governments because of service in the Armed Forces of The United States by the person rendering the service, or as a result of another person rendering such services, exempted for Federal Income Tax purposes or Ohio State Income Tax purposes.

(b) (1) Poor relief, unemployment insurance benefits, or similar payments received from local, state or federal governments or charitable or religious organizations; proceeds of insurance other than third party sick pay; annuities; worker's compensation insurance; social security benefits; pension income including, but not limited to, distributions from Internal Revenue Code (IRC) Section 457 plans; IRC Section 401(a) qualified pension and profit sharing plans, individual retirement accounts (IRAS) , simplified employee pensions (SEPS), IRC section 403(b) plans, governmental plans, and non-qualified deferred compensation plans; compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits or wages; alimony (payments not deductible); and patent and copyright income.

(A) Employer contributions on behalf of an employee to a non-qualified deferred compensation plan, which may be considered wages subject to social security and Medicare withholding, shall not be considered wages subject to the tax imposed by this chapter.

(2) Mentally handicapped and developmentally disabled employees earning less than minimum hourly wage while employed at a government-sponsored sheltered workshop shall be exempt from the levy of the tax provided herein.

(c) Dues, contributions and similar payments received by charitable, religious, educational or literary organizations or labor unions, lodges and similar organizations.

(d) Receipt from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide charitable, religious and educational organizations and associations.

(e) Any association, organization, corporation, club or trust which is exempt from federal taxes on income by reason of its charitable, religious,

educational organizations and associations.

(f) Gains from involuntary conversions, cancellation of indebtedness, interest on federal obligation, items of income which are preempted by the Ohio constitution, statutes or case law from taxation by municipalities, and income of a decedent's estate during the period of administration (except income from the operation of a business).

(g) Earnings and income of all persons under eighteen (18) years of age, whether residents or nonresidents.

(h) This chapter shall not apply to any person, firm, corporation or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for.

17) TAX CREDIT TO RESIDENTS.

Every individual taxpayer who resides in the Village but receives net profits, salaries, wages, commissions, or other personal service compensation for work done or services performed or rendered outside of such Village if it be made to appear that he has paid a municipal income tax in such net profits, salary, wages, commission or other compensation to another municipality shall be allowed a credit 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 ordinance on such net profits, salary, wages, commission or compensation earned in such other municipality or municipalities where such tax is paid.

18) SAVING CLAUSE.

This ordinance shall not apply to any person, firm, or corporation or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. Any sentence, clause, section or part of this chapter or any tax against or exception granted any individual or any of the several groups of persons, or forms of income specified herein is found to be unconstitutional or illegal or invalid, such unconstitutionality, illegality and invalidity shall effect only such clause, sentence, section or part of this chapter and shall not effect or impair any of the remaining provisions, sentences, clauses, sections or other parts of the chapter. It is hereby declared to be the intention of Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

99) PENALTY.

(a) Any person, firm or corporation who fails, neglects, or refuses to make any return or declaration required by this chapter or any taxpayer who fails, neglects, or refuses to pay the tax, penalties and interest imposed by this chapter, or any person who refuses to permit the Tax Commissioner or any duly authorized agent or employee to examine his books, papers and records or who knowingly makes any incomplete, false, or fraudulent return, or who attempts to do anything whatever to avoid the payment of the whole or any part of the tax imposed by this chapter, shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00), or imprisoned not more than six months or both. The

failure of any employer or taxpayer to receive or procure a return or declaration form shall not excuse him from making a return or declaration or from paying tax.

- (b) All prosecutions under this section shall be commenced within the time limits provided by Ohio R.C. Chapter 718.**

