

RESOLUTION NO. 2009-77 AS AMENDED

Passed: January 6, 2010  
First reading 12/02/09  
Second reading 12/16/09  
Third reading 01/06/10

SPONSOR: B. VAN DIKE

RESOLUTION DECLARING THE NECESSITY OF AN ELECTION ON THE QUESTION OF APPROVING THE PASSAGE OF AN ORDINANCE TO AMEND SECTIONS 37.12, 37.13, 37.15, AND 37.23 OF THE CODE OF ORDINANCES OF THE VILLAGE OF MOGADORE IN ORDER TO INCREASE THE INCOME TAX RATE FROM TWO PERCENT TO TWO AND ONE QUARTER PERCENT BEGINNING JULY 1, 2010, AND ENDING ON DECEMBER 31, 2019, FOR THE PURPOSES PROVIDED IN SECTIONS 37.10 AND 37.23 OF THE CODE OF ORDINANCES OF THE VILLAGE OF MOGADORE AND DECLARING AN EMERGENCY

WHEREAS, this Council finds it appropriate and necessary to place before the voters an ordinance to provide for an increase in the levy of the municipal income tax from the rate of two percent (2%) to the rate of two and one quarter percent (2.25%) beginning July 1, 2010 through December 31, 2019, for the purposes provided in Sections 37.10 and 37.23 of the Code of Ordinances of the Village of Mogadore; and

WHEREAS, this Council finds it also appropriate and necessary to provide that the increased revenues derived from the increase in the income tax rate be used for any purposes defined in Sections 37.10 and 37.23.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Mogadore, Counties of Summit and Portage, State of Ohio:

SECTION 1: That this Council hereby authorizes and directs the submission to the electors of the Village of Mogadore, Ohio, at an election to be held at the usual places of voting in the Village on Tuesday, May 4, 2010, of the question of approving the passage of an ordinance to amend Sections 37.12, 37.13, 37.15, and 37.23 of the Code of Ordinances of the Village of Mogadore, Ohio, in order to increase the income tax rate from Two Percent (2%) to Two and One Quarter Percent (2.25%) beginning on July 1, 2010 through December 31, 2019, for the purposes provided in Sections 37.10 and 37.23 of the Code of Ordinances of the Village of Mogadore.

SECTION 2: It is the desire of this Council that the ballots presented to the electors of the Village of Mogadore contain the following ballot language:

“Shall an ordinance providing for a Two and One Quarter Percent (2.25%) levy on income, on and after July 1, 2010, for the purposes provided in Sections 37.10 and 37.23 of the Code of Ordinances of the Village of Mogadore, establishing the effective period for the increase in the income tax rate from 2% to 2.25% to be effective from July 1, 2010 through December 31, 2019, be passed?”

FOR THE INCOME TAX \_\_\_\_\_

AGAINST THE INCOME TAX \_\_\_\_\_

SECTION 3: That the Clerk-Treasurer of the Village is hereby directed to file a copy

of this resolution with the Board of Elections.

**SECTION 4:** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted 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 5:** That this Resolution is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the Village of Mogadore and the inhabitants thereof in order to place the issue on the ballot at the May 4, 2010, election, and provided it receives the affirmative vote of at least five of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force at the earliest period allowed by law.

Effective Date: January 6, 2010

|                               |                 |
|-------------------------------|-----------------|
| <i>C. William Bauer</i>       | <i>01/06/10</i> |
| _____<br>President of Council | _____<br>Date   |

|                        |                 |
|------------------------|-----------------|
| <i>Michael A. Rick</i> | <i>01/06/10</i> |
| _____<br>Mayor         | _____<br>Date   |

Attest:

*Juliann McCulley*

\_\_\_\_\_  
Clerk-Treasurer

**CHAPTER 37: FINANCE AND TAXATION**

## Section

*Taxation*

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**TAXATION****§ 37.10 PURPOSE.**

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

(Ord. 99-1972, passed 12-6-72)

**§ 37.11 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

**ADMINISTRATOR.** The individual designated by this subchapter, whether appointed or elected, to administer and enforce the provisions of this subchapter.

**ASSOCIATION.** A partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons.

**BOARD OF REVIEW.** The Board created by and constituted as provided in § 37.24

**BUSINESS.** 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, real, personal or mixed.

**CORPORATION.** 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.

**EMPLOYEE.** One who works for wages, salary, commission or other type of compensation in the service of an employer. Any person for whom an employer is required to withhold for either federal income or social security or on whose account payments are made under the Ohio Worker's Compensation Laws shall prima facie be an **EMPLOYEE**.

**EMPLOYER.** An individual, partnership, limited partnership, association, corporation, governmental 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.

**FISCAL YEAR.** An accounting period of 12 months or less ending on any day other than December 31st.

**GROSS RECEIPTS.** The total income from any source whatsoever.

**NET PROFITS.** A net gain from the operation 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 subchapter.

**NONRESIDENT.** An individual, partnership, limited partnership, corporation, association or other entity domiciled outside this municipality.

**OTHER COMPENSATION.**

(1) Includes all forms of earned income, including, but not limited to, tips, tax shelter plans, gifts of any type for services rendered, vacation and holiday pay, wage continuation benefits, director fees, jury duty fees, stock options granted in connection with the performance of service and not designated as capital gains, property in lieu of cash, sick pay, bonuses, incentive payments in whatever form, company closing benefits, supplemental unemployment benefits, earnings designated as deferred compensation or compensation paid by an employer in whatever form for services rendered, employer paid premiums for group-term insurance in excess of \$50,000, strike benefits, depreciation recapture, ordinary income shown on IRS Form 4797, and a resident partner's or stockholder's distributive share of a non-resident partnership's or S-corporation's net profits whether received as wage paid or a draw from a drawing or capital account, and whether received or accrued.

(2) Also includes income reported on federal tax returns as earned or derived from gaming, wagering, lotteries (including the Ohio or any other state lottery) or schemes or chance effective during the tax year in which such income from gaming, wagering, lotteries or schemes of chance is received.

**OTHER ENTITY.** Any person or unincorporated body not previously named or defined and includes, inter alia, fiduciaries located within the village.

**PERSON.** Every natural person, partnership, limited partnership, corporation, fiduciary or association. Whenever used in any clause prescribing and imposing a penalty, the term **PERSON** as applied to any association, shall mean the partners or members thereof, and as applied to corporation, the officers thereof. In the case of any unincorporated entity or corporation not having any partner, member or officer living within the village, any employee or agent of such unincorporated entity or corporation who can be found within the corporate limits of the village.

**PLACE OF BUSINESS.** 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 or her regular employees regularly in attendance.

**RESIDENT.** An individual, partnership, limited partnership, corporation, association or other entity domiciled in the village.

**TAXABLE INCOME.** Wages, salaries, 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 this subchapter.

**TAXABLE YEAR.** The calendar year, or the fiscal year upon the basis of which net profits are to be computed under this subchapter 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.

**TAXPAYER.** A person, whether an individual, partnership, association, or any corporation or other entity, required hereunder to file a return or pay a tax.

(Ord. 99-1972, passed 12-6-72; Am. Ord. 101-1979, passed 12-19-79; Am. Ord. 50, passed 11-18-04)

**§ 37.12 IMPOSITION OF TAX.**

(A) Subject to the provisions of § 37.14, an annual tax for the purposes specified in §§ 37.10 and 37.23 shall be imposed on and after January 1, 2000 at the rate of 2% per annum through December 31, 2019 and thereafter at the rate of 1½% per annum upon the following:

(1) On all salaries, wages, commissions, and other compensation earned on and after January 1, 2000, by residents of this municipality.

(2) On all salaries, wages, commissions and other compensation earned on and after January 1, 2000, by nonresident individuals for work done or services performed in this municipality.

(3) (a) On the portion attributable to this municipality of the net profits earned during the effective period of this subchapter 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 this municipality.

(b) On the portion of the distributive share of the net profits earned during the effective period of this subchapter 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.

(4) (a) On the portion attributable to this municipality of the net profits earned after January 1, 2000 of all nonresident unincorporated businesses, professions or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in 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 subchapter of a resident partner or owner of a nonresident unincorporated business entity not attributable to this municipality and not levied against such unincorporated business entity by this municipality.

(5) On the portion attributable to this municipality of the net profits earned during the effective period of this subchapter of all corporations derived from sales made work done, services performed or rendered and business or other activities conducted in this municipality, whether or not such corporations have an office or place of business in this municipality.

(B) The portion a 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 this municipality shall be determined as provided in R.C. § 718.02 and in accordance with the rules and regulations adopted by the Council pursuant to this subchapter.

(C) Operating Loss Carry Forward.

(1) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 2000, allocable to this municipality may be applied against the portion of the profit of succeeding years allocable to this municipality, until exhausted but in no event for more than five taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.

(2) 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.

(3) The Clerk-Treasurer shall provide by Rules and Regulations the manner in which such net operating loss carry-forward shall be determined.

(D) Consolidated Returns.

(1) Filing of consolidated returns may be permitted, required, or denied in accordance with Rules and Regulations prescribed by the Clerk-Treasurer.

(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 Clerk-Treasurer shall require such additional information as he or she may deem necessary to ascertain whether net profits are properly allocated to this municipality. If the Clerk-Treasurer 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 by some other method, he or she shall make such allocation as he or she deems appropriate to produce a fair and proper allocation of net profits to this municipality.

(Ord. 99-1972, passed 12-6-72; Am. Ord. 9-1977, passed 2-16-77; Am. Ord. 56, passed 1-20-99)

**§ 37.13 EFFECTIVE PERIOD.**

The tax imposed by § 37.12 shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of businesses, professions or other activities earned on and after January 1, 2000; provided that the ½% portion of the income tax, the revenues from which are to be used solely for infrastructure improvement purposes of the municipality pursuant to § 37.23 hereof, shall be effective through December 31, 2019, and thereafter the income tax rate shall be 1½%.

(Ord. 99-1972, passed 12-6-72; Am. Ord. 56, passed 1-20-99)

**§ 37.14 RETURN AND PAYMENT OF TAX.**

(A) Each taxpayer, except as herein provided, shall, whether or not a tax be due therein, make and file a return on or before April 30 of the year following January 1, 1973 and on or before April 30 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 months from the end of such fiscal year or period. The Clerk-Treasurer is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by the employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by him or them to the Clerk-Treasurer shall be accepted unless otherwise specified as the return required of any employee whose sole income, subject to tax under this subchapter, is such salary, wages, commissions, or other compensation.

(B) The return shall be filed with the Clerk-Treasurer on a form or forms furnished by or obtainable upon request from such Clerk-Treasurer setting forth:

(1) The aggregate amounts of salaries, wages, commissions and other compensation earned and gross income from business, profession or other activity, less ordinary, reasonable, and necessary expenses incurred in the acquisition of such gross income earned during the preceding year and subject to the tax;

(2) The amount of the tax imposed by this subchapter on such earnings and profits, and

(3) Such other pertinent statements, information returns, or other information as the Clerk-Treasurer may require.

(C) The Clerk-Treasurer may extend the time for filing of the annual return upon the request of the taxpayer for a period of not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income Tax Return. The Clerk-Treasurer may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

(D) (1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to § 37.15, or where any portion of the tax shall have been paid by the taxpayer pursuant to the provisions of § 37.16, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with § 37.24, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return.

(2) A taxpayer who has overpaid the amount of tax to which this municipality is entitled under the provisions of this subchapter 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 \$1 shall be collected or refunded.

(E) Amended returns.

(1) Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in §§ 37.21 and 37.24. Such amended returns shall be on a form obtainable on request from the Clerk-Treasurer. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(2) Within three months from the final determination of any federal tax liability affecting the taxpayer's 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 over-payment.

(Ord. 99-1972, passed 12-6-72)

### **§ 37.15 COLLECTION AT SOURCE.**

(A) In accordance with Rules and Regulations prescribed by the Clerk-Treasurer, each employer within or doing business within this municipality shall deduct at the time of payment of such salary, wage, commissions or other compensation, the tax of 2% on and after January 1, 2000, through December 31, 2019, and thereafter at the rate of 1½% of the gross salaries, wages, commissions or other compensation due by the employer to the employee. Effective January 1, 2001, each employer within or doing business within this municipality shall, on or before the last day of each month, make a return and pay to the Clerk-



Treasurer the amount of taxes so deducted during the previous month; provided, however, that if the amount of taxes so deducted by any employer in any one month is less than \$100, the employer may defer the filing of a return and payment of the amount deducted until the last day of the month following the end of the calendar quarter in which such month occurred. Prior to January 1, 2001, each employer within or doing business within this municipality shall, on or before the last day of the month following the close of each calendar quarter, make a return and pay to the Clerk-Treasurer the amount of taxes so deducted. The returns shall be on a form or forms prescribed by or acceptable to the Clerk-Treasurer. Such employer shall be liable for the payment of the tax required to be deducted and withheld, and shall be subject to the Rules and Regulations prescribed therefor by the Clerk-Treasurer, whether or not such taxes have in fact been withheld.

(B) Such employer in collecting the tax shall be deemed to hold the same, until payment is made by such employer to this municipality, as 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 hands of such employer.

(C) On or before January 31 of each year beginning with the year 2000, each employer shall file a withholding return setting forth the names and addresses of all employees from whose compensation the tax was withheld during the preceding calendar year and the amount of tax withheld from his or her employees and such other information as may be required by the Clerk-Treasurer. All payments not subject to withholding shall be reported on a form required by the Clerk-Treasurer.

(D) 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 section. The dissolution, termination or bankruptcy of a corporation does not discharge 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.

(Ord. 99-1972, passed 12-6-72; Am. Ord. 56, passed 1-20-99; Am. Ord. 45, passed 7-19-00)

### **§ 37.16 DECLARATIONS.**

(A) Every person who anticipates any taxable income which is not subject to § 37.15, or who engages in any business, profession, enterprise or activity subject to the tax imposed by § 37.12 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; provided, however, if a person's income is wholly from wages from which the tax will be withheld and remitted to this municipality in accordance with § 37.15, such person need not file a declaration.

(B) (1) Such declaration shall be filed on or before April 30th of each year during the life of this subchapter, or within four months of the date the taxpayer becomes subject to tax for the first time.

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year or period.

(C) (1) Such declaration shall be filed upon a form furnished by, or obtainable from, the Clerk-Treasurer; provided, however, credit shall be taken for this municipality's income tax to be withheld from any portion of such income. In accordance with the provisions of § 37.17 hereof, credit may be taken for

tax to be paid to or to be withheld and remitted to another taxing municipality.

(2) The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment date and provided for herein.

(D) Such declaration of estimated tax to be paid to this municipality shall be accompanied by a payment of at least 1/4 of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the sixth, ninth and thirteenth months after the beginning of the 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.

(E) 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 § 37.14.  
(Ord. 99-1972, passed 12-6-72)

### **§ 37.17 RECIPROCITY PROVISION.**

Credit for tax paid to other municipalities or Joint Economic Development Districts.

(A) When taxable income of a resident of the village is subject to a municipal income tax in another municipality or in a Joint Economic Development District created pursuant to R.C. § 715.70, as such section exists or may hereinafter be amended, on the same income taxable under this section, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to such other municipality, equal to 100 percent of the amount obtained by multiplying the lower of the tax rate of such other municipality or of the village by the taxable income earned in or attributable to the municipality of employment or business activity. For the purposes of this section, taxable income includes the distributive share of net profits of a resident partner or owner of an unincorporated business entity.

(B) A claim for credit or refund under this section shall be made in such manner as the Administrator may by regulation provide. If a village resident fails, neglects or refuses to file an annual return or declaration on the form prescribed by the Administrator, he or she shall not be entitled to such credit or refund and shall be considered in violation of this chapter for failure to file a return.  
(Ord. 99-1972, passed 12-6-72; Am. Ord. 8-1995, passed 1-18-95)

**§ 37.18 ADMINISTRATION; DUTIES OF CLERK-TREASURER.**

(A) It shall be the duty of the Village Clerk-Treasurer to receive the tax imposed by this subchapter in the manner prescribed herein from the taxpayers; to keep an accurate record thereof; and to report all monies so received. All cashiers handling tax monies shall be subject directly to the Village Clerk-Treasurer and shall give daily accountings to the Clerk-Treasurer.

(B) It shall be the duty of the Clerk-Treasurer to enforce payment of all taxes owing this municipality, to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

(C) The Clerk-Treasurer is hereby charged with the enforcement of the provisions of this subchapter and to enforce the rules and regulations of Council of this municipality relating to any matter or thing pertaining to the collection of income taxes and the administration and enforcement of the provisions of this subchapter, including provisions for the examination, reexamination and correction of returns and payments.

(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 Clerk-Treasurer may determine the amount of tax appearing to be due to the village from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(E) Subject to the consent of the Board of Review or pursuant to regulations approved by the Council of this municipality, the Clerk-Treasurer shall have the power to compromise any interest or penalty, or both, imposed by this subchapter.

(F) A Department of Taxation is hereby created within the office of the Clerk-Treasurer of this municipality. Such Department of Taxation shall have such deputies, clerks and other employees as may be from time to time determined by the Village Council, and shall receive such salary as may be determined by the Village Council. The Clerk-Treasurer shall recommend all appointments of personnel and purchase all equipment, supplies and material for the Department of Taxation. The Department of Taxation shall be charged with the administration and operation of this subchapter, under the direction of the Clerk-Treasurer. The Clerk-Treasurer shall prescribe the form and method of accounts and reports for the department, as well as the forms for taxpayers' returns and declarations, and shall be charged with the internal examination and audit all such accounts, and shall exhibit accurate records showing the amount received from each taxpayer, and the date of receipt. The Clerk-Treasurer shall also make written report to Council annually of all monies hereunder collected during the preceding year.  
(Ord. 99-1972, passed 12-6-72)

**§ 37.19 RULES AND REGULATIONS ADOPTED BY REFERENCE.**

The resolution regarding the Rules and Regulations for this income tax subchapter and all amendments thereto, adopted under the authority of § 37.18, is hereby adopted by reference and shall be treated as if set forth in full herein.  
(Res. 108-1972, passed 12-20-72; Am. Res 100-1979, passed 12-19-79)

**§ 37.20 INVESTIGATIVE POWERS OF THE CLERK-TREASURER; DIVULGING CONFIDENTIAL INFORMATION PROHIBITED.**

(A) The Clerk-Treasurer, or any authorized employee, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Clerk-Treasurer believes is subject to the provisions of this subchapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this subchapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Clerk-Treasurer, or his or her duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

(B) The Clerk-Treasurer is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he or she believes such persons have knowledge of such income or information pertinent to such inquiry.

(C) The refusal to produce books, papers, records and federal income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Clerk-Treasurer authorized hereby shall be deemed a violation of this subchapter, punishable as provided in § 37.99.

(D) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this subchapter shall be confidential, except for official purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this subchapter, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject the provisions on § 37.99(D).

(E) Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of five years from the date his or her return is filed, or the withholding taxes are paid.  
(Ord. 99-1972, passed 12-6-72) Penalty, see § 37.99

**§ 37.21 INTEREST AND PENALTIES.**

(A) All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this subchapter and remaining unpaid after they become due shall bear interest at the rate of ½% per month or fraction thereof.

(B) In addition to interest as provided in division (A), penalties based on the unpaid tax are hereby imposed as follows:

- (1) For failure to pay taxes due, other than taxes withheld, 1½% per month or fraction thereof.
- (2) For failure to remit taxes withheld from employees, 5% per month or fraction thereof.

(C) Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Clerk-

Treasurer when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Clerk-Treasurer; and provided further, that in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability.

(D) Upon recommendation of the Clerk-Treasurer, the Board of Review may abate penalty or interest, or both, upon an appeal from the refusal of the Clerk- Treasurer to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest, or both.  
(Ord. 99-1972, passed 12-6-72) Penalty, see § 37.99

### **§ 37.22 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.**

(A) All taxes imposed by this subchapter 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 must be brought within the time limitation provided in division (A) of this section.

(C) Amounts of less than \$1 shall not be collected or refunded.  
(Ord. 99-1972, passed 12-6-72) Penalty, see § 37.99

### **§ 37.23 ALLOCATION OF FUNDS.**

(A) Funds derived from the 1½% income tax collected under the provisions of this section, shall be deposited in the Income Tax Fund and said funds collected for the duration of this section, shall be disbursed in the following order, to-wit:

(1) Such part thereof as shall be necessary to defray all costs of collecting the taxes and the cost of administering and enforcing the provisions thereof.

(2) Not more than 70% of net available income tax receipts received annually therefrom shall be used to defray operating expenses of the municipality.

(3) At least 25% of net available income tax receipts received annually therefrom shall be set aside and used for capital development and construction of storm sewers and street improvements, for public buildings, and for equipment necessary for the police, fire, street, traffic and safety departments.

(4) At least 5% of net available income tax receipts received annually therefrom shall be set aside and used for parks and playgrounds and other recreational activities.

(B) Notwithstanding the provisions of § 37.10 or any other provision of this chapter, funds derived from the ½% increase in the income tax rate effective from January 1, 2000 through December 31, 2019 shall be used solely for infrastructure improvement purposes of the municipality and accordingly, such funds collected under the provisions of this section through December 31, 2019, shall be deposited in the Income Tax Fund and shall be set aside for such infrastructure improvement purposes of the municipality.  
(Ord. 99-1972, passed 12-6-72; Am. Ord. 54-1980, passed 7-2-80; Am. Ord. 9-1995, passed 2-1-95; Am.

Ord. 56, passed 1-20-99)

**§ 37.24 BOARD OF REVIEW.**

(A) A Board of Review of five members is hereby created consisting of the Mayor, the Clerk-Treasurer, the Director of Law, and two village citizens not otherwise employed by or appointed to public office for this municipality, who shall be appointed by the Mayor with the consent of Council for a term of three years. All members of the Board of Review shall serve without pay.

(B) A majority of the members of the Board of Review shall constitute a quorum. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions.

(C) All hearings of the Board shall be conducted privately and the provisions of § 37.19 with reference to the confidential character of information required to be disclosed by the subchapter shall apply to such matters as may be heard before the Board of Review on appeal.

(D) Any person dissatisfied with any ruling or decision of the Clerk-Treasurer which is made under the authority conferred by this subchapter may appeal there from to the Board of Review within 30 days from the announcement of such ruling or decision by the Clerk-Treasurer, and the Board of Review shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. Such hearing shall be scheduled within 30 days from the date of appeal. The Board of Review's ruling must be made within 15 days from the date of the hearing.

(E) Any person dissatisfied with any ruling or decision of the Board of Review may appeal there from to a Court of competent jurisdiction within 30 days from the announcement of such ruling or decision.

(F) The Board of Review, as hereinbefore created, shall serve during the life of this subchapter. (Ord. 99-1972, passed 12-6-72)

**§ 37.25 EXEMPTIONS.**

The provisions of this subchapter shall not be construed as levying a tax upon 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 such service, or as a result of another person rendering such service.

(B) Poor relief, pensions, social security, unemployment compensation, and disability benefits received from private industry or local, state or federal governments, or from charitable, religious or educational organizations.

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

(D) Receipts 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, literary, scientific, and like purposes.

(F) Gains from involuntary conversions, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the state, and income of a decedent's estate during the period of administration (except such income from the operation of a business).

(G) Earnings and income of all persons under 18 years of age, whether residents or nonresidents.  
(Ord. 99-1972, passed 12-6-72)

**§ 37.26 TAX CREDIT FOR CERTAIN FULL-TIME STUDENTS IN POST-SECONDARY EDUCATION PROGRAMS.**

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***FULL TIME ENROLLMENT.*** That period established by the qualifying post secondary institution as full time status for students or trainees in attendance.

***QUALIFYING POST SECONDARY INSTITUTION.*** A college, university, technical school, vocational school or training program whose students or trainees are eligible to receive grants and loans through programs established by the United States Department of Education.

(B) There is hereby created a tax credit not to exceed \$75 per year for taxpayers who are in full time enrollment for at least five calendar months of the year in which the credit is requested at a qualifying post secondary institution. Taxpayers applying for the tax credit shall be required to complete and sign a disclosure and authorization form which may be obtained from the Clerk-Treasurer.

(C) The tax credit created hereunder shall become effective for calendar year 1993 and each year thereafter.  
(Ord. 47-1993, passed 10-6-93)

**§ 37.27 R.I.T.A. RULES AND REGULATIONS ADOPTED BY REFERENCE.**

The Regional Income Tax Agency (R.I.T.A.) rules and regulations, and all amendments thereto, are hereby adopted by reference and incorporated into this code of ordinances as if fully set forth herein.

**§ 37.99 PENALTY.**

(A) Any person who shall do any of the following shall be guilty of a misdemeanor of the first degree and shall be fined not more than \$1,000 or imprisoned not more than six months, or both, for each offense:

(1) Fail, neglect or refuse to make any return or declaration required by this subchapter, or

(2) Make any incomplete, false or fraudulent return; or

(3) Willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this subchapter; or

(4) Willfully fail, neglect or refuse to withhold the tax from his employees or remit such

withholding to the Clerk-Treasurer, or

(5) Refuse to permit the Clerk-Treasurer or any duly authorized agent or employee to examine his or her 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 Clerk-Treasurer and to produce his or her books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or

(7) Refuse to disclose to the Clerk-Treasurer any information with respect to the income or net profits of a taxpayer; or

(8) Fail to comply with the provisions of this subchapter or any order or subpoena of the Clerk-Treasurer authorized hereby; or

(9) Give to an employer false information as to his or her true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or

(10) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and this municipality's income tax withheld, or to knowingly give the Clerk-Treasurer false information; or

(11) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this subchapter.

(B) Prosecutions for an offense made punishable under this section or any other provision of this subchapter shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of 25% or more of income required to be reported, prosecutions may be commenced within six 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 or her from making any information return, return or declaration, from filing such form, or from paying the tax.

(D) Whoever violates any provision of § 37.20(D) shall be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than \$500 or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of this municipality who violates the provisions of § 37.20 relative to the disclosure of confidential information shall be immediately dismissed upon conviction.

(Ord. 99-1972, passed 12-6-72; Am. Ord. 101-1979, passed 12-19-79)