

ORDINANCE NO. ⁰¹⁻⁰⁶ 01-06

AN ORDINANCE PROVIDING FOR A MUNICIPAL
INCOME TAX, AND DECLARING AN EMERGENCY

Power to Levy See Ohio Const., Art XII, Sec. 8

Payroll Deductions See Ohio R.C. 9.42

Municipal Income Tax See Ohio R.C. CH. 718

WHEREAS, the maintenance of an efficient service department with adequate pay for its members is imperative; and

WHEREAS, the basic maintenance of the Village streets is necessary for the preservation of the public good as well as a mandatory legal obligation upon the village; and

WHEREAS, the balance of municipal operations likewise contribute to the public benefit and require an adequate level of financial support; and

WHEREAS, an emergency exists for the immediate preservation of the public peace, property, health, safety, and welfare in that the financial condition of the Village is bad and retrogressing due to the continued erosion of property tax levies and the necessarily increasing costs of operating Village services; and

WHEREAS, a municipal income tax is deemed the fairest means of rectifying this situation and providing the necessary additional revenues for the functions of Village government;

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL, OF THE VILLAGE OF NEW BLOOMINGTON, OHIO, AS FOLLOWS:

Section 1: PURPOSE

1.01 PURPOSE OF LEVY OF INCOME TAX

To provide funds for the purposes of general municipal functions of the Village of New Bloomington, there shall be and is hereby levied a tax on all salaries, wages, commissions and other compensations, and on net profits as hereinafter provided.

Section 2: DEFINITIONS

2.01 DEFINITIONS GENERALLY

For the purpose of this Ordinance, the terms, phrases, words and their derivatives shall have the

meanings given in the next succeeding sections. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

2.02 ADMINISTRATOR

"ADMINISTRATOR" means the individual designated by the Mayor to administer and enforce the provisions of time municipal income tax along with the Administrator of the Regional Income Tax Agency.

2.03 ASSOCIATION

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

2.04 BOARD OF REVIEW

"Board of Review" means the Board created by and constituted as provided in this Ordinance.

2.05 CORPORATION

"Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory or foreign country or dependency.

2.06 BUSINESS

"Business" means any enterprise, activity, and profession or undertaking of any nature conducted for profit or ordinarily conducted for profit; whether by an individual, partnership, association, corporation or any other entity; excluding, however, all nonprofit corporations which are exempt from the payment of federal income tax.

2.07 EMPLOYEE

"Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.

2.08 EMPLOYER

"Employer" means an individual, partnership, association, corporation, government body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other basis of compensation.

2.09 FISCAL YEAR

"Fiscal Year" means any account period of twelve months or less ending on any day other than

December 31 st.

2.10 GROSS RECEIPTS

"Gross Receipts" means the total income from any source whatsoever.

2.11 MUNICIPALITY

"Municipality" is used in Article XVIII (18), Ohio Const. and specifically does not include a school district or any other political subdivision as defined RC 2744.01

2.12 NEW PROFITS

"New Profits" means a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes without deduction of taxes imposed by this ordinance; federal, state, and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners and other owners.

2.13 NON RESIDENT

"Nonresident" means an individual domiciled outside the municipality.

2.14 NONRESIDENT UNINCORPORATED BUSINESS ENTITY

"Nonresident Unincorporated Business Entity" means an unincorporated business entity not having an office or place of business within the municipality.

2.15 PERSON

"Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity, means the partners or members thereof, and as applied to corporations, the officers thereof

2.16 PLACE OF BUSINESS

"Place of Business" means any bonafide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance.

2.17 RESIDENT

"Resident" means an individual domiciled in the municipality.

2.18 RESIDENT UNINCORPORATED BUSINESS ENTITY

"Resident Unincorporated Business Entity" means an unincorporated business entity having an office or place of business within the municipality.

2.19 TAXABLE INCOME

"Taxable Income" means 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 time provisions of the ordinance.

2.20 TAXABLE YEAR

"Taxable Year" means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this Ordinance and in the case of a return for a fractional part of a year, time period for which such return is required to be made.

2.21 TAXPAYER

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

Section 3; IMPOSITION OF INCOME TAX

3.01 RATE AND INCOME TAXABLE

An annual tax for time purposes specified in (his Ordinance shall be imposed on and after THE 1st day of March, 2002 at the rate of 1% per annum upon the following:

- (a) On all salaries, wages, commissions and other compensation earned on and after the 1st day of March, 2002, by residents of the Village of New Bloomington;
- (b) On all salaries, wages, commissions and other compensation earned on or after the 1st day of March, 2002, by nonresidents of the Village of New Bloomington for work done or services performed or rendered within time Village of New Bloomington;
- (c)(1) On the portion attributable to the Village of New Bloomington on the net profits earned on and after 1st day of March, 2002, of all resident unincorporated business

entities or professions or other activities, derived from sales made, work done, services performed or rendered amid business or other activities conducted in the Village of New Bloomington;

(2) On the portion of time distributive share of the net profits earned on or after the 1st day of March, 2002, of a resident, partner or owner of a resident unincorporated business entity not attributable to the Village of New Bloomington and not levied against such unincorporated business entity by the Village of New Bloomington;

(d) (I) On the portion attributable to the Village of New Bloomington of the net profits earned on or after the 1st day of March, 2002, of all nonresidents unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered and business and other activities conducted in the Village of New Bloomington, whether or not such unincorporated business entity has an office or place of business in the Village of New Bloomington;

(2) On the portion of the distributive share of the net profits earned on or after the 1st day of March, 2001, of a resident, partner or owner of a nonresident unincorporated business entity not attributable to the Village of New Bloomington and not levied against such unincorporated business entity by the Village of New Bloomington.

(e) On the portion attributable to the Village of New Bloomington of the net profits earned on or after the 1st day of March, 2002, of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the Village of New Bloomington, whether or not such corporations have an office or place of business in the Village of New Bloomington;

3.02 EFFECTIVE PERIOD

Such tax shall be levied, collected, and paid with respect to the salaries, wages, commissions, and other compensation, and with respect to the net profits of business, professions, or other activities earned on or after the 1st day of March, 2002.

Section 4: DETERMINATION OF ALLOCATION OF TAX

4.01 METHOD OF DETERMINATION

In the taxation of income which is subject to municipal income taxes, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the municipality shall disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the municipality, then only such portion shall be considered as having taxable situs in the municipality for the purposes of municipal income taxation. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the municipality, in the absence of actual records thereof, shall be determined as follows:

Multiply the entire net profits by a business allocation percentage to be determined by a three-factor formula of property, payroll and sales, action which shall be given equal weight, as follows;

- (a) The average net book value of the real and tangible personal property owned or used by time taxpayer in the business or profession in the municipality during time taxable period to the average net book value of all time real and tangible personal property owned or used by the taxpayer in the business or profession during time same period, wherever situated.

As used in the preceding paragraph, "real property" included property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

- (b) Wages, salaries and other compensation paid during the taxable period to persons employed in the municipality to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed.
- (c) Gross receipts of the business or profession from sales and services performed during the taxable period in the municipality to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such results.

4.02 SALES MADE IN MUNICIPALITY

As used in Subsection (c) above, "sales made in the municipality" means:

- (a) All sales of tangible personal property which is delivered within the Village of New Bloomington regardless of where title passes if shipped or delivered from a stock of goods within the Village of New Bloomington.
- b) All sales of tangible personal property which is delivered within the Village of New Bloomington, regardless of where title passes even though transported from a point outside the Village of New Bloomington, if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village of New Bloomington and the sales result from such solicitation or promotion;
- (c) All sales of tangible personal property which is shipped from a place within time Village of New Bloomington to purchasers outside the Village of New Bloomington, regardless of where title passes, if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is

made.

4.03 TOTAL ALLOCATION

Add together time percentage determined in accordance within Subsections (a), (b) and (c) above or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving such total in order to obtain the business allocation percentage referred to above.

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

4.04 RENTALS

Rentals income received by a taxpayer shall be included in the computation of net profits from business activities under subparagraphs (c), (d) and (e) of the section pertaining to "Rate and Income Taxable", only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed, or operated by a taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

Where the gross monthly rental of any and all real properties, regardless of number and value, aggregate in excess of Two Hundred Fifty and 00/100 dollars (\$250.00) per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax; provided that in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds Two hundred Fifty and 00/100 dollars (\$250.00) per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when line shares in crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds said \$250.00 per month; and provided further that the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceed \$250.00 per month.

4.05 OPERATING LOSS CARRY-FORWARD

(a) The portion of a not operating loss sustained in any taxable year subsequent to the 1st day of March, 2001, allocable to the municipality may be applied against the portion of the profit if succeeding tax years allocable to the municipality, until exhausted, but in no event for more than five taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

(b) The portion of net operating loss sustained shall be allocated to the municipality in the same manners as provided herein for allocating net profits to the municipality.

- (c) The Administrator shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined.

Section 5: EXEMPTIONS

5.01 SOURCES OF INCOME NOT TAXED

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

- (a) Pay or allowances of active members of the Armed Forces of the United States or the income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property or tax-exempt activities.
- (b) Poor relief, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, state or federal governments or charitable, religious or educational organizations.
- (c) Proceeds of insurance paid by reason of the death of the insured, pensions disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
- (d) Receipts from seasonal or casual entertainment, amusements, sport events and health and welfare activities when any such are conducted by bonafide charitable, religious or education organization and associations.
- (e) Alimony received.
- (f) Personal earnings of any natural person under eighteen years of age.
- (g) Compensation for personal injuries or for damages to property by way of insurance or otherwise.
- (h) Interest, dividends and other revenue from intangible property by way of insurance.
- (i) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the State of Ohio from which the municipality is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from time operation of a business).

- (j) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce.
- (k) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution for the State of Ohio or any act of the Ohio General Assembly limiting the power of the municipality to impose net income taxes.

6.01 WHEN RETURN REQUIRED TO BE MADE

Each taxpayer shall, whether or not a tax be due thereon, make and file a return on or before April 30th of the year following the effective date of this Ordinance and on or before April 30th of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four (4) months from the end of such fiscal year or period.

6.02 FORM AND CONTENTS OF RETURN

The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from such Administrator, setting forth:

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

6.03 EXTENSION OF TIME FOR FILING RETURNS

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

6.04 CONSOLIDATED RETURNS

- (a) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Administrator.

- (b) 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 the case any person operates a division, branch, factory, office, laboratory, or activity within the Village of New Bloomington constituting a portion only of its total business, the Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated by the Village of New Bloomington. If the Administrator finds that net profits are not properly allocated to the Village of New Bloomington by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, He shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the municipality.

6.05 AMENDED RETURNS.

- (a) Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations or both contained in appropriate sections of this Ordinance. Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.
- (b) Within three months from the final determination of any federal tax liability affecting the taxpayer's municipal tax liability, such taxpayer shall make and file an amended municipal return showing income subject to the municipal tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make a claim for refund of any overpayment.

Section 7: PAYMENT OF TAX

7.01 PAYMENT OF TAX ON FILING OF RETURNS

- (a) The taxpayer making a return shall, at the time of filing thereof, pay to the Administrator the amount of taxes shown as due thereon, provided, however, that;
- (1) Where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of this Ordinance; or
 - (2) Where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of this Ordinance; or
- (b) A taxpayer who has overpaid the amount of tax which the Village of new Bloomington is entitled under the provision of this Ordinance may have such overpayment applied

against any subsequent liability hereunder, or at his election, indicated on the return, such overpayment (or any part thereof) shall be refunded, provided that no additional taxes or refunds of less than One and 00/100 dollar (\$1.00) shall be collected or refunded.

7.02 COLLECTION AT SOURCE

- (a) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business within the Village of New Bloomington shall deduct, at the time of the payment of such salary, wages, commissions or other compensation, the tax of 17 percent of the gross salaries, wages, commissions or other compensation due by the said employer to said employee and shall, on or before the last day of each month, make a return and pay to the Administrator the amount of taxes so deducted during the previous month; provided, however, that if the amount of the tax so deducted by any employer in any one month is less than \$100.00, 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.
- (b) Said returns shall be on a form or forms prescribed or acceptable to the Administrator and shall be subject to the rules and regulations prescribed therefore by the administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such taxes have in fact, been withheld.
- (c) Such employer in collecting said tax shall be deemed to hold the same until payment is made by such employer to the Village of New Bloomington as a trustee for the benefit of the Village of New Bloomington, and any such tax collected by such employer from his employees shall, until the same is paid to the Village of New Bloomington, be deemed a trust fund in the hands of such employer.
- (d) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him exclusively in or about such person's residence, even though such residence is in the Village of New Bloomington, but such employee shall be subject to all of the requirements of this Ordinance.

7.03 DECLARATIONS OF INCOME COLLECTED AT SOURCE

Any person whose income tax is not fully withheld in the Village of New Bloomington or in any other municipality in which taxes are withheld at a rate the same as or higher than the rate provided in this Ordinance hereof shall file a declaration setting forth estimated taxable income, including distributive shares net profits or unincorporated business entities estimated to be earned by the taxpayer during the current tax year, together with the estimated tax due thereon less:

- (a) Tax withheld within the Village of New Bloomington

7.04 FILLING OF DECLARATION

- (a) The declaration required by this Ordinance shall be filed on or before April 30th of each year during the effective period set fourth in this Ordinance or within four months of the date the taxpayer becomes subject to tax for the first time.
- (b) Those taxpayers reporting on a fiscal year basis shall file a declaration with four months after the beginning of each fiscal year of period.

7.05 FORM OF DECLARATION

- (a) The declaration required by this Ordinance shall be filed upon a form furnished by or obtainable from the Administrator. As provided for in this Ordinance, credit shall be taken for the Village of New Bloomington tax to be withheld from any portion of such income and credit shall be taken for tax to be paid or withheld and remitted to another taxing municipality, in accordance with the provision of this Ordinance.
- (b) The original declaration of any subsequent amendment thereof may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.

7.06 PAYMENT TO ACCOMPANY DECLARATION

Such declaration of estimated tax to be paid to the Village of New Bloomington shall be accompanied by a payment of least one-fourth (.25%) of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the seventh and tenth months after the beginning of the taxable year, and on or before the last day of the first month of the succeeding year following 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 date or dates.

7.07 ANNUAL RETURN

On or before the last day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the Village of New Bloomington shall be paid therewith in accordance with the provisions of this Ordinance. Provided, however, that any taxpayer may file, on or before the last day of the first month of the year following that for which such declaration or amended declaration was filed, an annual return and pay any balance due at such time in lieu of filing such declaration or any amended declaration, and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax.

The Administrator may extend the time of filing any return required, of making any payment or performing any other act required by this Ordinance for a period not to exceed six months beyond the original required date.

Section 8: INTEREST AND PENALTIES

8.01 INTEREST ON UNPAID TAX

All taxes imposed and all monies withheld or required to be withheld by employers and all installments of estimated taxes required to be paid under the provisions of this Ordinance of the Village of New Bloomington and remaining unpaid after they become due, shall bear interest at the rate of six percent (6%) per annum.

8.02 PENALTIES ON UNPAID TAX

In addition to interest as provided in this Ordinance, penalties based on the unpaid tax or installments of estimated tax are hereby imposed as follows:

- (a) For failure to pay taxes or estimated taxes due, other than taxes withheld: ten percent (10%) per annum, but not less than \$5.00.
- (b) For failure to remit taxes withheld from employees: ten percent (10%) per month or fraction thereof, but accumulated penalty shall not exceed fifty percent (50%) upon any unpaid amount and shall not be less than \$5.00.

8.03 EXCEPTIONS

A penalty shall not be assessed on any additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator; and provide further that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment against a taxpayer by the Administrator resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after a final determination of the federal tax liability.

8.04 ABATEMENT OF INTEREST AND PENALTY

Either the Administrator hereunder or the Board of Review may abate penalty or interest, or both, for good cause shown.

8.05 VIOLATIONS

Any person who shall:

- (a) Fail, neglect or refuse to make any return or declaration required by this Ordinance; or
- (b) Make any incomplete, false or fraudulent return; or
- (c) Fail, neglect or refuse to pay time tax, penalties or interest imposed by this

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- (b) For failure to remit taxes withheld from employees: ten percent (10%) per month or fraction thereof, but accumulated penalty shall not exceed fifty percent (50%) upon any unpaid amount and shall not be less than \$5.00.

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- (a) Fail, neglect or refuse to make any return or declaration required by this Ordinance; or
- (b) Make any incomplete, false or fraudulent return; or
- (c) Fail, neglect or refuse to pay time tax, penalties or interest imposed by this

Ordinance; or

- (d) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
- (c) Refuse to permit the Administrator, or any duly authorized agent or employee to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
- (l) Fail to appear before the Administrator and to produce his books, records, papers or federal income tax returns relating to the income or net profits of a taxpayer upon order of subpoena of the Administrator; or
- (g) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
- (h) Fail to comply with the provisions of this Ordinance or any under or subpoena of the Administrator authorized hereby; or
- (i) Give to any employer false information as to his true name, correct social security number and resident address, or fail to promptly notify an employer of any change in resident address and date thereof; or
- (j) Fail to use ordinary diligence in maintaining proper records of employees; resident addresses, total wages paid and municipal tax withheld or knowingly give the Administrator false information; or
- (k) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or Interest Imposed by this Ordinance;

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shall be guilty of a misdemeanor and shall be fined not more than Five Hundred and 00/100 (\$500.00) or imprisoned not more than six months or both, for each offense.

8.06 LIMITATION ON PROSECUTION

All prosecutions under this section must be commenced within five years from the time of the offense complained of, except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of the time within which prosecution must be commenced shall be ten years from the date the return was due or the date the false or fraudulent return was filed.

8.07 FAILURE TO PROCURE FORMS NOT EXCUSE

The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return, return or declaration, from filing such form, or from paying the tax.

Section 9: COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENT

9.01 UNPAID TAXES RECOVERABLE AS OTHER DEBTS

All taxes imposed by this Ordinance shall be collectible, together within any interest and penalties thereon, by suit, as other debts of the like amount are recoverable. Except in the case of fraud, of omission of a substantial portion of income subject to this tax, or of failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later, provided, however, in those cases in which a Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal Statute of Limitations, the period within which an additional assessment may be made by the Administrator shall be one year from the time of the final determination of the federal tax liability.

9.02. REFUND OF TAXES ERRONEOUSLY PAID

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date which such payment was made or the return was due, or within three months after the final determination of the federal tax liability, whichever is later.

9.03 AMOUNTS OF LESS THAN ONE DOLLAR

Amounts of less than One Dollar (\$1.00) shall not be collected or refunded.

9.04 CLAIM FOR REFUND

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date of which such payment was made or the return was due.

9.05 DUTY TO RECEIVE TAX IMPOSED

It shall be the duty of the administrator to receive the tax imposed by this Ordinance in the manner prescribed herein from the taxpayers, to keep an accurate record thereof, and to report all monies so received.

9.06 DUTY TO ENFORCE COLLECTION

It shall be the duty of the Administrator to enforce payment of all taxes owing to the municipality, to keep accurate records for a minimum of five years showing time amount due

from each taxpayer required to file a declaration and make any return, or both including taxes withheld, and to show the dates and amount of payment thereof.

9.07 AUTHORITY TO MAKE AND ENFORCE REGULATIONS

The Administrator is hereby charged with the enforcement of the provisions of this Ordinance, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the provisions for the re-examination and correction of returns.

9.08 AUTHORITY TO ARRANGE INSTALLMENT PAYMENTS

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

Failure to unmake any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand.

9.09 AUTHORITY TO DETERMINE AMOUNT OF TAX DUE

In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the municipality 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.

9.10 AUTHORITY TO MAKE INVESTIGATION

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

9.11 AUTHORITY TO COMPEL PRODUCTION OF RECORDS

The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal

income tax returns and the attendance of all persons before him whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

9.12 REFUSAL TO PRODUCE RECORDS

The refusal to produce books, papers, records and federal income tax returns, or the refusal to submit to such examination by any employer or persons subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or time failure of any person to comply with the provisions of this Ordinance or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this Ordinance punishable as provided in this Ordinance.

9.13 CONFIDENTIAL NATURE OF INFORMATION

Any information gained as the result of any returns, investigations, hearings, or verifications required or authorized by this Ordinance shall be confidential except for official purposes, or except in accordance within proper judicial order. Any person divulging such information in violation of this section shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than One Thousand and 00/100 dollars (\$1,000.00) or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the municipality who violates the provisions of this section relative to the disclosures of confidential information shall be guilty of an offense punishable by immediate dismissal.

9.14 TAXPAYER REQUIRED TO RETAIN RECORDS

Every taxpayer shall retain all records necessary to compute his tax liability for a period of five years from the date his return is filed, or the withholding taxes are paid.

9.14 AUTHORITY TO CONTRACT FROM CENTRAL COLLECTION FACILITIES

The Village of New Bloomington having already entered into an agreement for the establishment of a Regional Council of Governments pursuant to Ordinance Number 01-06, which Council has organized a municipal tax collection agency known as "Regional Income Tax Agency", the Board of Trustees of said Regional Income Tax Agency is authorized to administer and enforce the provisions of this Ordinance as the agent of the Village of New Bloomington, and the duties and authority of the Administrator hereunder may be performed by the Board of Trustees of said agency through the administrator of said agency. Provided, however, the Administrator of said agency shall have no authority to abate penalties or interest provided for in this Ordinance.

Section 10: BOARD OF REVIEW

10.01 BOARD OF REVIEW ESTABLISHED

A Board of Review, consisting of the Mayor and a member of Council to be elected to that body, and a member appointed by the Mayor of the Village of New Bloomington, is hereby created. The Board shall select, each year for a one-year term, one of its members to serve as Chairman and one to service as Secretary. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of this Ordinance with reference to the confidential character of information required to be disclosed by this Ordinance shall apply to such matters as may be heard before this Board on appeal.

10.02 DUTY TO APPROVE REGULATIONS AND TO HEAR APPEALS

All rules and regulations and amendments or changes thereto which are adopted by the Administrator under the authority conferred by this Ordinance must be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator, and at the request of the taxpayer of Administrator, and at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.

10.03 RIGHT OF APPEAL

Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this Ordinance may appeal therefrom to the Board of Review within thirty days from the announcement of such ruling or decision by the Administrator, and the Board shall, on hearing have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.

Section 11: OTHER PROVISIONS

11.01 DECLARATION OF LEGISLATIVE INTENT

If any sentence, clause, section or part of this Ordinance, or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this Ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other part of this Ordinance. 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 hereof not be included herein.

SAID EMERGENCY ARISES BY VIRTUE OF THOSE REASONS SET FORTH IN THE
PREAMBLE HERETO WHICH CREATE THE IMMEDIATE NEED TO LEVY A
MUNICIPAL INCOME TAX IN ORDER TO OBTAIN ESSENTIAL REVENUE FOR THE
FUNCTIONS OF THE VILLAGE OF NEW BLOOMINGTON GOVERNMENT AND
CREATE A MECHANISM FOR THE COLLECTION OF SUCH TAX. THESE REASONS,
TOGETHER WITH THE NECESSITY FOR START UP ACTIVITIES TO BE COMPLETED
BY 7 DAY OF January, 2002, GIVE RISE TO THE NEED FOR
EMERGENCY ACTION.

PASSED THIS 7th DAY OF January 2002

Heraldine Johnson 1-7-02
MAYOR Dated

Date
d

Attest:

Lisa Rose 1-7-02
Clerk-Treasurer Dated

Ordinance 02- 04
An Amendment to Ordinance 01-06

WHEREAS, amendments to Ordinance 01-06 are needed in order to comply with the laws of the State of Ohio.

WHEREAS, the Council for the Village of New Bloomington deems it necessary to make such amendments.

WHEREAS, an emergency exists to rectify the discrepancies in Ordinance 01-06

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL, OF THE VILLAGE OF NEW BLOOMINGTON, STATE OF OHIO, AS FOLLOWS:

Amend: Section 3.01 RATE AND INCOME TAXABLE to read as follows:

An annual tax for the purposes specified in this Ordinance shall be imposed on and after THE 1st day of June, 2002 at the rate of 1% per annum upon the following:

- (a) On all salaries, wages, commissions and other compensation earned on and after the 1st day of June, 2002, by residents of the Village of New Bloomington;
- (b) On all salaries, wages, commissions and other compensation earned on or after the 1st day of June, 2002, by nonresidents of the Village of New Bloomington for work done or services performed or rendered within the Village of New Bloomington;
- (c)(1) On the portion attributable to the Village of New Bloomington on the net profits earned on and after the 1st day of June, 2002, of all resident unincorporated business entities or professions or other activities, derived from sales made, work done, services performed or rendered amid business or other activities conducted in the Village of New Bloomington;
- (2) On the portion of time distributive share of the net profits earned on or after the 1st day of June, 2002, of a resident, partner or owner of a resident unincorporated business entity not attributable to the Village of New Bloomington and not levied against such unincorporated business entity by the Village of New Bloomington.
- (d) (1) On the portion attributable to the Village of New Bloomington of the net profits earned on or after the 1st day of June, 2002, of all nonresidents unincorporated business entities, professions or other activities derived from sales made, work done, services performed or rendered and business and other activities conducted in the Village of New Bloomington, whether or not such unincorporated business entity has an office or place of business in the Village of New Bloomington.
- (2) On the portion of distributive share of the net profits earned on or after the 1st day of June, 2002, of a resident, partner, or owner of a nonresident unincorporated business entity not attributable to the Village of New Bloomington and not levied against such unincorporated business entity by the Village of New Bloomington.
- (e) On the portion attributable to the Village of New Bloomington of the net profits earned on or after the 1st day of June, 2002, of all corporations derived from sales made, work done, services

Ordinance 02- 04
An Amendment to Ordinance 01-06

performed or rendered and business or other activities conducted in Village of New Bloomington, whether or not such corporations have an office or place of business in the Village of New Bloomington.

- (f) A credit of 50% (fifty percent) will be given to persons paying income taxes to other entities.

AMEND: Section 3.02 EFFECTIVE PERIOD to read as follows:

Such tax shall be levied, collected, and paid with respect to the salaries, wages, commissions, and other compensation, and with respect to the net profits of business, professions, or other activities earned on or after the 1st day of June, 2002.

AMEND: Section 4.05 (a) to read as follows:

- (a) The portion of a not operating loss sustained in any taxable year subsequent to the 1st day of June, 2002, allocable to the municipality may be applied against the portion of the profit if succeeding tax years allocable to the municipality, until exhausted but in no event for more than five taxable year immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

SAID EMERGENCY ARISES BY VIRTUE OF THOSE REASONS SET FORTH IN THE PREAMBLE HERETO WHICH CREATE THE IMMEDIATE NEED TO AMEND ORDINANCE 01-06 AN ORDINANCE PROVIDING FOR A MUNICIPAL INCOME TAX AND DECLARING AN EMERGENCY.

PASSED THIS 6th DAY OF May, 2002

Heraldine Johnson 5-6-02
MAYOR Dated

Attest:

Joyce Blum 05/06/02
Clerk/Treasurer Dated

Ordinance 02-05
An Amendment to Ordinance 01-06

WHEREAS, amendments to Ordinance 01-06 are needed in order to comply with the laws of the State of Ohio.

WHEREAS, the Council for the Village of New Bloomington deems it necessary to make such amendments.

WHEREAS, an emergency exists to change the effective date in Ordinance 01-06 from June 1st, 2002 to July 1st, 2002

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL, OF THE VILLAGE OF NEW BLOOMINGTON, STATE OF OHIO, AS FOLLOWS:

Amend: Section 3.01 RATE AND INCOME TAXABLE to read as follows:

An annual tax for the purposes specified in this Ordinance shall be imposed on and after THE 1st day of July, 2002 at the rate of 1% per annum.

- (a) On all salaries, wages, commissions and other compensation earned on and after the 1st day of July, 2002, by residents of the Village of New Bloomington;
- (b) On all salaries, wages, commissions and other compensation earned on or after the 1st day of July, 2002, by nonresidents of the Village of New Bloomington for work done or services performed or rendered within the Village of New Bloomington;
- (c)(1) On the portion attributable to the Village of New Bloomington on the net profits earned on and after the 1st day of July, 2002, of all resident unincorporated business entities or professions or other activities, derived from sales made, work done, services performed or rendered amid business or other activities conducted in the Village of New Bloomington;
- (2) On the portion of time distributive share of the net profits earned on or after the 1st day of July, 2002, of a resident, partner or owner of a resident unincorporated business entity not attributable to the Village of New Bloomington and not levied against such unincorporated business entity by the Village of New Bloomington.
- (d) (1) On the portion attributable to the Village of New Bloomington of the net profits earned on or after the 1st day of July, 2002, of all nonresidents unincorporated business entities, professions or other activities derived from sales made, work done, services performed or rendered and business and other activities conducted in the Village of New Bloomington, whether or not such unincorporated business entity has an office or place of business in the Village of New Bloomington.
- (2) On the portion of distributive share of the net profits earned on or after the 1st day of July, 2002, of a resident, partner, or owner of a nonresident unincorporated business entity not attributable to the Village of New Bloomington and not levied against such unincorporated business entity by the Village of New Bloomington.
- (e) On the portion attributable to the Village of New Bloomington of the net profits earned on or after the 1st day of July, 2002, of all corporations derived from sales made, work done, services

Ordinance 02-05
An Amendment to Ordinance 01-06

performed or rendered and business or other activities conducted in the Village of New Bloomington, whether or not such corporations have an office or place of business in the Village of New Bloomington.

- (f) A credit of 50% (fifty percent) will be given to persons paying income taxes to other entities.

AMEND: Section 3.02 EFFECTIVE PERIOD to read as follows:

Such tax shall be levied, collected, and paid with respect to the salaries, wages, commissions, and other compensation, and with respect to the net profits of business, professions, or other activities earned on or after the 1st day of July, 2002.

AMEND: Section 4.05 (a) to read as follows:

- (a) The portion of a not operating loss sustained in any taxable year subsequent to the 1st day of July, 2002, allocable to the municipality may be applied against the portion of the profit if succeeding tax years allocable to the municipality, until exhausted but in no event for more than five taxable year immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

SAID EMERGENCY ARISES BY VIRTUE OF THOSE REASONS SET FORTH IN THE PREAMBLE HERETO WHICH CREATE THE IMMEDIATE NEED TO AMEND ORDINANCE 01-06 AN ORDINANCE PROVIDING FOR A MUNICIPAL INCOME TAX AND DECLARING AN EMERGENCY.

PASSED THIS 19th DAY OF June, 2002

Heraldine Johnson 6-19-02
MAYOR Dated

Attest:

Joyce Mann 06/19/02
Clerk/Treasurer Dated

Ordinance 05-02

An Amendment to Ordinances 01-06 and 02-04

WHEREAS, amendments to Ordinances 01-06 and 02-04 are needed in order to comply with the laws of the State of Ohio.

WHEREAS, the Council for the Village of New Bloomington deems it necessary to make such amendments.

WHEREAS, an emergency exists to rectify the discrepancies in Ordinances 01-06 and 02-04

NOW THEREFORE BE IT ORDAINED BY THE
COUNCIL, OF THE VILLAGE OF NEW
BLOOMINGTON, STATE OF OHIO, AS FOLLOWS:

HB 95 AMENDMENTS:

1. Net profits.

For taxable years 2004 and later, "net profits" equate to "adjustable federal taxable income" (AFTI), which is the new term that has been added to ORC 718. A detailed provision for how AFTI is to be calculated will be contained in RITA's Rules & Regulations, which are currently being redrafted. However, we recommend the following summary definition for AFTI be added to the Definition Section of your ordinance:

Adjusted federal taxable income - A "C" corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "Adjusted Federal Taxable Income" as if the pass-through entity was a "C" corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

We also recommend two corresponding changes to your existing definition for "net profits". The definition should begin "For taxable years prior to 2004," and at the end of your current definition you should add a sentence that says "(For taxable years 2004 and later, see "adjusted federal taxable income".)".

2. 3-factor formula.

One of the changes in HB 95 eliminated the use of books and records for allocating net profits, and essentially it attempts to require that all businesses allocate net profits by using the 3-factor formula. Therefore, if the provision for books and records appears in your ordinance (it usually appears in conjunction with the 3-factor formula), you should delete it. On the flip side,

however, that State retained the provision for allowing "alternate methods" of allocation if the use of the 3-factor formula does not seem the most appropriate allocation to use in certain instances. Consequently, if language regarding the 3-factor formula currently appears in your ordinance you may wish to add the following language as a subpart of the "alternative methods" provision:

If the [Tax Administrator] approves the use of books and records as a substitute method, the following shall apply:

A. The net profits allocable to the [municipality] from business, professional or other activities conducted in the [municipality] by corporations or unincorporated entities (whether resident or non-resident) may be determined from the records of the taxpayer only if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within the [municipality].

B. If the books and records of the taxpayer are used as the basis for apportioning net profits, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the [Tax Administrator] to determine whether the net profits attributable to the [municipality] are apportioned with reasonable accuracy.

C. In determining the income allocable to the [municipality] from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the [municipality].

Please be aware that the above language has been added to the draft changes to RITA's Rules & Regulations.

3. Intangible income.

Many municipalities simply reference the State code (ORC 718.01(A)(5)) for the definition of intangible income. However, if you include a definition within your ordinance, the following needs to be added as a part of the definition:

...patents, copyrights, trademarks, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred income. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.

4. Qualifying wages.

As a result of the amendments to ORC 718, effective January 1, 2004 municipalities can only tax wages that are subject to withholding. Those wages are called "qualifying wages". As with AFTI, a detailed provision for how the qualifying wage is to be calculated will be contained in RITA's Rules & Regulations. However, we recommend that the following summary definition for "qualifying wage" be added to the Definition Section of your ordinance:

Qualifying wage - These are wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. "Qualifying wage" represents employees' income from which municipal tax shall be deducted by the employer, and any wages not considered a part of "qualifying wage" shall not be taxed by the [municipality]. This definition is effective January 1, 2004, for taxable years 2004 and later.

5. Taxation of non-qualified deferred compensation and stock options.

Under State law, non-qualified deferred compensation and stock options are taxable as a part of qualifying wages. However, State law also permits a municipality to not tax these items. If a municipality chooses to exempt one or both of these items the municipality must then include a provision in their tax ordinance to that effect. RITA *does not* recommend exemption of these items. If you wish to clarify this within your ordinance, you can do so by adding a phrase to the

definition for "qualifying wage". The addition should be after the word "income" in the second sentence of the definition recommended above, and should read "(including non-qualified deferred compensation and stock options)".

6. Annual return date of April 15th

The date for the annual return for taxable years 2004 and later is now April 15th. ORC 718 does not allow for an alternate date. Therefore this is the date that should now appear in the "Return and Payment of Tax" section of your ordinance. The date for the Declaration should also be April 15th, so that amendment may need to also be made to the "Declarations" section of your ordinance.

7. Appeals of Board of Review decisions.

For taxable years 2004 and later, an option now exists when making an appeal of a decision rendered by your local Board of Review/Appeal. The option allows an appeal to be made to the State Board of Tax Appeals. Therefore the following sentence should appear in the "Board of Review/Appeal" section of your ordinance. The sentence should be added to the end of your current provision related to appeals of Board decisions:

For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Review/Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

Please keep in mind that this new provision relates only to taxable years 2004 and later. Therefore, should an appeal be made in 2004 or later to your local Board of Review/Appeal, and that appeal relates to taxable years 2003 or earlier, the option to make the appeal to the State Board of Tax Appeals does not apply. The appeal would be handled under the regulations existing in your ordinance in 2003.

HB 477 AMENDMENTS:

1. Generic Form.

The State has attempted to make compliance easier on businesses by allowing them to submit certain generic forms. They can be submitted in the form of annual tax returns and estimated payment forms (HB 477), and forms for requests for refunds (HB 95). However, the State also required that the forms meet certain administrative rules of each municipality. Therefore, we suggest the following definition be added to your ordinance in the Definition section and that anywhere within your ordinance where these forms are referenced a clause concerning acceptance of generic forms by the [municipality's] Administrator be included:

Generic Form - An electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or requests for refunds, which contain all the information required on [municipality] regular tax return, estimated payment forms, and request for refund forms, and are in a similar format that will allow processing of the generic forms without altering the [municipality] procedures for processing forms.

2. 12-day occasional entrant rule.

This provision was established to allow non-residents who worked in a municipality 12 or less days per year to be exempt from income tax in the municipality. The procedures regarding the "occasional entrant" are a part of RITA's Rules & Regulations. However, if you would also prefer to place language within your ordinance relative to this regulation, we recommend that it be inserted in the section for "Imposition of Tax" (i.e., for non-residents). We recommend the following language:

A. A non-resident individual who works in the [municipality] twelve (12) or fewer days per year shall be considered an occasional entrant, and shall not be subject to the [municipality] municipal income tax for those 12 days. For purposes of the 12-day calculation, any portion of a day worked in the [municipality] shall be counted as one day worked in the [municipality].

B. Beginning with the thirteenth day, the employer of said individual shall begin withholding the [municipality] income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the [municipality] in accordance with the requirements of this chapter/ordinance. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in the [municipality] by the individual for the first twelve days.

C. If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to [municipality].

D. The 12-day occasional entry rule does not apply to entertainers or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events.

3. Extensions.

A provision was added that municipalities cannot require submission of other than a copy of a federal extension as the formal extension request. However, municipalities retain the right to deny extensions in certain circumstances. The circumstances are as follows (with wording to be added to the section of your ordinance that deals with extensions):

The extension request may be made by filing a copy of the taxpayer's request for a federal filing extension, or by filing a written request. The [municipality] Administrator may deny the extension if the taxpayer's income tax account with [municipality] is delinquent in any way.

Detailed language regarding delinquent circumstances is contained in RITA's Rules & Regulations. It includes failure to timely file the extension request, failure to file all required documents, and failure to pay all amounts due.

4. Municipalities are required to accept consolidated returns if they have been filed as consolidated returns with a taxpayer's federal filings. If your ordinance currently speaks to consolidated returns, it is presumably in the section for "Return and Payment of Tax". The first paragraph should read as follows:

Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with [municipality]. However, once the affiliated group has elected to file a consolidated return or a separate return with [municipality], the affiliated group may not change their method of filing in any subsequent tax year without written approval from [municipality].

5. Safe Harbor/Deposit Dates

State law now requires that municipalities have "safe harbor" provisions that match those of the federal government. Accordingly, municipalities cannot charge penalties and/or interest if the liability paid by an individual taxpayer by January 31st equaled 90% percent of the estimated tax owed for the year, or equaled 100% of the previous liability (i.e., if the previous year was a twelve-month period). In the case of a business taxpayer, the date changes to December 15th of the tax year for which estimated payments are being made. The language regarding safe harbor can be placed in the "Collection at Source" section of your ordinance, or the "Declarations" section, and we recommend the latter.

No penalties or interest shall be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period, or if 90% of the actual liability has been received.

6. In conjunction with estimated payments, the deposit dates have been changed. The following language specifies those dates, and should appear in the "Declarations" section of your ordinance:

Effective January 1, 2003, the Declaration of Estimated Tax to be paid [municipality] by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth (1/4) of the Declaration amount and at least a similar amount shall be paid on or before July 31st and October 31st of the taxable year, and January 31st of following year.

Effective January 1, 2003, such declaration of estimated tax to be paid to [municipality] by corporations and associations shall be accompanied by a payment of at least one-fourth of the Declaration amount and at least a similar amount shall be paid on or before June 15th, September 15th, and December 15th. In the case of a fiscal year taxpayer the second, third, and fourth quarterly estimated payments shall be due on the fifteenth day of the sixth, ninth, and twelfth months of the taxable year, respectively.

7. Board of Review/Appeal.

This provision is also referenced in point #7 of the HB 95 comments. HB 477, however, also contained changes to the law. It required that all municipalities have a Board of Review/Appeal, and set certain regulations regarding the Board. The regulations involved what must be a part of an appeal when one is filed, and dates by which filings must be made and decisions must be rendered. The following language should appear in your ordinance in the "Board of Review/Appeal" section:

Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this Ordinance may appeal there from to the Board of Review/Appeal within thirty (30) days from the announcement of such ruling or decision by the Tax Commissioner, provided the taxpayer making the appeal has filed with [municipality] the required return or other documents concerning the obligation at issue. 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. Such hearing shall be scheduled within 45 days from the date of appeal. The Board's ruling must be made within 30 days from the date of the closing of the record, shall be in writing and filed with the Administrator, and within 15 days of its decision shall send notice of its decision by ordinary mail to the taxpayer making the appeal.

The wording in bold type, in both paragraphs above, should be added to the wording shown as preceding it that presumably already exists in similar language in your ordinance.

8. Parsonage Allowance.

Municipalities must grant parsonage allowance. ORC 718 is not specific on the provisions, but simply says it must be an exclusion from income "pursuant to section 107 of the Internal Revenue Code". Accordingly, if you have not already done so, we suggest you add the following to the "Exemption" or "Exception" list of items excluded from municipal income tax:

Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The ordained minister must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and must have authority to perform all sacraments of the church.

SAID EMERGENCY ARISES BY VIRTUE OF THOSE REASONS SET FORTH IN
THE PREAMBLE HERETO WHICH CREATE THE IMMEDIATE NEED TO
AMEND ORDINANCES 01-06 AND 02-04, ORDINANCES PROVIDING FOR A
MUNICIPAL INCOME TAX AND DECLARING AN EMERGENCY

Passed this 7th day of March, 2005

Heraldine Johnson 3-7-05
Mayor Date

Attest:

Diana Lewis 3/7/05
Clerk/Treasurer Date