

ORDINANCE NO: 05-53
SPONSOR: MR. ADAMSON
INTRODUCED: MAY 18, 2005 (AMENDED JUNE 13, 2005)

AN ORDINANCE TO LEVY A ONE PERCENT (1%) INCOME TAX FOR THE VILLAGE OF NEW FRANKLIN AND ADOPTING AN INCOME TAX CODE FOR THE COLLECTION AND ENFORCEMENT OF THE INCOME TAX LEVY. ~~AND DECLARING AN EMERGENCY.~~

WHEREAS, Ohio Revised Code (ORC) Section 718.01 authorizes the legislative body of a municipality to levy a one percent (1%) income tax; and

WHEREAS, it is necessary to levy a tax to provide for General Fund and Capital improvements for the Village; and

WHEREAS, this Ordinance provides for the filing of returns and the providing of information by all those subject to the tax; and

WHEREAS, this Ordinance provides for the administration, collection and enforcement of the Village income tax and sets forth both civil and criminal violations for violation of the terms of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF NEW FRANKLIN, COUNTY OF SUMMIT, AND STATE OF OHIO, THAT:

SECTION ONE: PURPOSE

To provide funds for capital improvements and general municipal operations of the Village, there is levied a tax on income, including qualifying wages, commissions, and other compensation, and on net profits, as hereinafter provided.

SECTION TWO: DEFINITIONS

For the purposes of this chapter, 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.

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.

ASSOCIATION: A partnership, limited partnership, limited liability company, **(INCLUDING A SINGLE-OWNER LLC)**, Chapter S corporation as defined in Federal Tax Code, 26 U.S.C. 1361, or any form of unincorporated enterprise.

BOARD OF APPEAL: The Board created by and constituted as provided in Section Sixteen of this Ordinance.

BUSINESS: An enterprise, activity, profession, public utility, public service, 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, or foreign country or dependency, but not including Chapter S Corporations.

DOMICILE: The permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

EMPLOYEE: One who works for income, wages, salaries, commissions, or other type of compensation in the service and under the control of an employer.

EMPLOYER: An individual, association, corporation, governmental body, unit or agency, or any entity, whether or not organized for profit, that provides one or more people a salary, wage, commission or other compensation or other income basis.

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

GROSS RECEIPTS: The total revenue derived from sales, work done, or service rendered.

INCOME: Shall include, subject to limitations imposed by ORC 718, all monies derived from any source whatsoever, including but not limited to:

(A) All salaries, wages, commissions, other compensation and other income from whatever source received by residents of New Franklin Village.

(B) All salaries, wages, commissions, other compensation and other income from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in New Franklin Village.

(C) The portion attributable to the Village of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in New Franklin Village.

JOINT ECONOMIC DEVELOPMENT DISTRICT: The Districts created under Ohio Revised Code Sections 715.70 through 715.83, as amended from time to time.

NET PROFITS: (See "Adjusted Federal Taxable Income").

NON-RESIDENT: An individual domiciled outside the New Franklin Village.

NON-RESIDENT UNINCORPORATED BUSINESS ENTITY: An unincorporated business entity not having an office or place of business within this municipality.

PERSON: Every natural person, partnership, fiduciary, association, corporation or other entity. Whenever used in any clause prescribing and

imposing a penalty the term "person" as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

PLACE OF BUSINESS: Any bona fide office (other than a mere statutory office), factory, warehouse or other space which is regularly occupied and used by the taxpayer in carrying on any business activity, whether in person or through employees regularly in attendance.

QUALIFYING WAGE: 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 New Franklin Village. This definition is effective January 1, 2005.

RESIDENT: An individual domiciled in New Franklin Village.

RESIDENT UNINCORPORATED BUSINESS ENTITY: An unincorporated business entity having an office or place of business within this municipality.

TAX ADMINISTRATOR: The individual designated by the Ordinance, whether appointed or elected, to administer and enforce the provisions of the Ordinance.

TAXABLE INCOME: (See "Income").

TAXABLE YEAR: The corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code and, in the case of a return for a fractional part of the 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 by this Ordinance to pay a tax.

SECTION THREE: IMPOSITION OF TAX

A tax is hereby imposed on and after September 1, 2005 at the rate of one percent (1%) per annum pursuant to ORC Section 718.01.

SECTION FOUR: DETERMINATION OF INCOME SUBJECT TO TAX

A. Qualifying wages and other income earned or received by residents of the Village.

1. Qualifying wages:

a. To the amount shown in Box 5 of federal form W-2, add the ordinary income portion resulting from the sale, exchange, or other disposition of a stock option; federal section 401(k) and 457 amounts, if not already included in Box 5; supplemental unemployment benefits as described in federal section 3121(v)(2)(C); and wages exempt from Medicare withholding due to being employed with the employer prior to April 1, 1986.

b. From the amount shown in Box 5 of federal form W-2, deduct amounts attributable to federal section 125 plans, if those amounts have been included as part of Box 5.

2. Other income shall include, but not be limited to.

a. A shareholder's distributive share of net profits of an S corporation, to the extent that the distributive share represents wages as defined in federal section 3121(a) or net earnings from self-employment as defined in federal section 1402(a).

b. Effective 09/01/2005, total annual combined winnings over five thousand dollars (\$5,000) earned or derived from gaming, wagering, lotteries (including the Ohio State Lottery or other state lotteries) or games of chance.

B. Qualifying wages and other income earned or received by non-residents of the Village for work done or services performed or rendered in the Village.

C. Net profit from a business or profession conducted both within and without the boundaries of the Village shall be considered as having a taxable situs in the Village for purposes of this tax in the same proportion as the average ratio of:

1. The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the Village during the taxable period to the average original cost of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. Real property includes property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereupon by eight;

2. Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the Village to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed. Wages, salaries, and other compensation shall be included to the extent that they represent qualifying wages.

3. Gross receipts of the business or profession from sales made and services performed during the taxable period in the Village to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

If the foregoing apportionment formulas do not produce an equitable result, another basis may be substituted, under uniform regulation, so as to produce an equitable result.

D. As used in this section, "SALES MADE IN THE VILLAGE" means:

1. All sales of tangible personal property which is delivered within the Village regardless of where title passes if it is shipped or delivered from a stock of goods within the Village.

2. All sales of tangible personal property which is delivered within the Village regardless of where title passes even though transported from a point outside the Village if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales as the place where delivery is made.

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

E. Net profit from rental activity, not constituting a business or profession and conducted by non-residents, is subject to net profit tax only on property located in New Franklin Village. Rental activity shall be considered as not constituting a business or profession if gross receipts from the property are less than \$5,000 per month.

F. In determining income subject to taxation, losses from the operation of a business or profession cannot be used to reduce wages from employees or other employment compensation.

G. New Franklin Village does not permit loss carryforward or carryback.

SECTION FIVE: CONSOLIDATED RETURNS.

A. 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 New Franklin Village. However, once the affiliated group has elected to file a consolidated return or a separate return with New Franklin Village, the affiliated group may not change their method of filing in any subsequent tax year without written approval from New Franklin Village.

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 case any person operates a division, branch, factory, office, laboratory or activity within the Village, constituting a portion only of its total business, the Tax Administrator shall require such additional information as he may deem

necessary to ascertain whether net profits are properly allocated to New Franklin Village. If the Tax Administrator finds net profits are not properly allocated to the Village by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such division, branch, factory, office, laboratory, or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the Village.

SECTION SIX: EXEMPTIONS AND CREDITS.

A. The tax provided for herein shall not be levied on the following;

1. Military pay or allowance of members of the Armed Forces of the United States and of members of their reserve components, including the National Guard;

2. The gross income and gross receipts 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;

3. Unemployment insurance benefits, welfare benefits, and pensions paid as a result of retirement.

4. Proceeds of insurance paid by reason of death of the insured; retirement disability benefits, annuities, or gratuities not in the nature of compensation for services rendered from whatever source derived;

5. Alimony received;

6. Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from seasonal or casual entertainment, amusements, fund raising, sports events, and health and welfare activities when conducted by bona fide charitable, religious, or educational organizations and associations;

7. The income of individuals under 18 years of age.

8. Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the state from which the Village is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business);

9. Expenses deductible on federal form 2106, subject to audit and approval by the Tax Administrator;

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10. 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.

11. Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually.

12. Salaries, income, wages, commissions, other compensation, other income 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; and

13. Salaries, wages, commissions, other compensation, other income and net profits, including interest and dividends as provided in O.R.C. 718.01, the taxation of which is prohibited by the Constitution of the State or any act of the Ohio General Assembly limiting the power of the Village to impose net income taxes.

SECTION SEVEN: EFFECTIVE DATE.

Said tax shall be levied, collected, and paid with respect to the income, salaries, wages, commissions, and other compensations, and with respect to the net profits of businesses, professions, or other activities earned or received on and after September 1, 2005 and thereafter, until repealed, at the rate of one percent per annum.

SECTION EIGHT: RETURN AND PAYMENT OF TAX; REGISTRATION;

A. Except as herein provided, Village Council hereby directs that each person who was a resident of New Franklin Village any time during the taxable year shall, whether or not a tax is due thereon, make and file a return on or before April 15 of the year following the taxable year. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within 105 days from the end of such fiscal year or period.

This method of filing termed "Universal Filing" shall be in effect until such time as Council provides otherwise, subject to the exception set forth in Section 191.08(F) herein.

B. The return shall be filed with the Tax Administrator on a Village form or forms furnished by or obtainable upon request from the Tax Administrator or other form containing all information as indicated on the Village's normal return as specified in Section 718.05 (a) thru (c) of the ORC.

1. The aggregate amounts of income, salaries, wages, commissions, and other compensation and gross income and gross receipts from a business, association, profession, corporation or other activity, less allowable expenses incurred in the acquisition of such gross income and gross receipts earned or received during the preceding year and subject to said tax;

2. The amount of the tax imposed by this Ordinance on such compensation and profits, and;

3. Such other pertinent statements, information returns, or other information as the Tax Administrator may require, including but not limited to copies of all W-2 forms, 1099 Miscellaneous Income Forms, Page One and Two of Form 1120, 1120S (including (K-1), 2106, 1065,

Schedule C (including cost of goods manufactured and/or sold), Schedule E and any other Federal Schedules if applicable.

C. The Tax 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, excepting that for taxable year 2004 the extended due date shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. The taxpayer shall make the request by filing a copy of the taxpayers' Federal Extension form or by using a Village Extension form. The request for extension shall be filed not later than the last day for filing the Village's Income Tax Return as prescribed in this Ordinance Section Eight (A). A tentative return, accompanied by payment of the amount of tax shown to be due, shall be filed by the date the return is normally due. The Tax Administrator may deny the extension if the taxpayer's income tax account with New Franklin

Village is delinquent in any way. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended, but interest at the rate as imposed under Section Thirteen will be assessed on the unpaid tax due.

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

E. All individuals, businesses, employers, brokers or others doing business who engage persons, either on a commission basis, or as independent contractors, and are not subject to withholding shall indicate the total amount of earnings, payment, commission and bonuses to such as are residents of the Village, or who do business in the Village, supported by form 1099A attached, providing the same information as is required on Federal Form 1099 or Schedule C.

F. Retirees having no taxable income for municipal income tax purposes shall be exempt from these filing requirements and any subsequent penalties upon the filing of a registration form with the Tax Administrator in the manner prescribed. Such registration shall be in effect until that time in which the retiree registrant received taxable income for municipal income tax purposes, at which time the retiree shall be required to comply with the provisions of this Ordinance, including the filing requirements.

G. 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 Sections Fourteen and Eighteen. Such amended returns shall be on a form obtainable, upon request, from the Tax Administrator. A taxpayer may not change the method of accounting (i.e., cash or accrual) or appointment of net profits after the due date for filing the original return. Within three months from the final determination of any federal tax liability affecting the taxpayer's Village tax liability, such taxpayer shall make and file an amended Village return showing gross income or gross receipts subject to the Village tax based upon such final determination of federal tax liability.

and pay any additional tax shown due thereon or make claim for refund of any overpayment.

H. No refund shall be allowed unless a written request is presented to the Tax Administrator within three years of the date the taxes were due. (For refund of amounts taxed under a nonqualified deferred compensation plan, see Section 191.14C.)

I. When the taxpayer's tax return indicates that a refund is due and a refund is not issued within 90 days after the Tax Administrator has received proper verification and substantiation of the validity of the refund claim, interest at the rate of 6% per annum shall be paid on the amount to be refunded after the date shown validating the refund.

J. Information returns, schedules and statements required to support tax returns which are not complete shall be filed within the limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be deemed to be a violation. However, the taxpayer shall have ten days after notification by the Tax Administrator to file the items required by this Section.

K. Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this ordinance.

SECTION NINE: COLLECTION AT SOURCE

A. Each employer within or doing business within the Village, shall deduct at the time of payment of such salaries, wages, commissions or other compensation, the tax of (one) 1 percent of the gross salaries, wages, commissions or other compensation or other income due by the said employer to said employee before the last day of the month following the close of each calendar quarter, and make a return showing the amount of taxes so deducted and a record of payments showing that all taxes deducted during the quarter have been paid to the Village in accordance with the payment schedule prescribed by subsections (A), (B), and (C) hereof.

B. Each employer shall, on or before the last day of the month following the close of the calendar quarter ending March 31st, June 30th, September 30th, and December 31st, make a return and pay to the Tax Administrator the amount of taxes so deducted. However, any employer who deducts taxes in the amount of five hundred dollars or more per month on average, based on the prior tax year's withholdings, shall remit to the Tax Administrator on or before the 15th day of each month the taxes so deducted for the prior month. Also, by January 31st, each employer shall file a withholding reconciliation prescribed by and attainable from the Tax Administrator, attaching form(s) W-2, 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 employees and such other information as may be required by the rules and regulations adopted by the Tax Administrator.

C. Such employer shall be liable for the payment of the required tax to be deducted and withheld, whether or not such taxes have in fact been withheld. Every employer or officer of a corporation is deemed to be a trustee for this municipality in collecting and holding the tax required under this ordinance to be withheld and the funds so collected by such withholding are deemed to be trust funds.

D. All officers of a corporation or the employees having control or supervision or charged with the responsibility of filing the return and making payment, shall be personally liable for failure to file the return or pay the tax due as required herein. The dissolution, bankruptcy, or reorganization of any such employer does not discharge any officer's or employee's liability for a prior failure of such business, to file a return or pay taxes due.

E. All employers that provide any contractual service within the Municipality, and who employ subcontractors in conjunction with that service, shall provide the Municipality the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withholding requirements under this ordinance.

SECTION TEN: DECLARATIONS

A. Every person anticipating any taxable income not subject to the provisions of Section Nine (Collection at Source), or who engages in any business, profession, enterprise, or activity subject to the tax imposed by Section Six, shall file a declaration setting forth the estimated annual income, or the estimated profit or loss from such business activity, together with an estimate of the amount of tax due thereon. The declaration shall be filed quarterly upon a form furnished or obtainable from the Tax Administrator, or on other forms deemed acceptable by the Tax

Administrator. The estimated amount of tax due annually may be amended each quarter to reflect the tax due under this Ordinance.

B. The declaration shall be accompanied by a payment of at least one-fourth of the estimated annual tax for such year and shall be paid on or before the due dates as follows:

1. Effective January 1, 2006 Such declaration of estimated tax to be paid New Franklin Village by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth (1/4) of 90% of the estimated annual tax 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. 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.

2. Effective January 1, 2006, such declaration of estimated tax to be paid to the New Franklin Village by corporations and associations shall be accompanied by a payment of at least one-fourth of 90% of the estimated annual tax 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.

C. Those taxpayers reporting on a fiscal year basis must file and pay the annual declarations of estimated tax and the annual return and tax due thereon using the corresponding calendar quarter of the fiscal year.

D. If a taxpayer's total quarterly estimate payments do not equal at least ninety percent of the total tax liability as established on the taxpayer's annual tax return or if the taxpayer's total quarterly estimate payments do not equal the taxpayer's tax liability for the preceding year, provided that such preceding year's liability was not zero, interest and penalty shall be assessed at the following rates and in the following manner:

1. The taxpayer's annual tax liability as established on the taxpayer's annual return will be divided by four to determine the amount of tax which should have been paid quarterly on an estimated basis. The difference between the amount of tax which should have been paid quarterly on an estimated basis and the amount of tax actually paid quarterly on an estimated basis shall be subject to penalty of one percent per month or fraction thereof and interest of one percent per month or fraction thereof from the due date of each quarterly installment to the date the annual return is due or the tax paid thereon, whichever is earlier.

2. The Tax Administrator may waive imposition of penalty and/or interest on underpayments of estimated taxes for good cause shown under guidelines established by the Board of Appeal.

3. No penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the New Franklin Village on the first day of January in the year in which they became subject to estimated payments, nor shall penalties or interest 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.

SECTION ELEVEN: DUTIES OF THE TAX ADMINISTRATOR

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

B. It shall be the duty of the Tax Administrator to enforce payment of all taxes owing the Village, to keep accurate records for a minimum of six 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 Tax 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 Appeal, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and administration and enforcement of the provisions of this Ordinance, including provisions for the reexamination and correction of returns and payments.

D. The Tax Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments not to exceed six months, when the taxpayer has proved to the Tax 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 the taxpayer files proper returns for all amounts owed by him under this Ordinance. The Tax Administrator may also authorize an extension of time for not more than six months in addition to the initial six months extension for the payment of such taxes due upon written application of the taxpayer. Denial of such extension by the Tax Administrator may be appealed to the Board of Appeal as set forth in Section Sixteen of this Ordinance. Additional extensions shall be granted only by the Board of Appeal.

E. Failure to make any deferred payment when due, shall cause the total unpaid balance, including penalty and interest, to become payable on demand and the provisions of Section Fourteen and Fifteen of the Ordinance shall apply.

F. In any case where a taxpayer or employer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Administrator may determine the amount of tax appearing to be due the Village from the taxpayer or employer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any. Such assessment shall be collected in accordance with the rules and regulations as set forth by the Tax Administrator and approved by the Board of Appeal.

G. Subject to the consent of the Board of Appeal, the Tax Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section Thirteen of this Ordinance.

SECTION TWELVE: INVESTIGATIVE POWERS OF THE TAX ADMINISTRATOR; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

A. The Tax Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records, and federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Income Tax 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 has been 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 within 10 days upon written request

by the Tax Administrator or his duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as hereby authorized.

B. The Tax 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 effect 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.

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 any order or subpoena of the Tax Administrator authorized hereby shall be deemed a violation of this Ordinance, punishable as provided in Section Fifteen hereof.

D. Any information gained as a result of any returns, investigations, hearings or verifications required or authorized by this Ordinance shall be confidential, and no disclosure thereof shall be made except to municipal, county, jurisdiction, or unless disclosure is necessary to the conduct of a hearing before the Board of Appeal. Any appointed employee divulging information in violation of this Section shall be subject to dismissal. Any person divulging such information in violation of this section shall be fined not more than five hundred dollars or imprisoned not more than six months, or both. Each disclosure shall constitute a separate offense.

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

1. The Village Clerk/Treasurer
2. The Tax Administrator
3. Employees of the Income Tax Division
4. The Village Solicitor

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

SECTION THIRTEEN: INTEREST AND PENALTIES

A. All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this Ordinance and remaining unpaid after they become due, effective 09/01/2005, shall bear interest at the rate of one and one-half percent (1-1/2%) per month until paid in full.

B. In addition to interest as provided in Paragraph A hereof, penalties based on the unpaid tax are hereby imposed as follows effective 09/01/2005:

1. For failure to pay taxes due – other than taxes withheld, one and one-half percent (1-1/2%) per month, or \$20.00, whichever is greater.

2. For failure to remit taxes withheld from employees, five percent (5%) per month, or fifteen percent (15%) of the total tax due, whichever is greater.

3. Penalties shall be imposed by the Tax Administrator on those taxpayers failing to file their tax returns when due, and who are not otherwise exempt from filing requirements by virtue of Section Four. A civil penalty of twenty-five dollars shall be imposed for the first instance of failure to file when due, and fifty dollars for each subsequent instance.

C. Exceptions – a penalty shall not be assessed on an additional tax assessment made by the Tax Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Administrator. Furthermore, 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 the final determination of the federal tax liability.

D. At the Tax Administrator's discretion, the Tax Administrator may abate up to five thousand dollars of penalty or interest, or both, and upon recommendation of the Tax Administrator, the Board of Appeal may abate penalty or interest, or both, of a taxpayer who appeals for such abatement under the provisions of Section Sixteen (Board of Appeal) subsequent to a denial of such abatement by the Tax Administrator.

E. Any person required to withhold the tax who knowingly fails to withhold such tax, or pay over such tax or knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a penalty equal to the total amount of the tax evaded, or not withheld, or not paid over. No other penalty under this Section shall be applied to any offense to which this penalty is applied.

**SECTION FOURTEEN: COLLECTION OF UNPAID TAXES;
REFUNDS.**

A. All taxes imposed by this Ordinance shall be collectable, together with any interest and penalties thereon by Civil Suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of twenty-five percent or more of income subject to this tax, or 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. In the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover Municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. However, in those cases in which the Commission 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 Tax Administrator shall be one year from the time of the final determination of the Federal tax liability.

B. Those officers or employees having control or supervision of, or charged with, the responsibility of filing the return and making payments for a corporation or association shall be personally liable for failure to file the return or pay the taxes due as required. The dissolution, bankruptcy, or reorganization of any employer does not discharge the officers' or employees' liability for a prior failure of such business to file a return or pay the taxes due.

C. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made or the return was due, or within three months after final determination of the Federal tax liability, whichever is later. However, the following shall apply regarding refunds of tax withheld from non-qualified deferred compensation plans (NDCP):

1. A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.

2. A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.

3. Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified compensation.

D. Additional amounts of less than one dollar shall not be collected or refunded, unless such assessment results from income that the taxpayer has failed to report.

E. Income tax that has been deposited with New Franklin, but should have been deposited with another municipality or Joint Economic Development District, is allowable by New Franklin as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with New Franklin, but was deposited with another municipality or Joint Economic Development District, shall be subject to recovery by New Franklin. New Franklin will allow a non-refundable credit for any amount owed New Franklin that is in excess of the amount to be refunded by the other municipality or Joint Economic Development District, as long as the tax rate of the other municipality or Joint Economic Development District is the same or higher than the New Franklin tax rate. If the New Franklin tax rate is higher, the tax representing the net difference of the rates is also subject to collection by New Franklin.

SECTION FIFTEEN: VIOLATIONS – PENALTIES.

A. A person shall be guilty of a misdemeanor of the third degree, and shall be fined not more than \$500.00 and/or imprisoned not more than sixty days for each offense, if he or she shall:

1. Fail, neglect, or refuse to make any return or declaration required by this Ordinance;
2. Make any incomplete, false, or fraudulent return;

3. Fail, neglect, or refuse to pay the tax, penalties or interest imposed by this Ordinance;

4. Fail, neglect or refuse to withhold the tax from his or her employees or remit such withholding to the Tax Administrator;

5. Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or her books, records, papers, and copies of Federal Income Tax Returns relating to the income or net profits of a taxpayer;

6. Fail to appear before the Tax Administrator and to produce his or her books, records, papers, or copies of Federal Income Tax Returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator;

7. Refuse to disclose to the Tax Administrator any information with respect to income or net profits of a taxpayer;

8. Fail to comply with the provisions of this Ordinance or any order or subpoena of the Tax Administrator authorized hereby;

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

10. Fail to use ordinary diligence in maintaining proper records of employee's residence address, total wages paid and the Village of New Franklin tax withheld, or to knowingly give the Tax Administrator false information;

11. Attempt to do anything whatever to avoid payment of the whole or any part of the tax, penalties, or interest, imposed pursuant to this Ordinance.

B. All prosecutions under this Section must be commenced within three years from the time of the offense complained of (see O.R.C. 718.06); provided that, in case of fraud, failure to file a return, or the omission of twenty-five percent 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, or declaration, from filing such forms, or paying the tax.

SECTION SIXTEEN: BOARD OF APPEAL.

A. A Board of Appeal, in compliance with Section 718.11 ORC., is created consisting of four members; the Village Clerk/Treasurer, and three residents of the New Franklin Village which shall be appointed by Village Council. One resident shall be appointed to be concurrent with the term of the Mayor and the other residents' term shall be concurrent with the term of the Village Clerk/ Treasurer. All rules and regulations and amendments or changes thereto, which are adopted by the Tax Administrator under the authority conferred by this Ordinance, must be approved by the Board of Appeal before the same become effective. After such approval, such rules, regulations, amendments, and changes shall be filed with the Clerk of Council and shall be open to public inspection.

B. Any person dissatisfied with any ruling or decision of the Tax Administrator which is made under the authority conferred by this Ordinance or Rules and Regulations, and who has filed the required returns or other documents pertaining to the municipal income tax obligation at issue, may appeal thereof to the Board of Appeal within thirty days from the announcement of such ruling or decision by the Tax Administrator. The request shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board of Appeal shall, upon hearing the appeal, have jurisdiction to affirm, reverse, or modify any such ruling or decision or any part thereof. Such hearing shall be scheduled within forty-five days from the date of appeal. The Board of Appeal ruling must be made within ninety days from the date of the hearing; the Board shall send a notice of its decision by ordinary mail to the petitioner within fifteen days after issuing a decision.

C. Any person dissatisfied with any ruling or decision of the Board of Appeal may appeal thereof to a court of competent jurisdiction within sixty days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after 2005, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

D. One of the citizen appointees shall be elected as Chairman of the Board of Appeal, and the Village Clerk/Treasurer shall serve as Secretary thereof. A majority of the members of the Board of Appeal shall constitute a quorum. The Board of Appeal shall adopt its own procedural rules and shall keep a record of its transactions. All hearings on appeal by the Board shall be conducted privately, and the provisions of Section Twelve, hereof with reference to the confidential character of information required to be disclosed by the Ordinance shall apply to such matters as may be heard before the Board of Appeal on appeal.

SECTION SEVENTEEN: ALLOCATION OF FUNDS.

The funds collected under the provision of this Ordinance shall be deposited in the special Income Tax Fund and said funds shall be disbursed at the end of each month in the following manner, to wit:

1. Such part thereof as shall be necessary to defray all costs of collecting the tax and the cost of administering and enforcing the provisions of this Ordinance.

2. ~~Thirty-five percent of net available income tax receipts received annually shall be used for the Street Fund;~~

2.3. ~~Sixty-five percent~~ THE BALANCE of net available income tax receipts received annually shall be used for the General Fund.

SECTION EIGHTEEN: CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY OR JOINT ECONOMIC DEVELOPMENT DISTRICT

A. Where a resident of the New Franklin Village is subject to a municipal income tax in another municipality or Joint Economic Development District, he or she shall not pay a total municipal income tax on the same income greater than the tax imposed at the highest rate.

B. Every individual taxpayer who resides in the Village but receives net profits, salaries, income, wages, commissions, other personal service compensation, or a distributive share of net profits from a resident or nonresident unincorporated business entity or association of which he is a partner or owner, for work done or services performed or rendered outside of

the Village, if it is made to appear that he or she or such business entity has paid a municipal income tax on or with respect to the same income taxable under this Ordinance to another, shall be allowed a credit against the tax imposed by this Ordinance in the amount so paid by him or higher, in his or her behalf, or by such business entity, to the other municipality or Joint Economic Development District. In no event, however, shall any municipal income tax to the extent paid to another municipality or Joint Economic Development District and allowed as a credit hereunder be deductible in computing the net profit of such taxpayer or such business entity. In addition, the credit shall not exceed the tax assessed by this Ordinance on income earned in such other municipality or municipalities or Joint Economic Development Districts where the tax is paid.

C. A claim for refund or credit under this section shall be made in such manner as the Tax Administrator may by regulation provide.

D. No credit will be given unless the taxpayer claims such credit on his final tax return or other form prescribed by the Tax Administrator, and presents such evidence, i.e. W-2 form(s) of the payment of a similar tax to another municipality or Joint Economic Development District.

E. If, after filing a New Franklin Village return and claiming the 1% credit on his return, a taxpayer receives a refund of all and/or a portion of the taxes paid to another municipality or Joint Economic Development District, the taxpayer is required to file an amended New Franklin Village Tax Return and pay the appropriate 1% tax due the New Franklin Village as reflected by the amended return. (Sec Fourteen (C) for nonqualified deferred compensation refunds.)

F. The Tax Administrator, or any duly authorized agent or employee, may exchange information with the Tax Administrator or his authorized agent, or employees or other taxing jurisdictions for the purpose of verifying any claim for credit by New Franklin Village residents, or for the purpose of verifying any claims for credit for taxes paid to the New Franklin Village by residents of such other taxing jurisdictions, and may enter into agreements for such purpose.

SECTION NINETEEN: DUTIES OF OWNERS OF RENTAL OR LEASED PROPERTY

A. For the purposes on this section, "tenant" means:

1. If there is a written lease or rental agreement, the person or persons who signs the written lease or rental agreement with the owner.
2. If there is an oral lease or rental agreement, the person or persons with whom the owner enters into the oral lease or rental agreement.

B. All property owners of rental or lease property who rent to tenants of residential, commercial or industrial premises, shall file with the Tax Administrator a report showing the names and address of each such tenant who occupies residential, commercial or industrial premises within the corporation limits of the Village.

C. Within thirty days after a new tenant occupies residential, commercial or industrial rental property of any kind within the Village, all property owners of rental or leased residential, commercial or industrial property who rent to tenants, shall file with the Tax Administrator, a report showing the names and addresses of each such tenant who occupies residential, commercial or industrial premises within the corporation limits of the Village.

D. Within thirty days after a tenant vacates a rental or leased residential, commercial or industrial property located within the Village, the property owner of such vacated rental or lease property shall file with the Tax Administrator a report showing the date of vacating from the rental or leased residential, commercial or industrial property and identifying such vacating tenant.

SECTION TWENTY: SAVING CLAUSE

This Ordinance shall not apply to any person, firm, corporation or to any property, as to whom or which it is beyond the power of Council to impose the tax herein provided for. If any sentence, clause, section or part of this Ordinance, or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause,

sentence, section, or part of this Ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of the Ordinance. It is hereby declared to be the intention of the Council of the New Franklin Village that this Ordinance would not have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

SECTION TWENTY-ONE: COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE

A. This Tax Ordinance and all preceding Tax Ordinances, including all amendments thereto, shall continue to be effective insofar as the collection of taxes levied thereunder until all of said taxes are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of said Ordinance shall have been fully terminated, subject to the limitations contained in Sections Fifteen and Sixteen hereof.

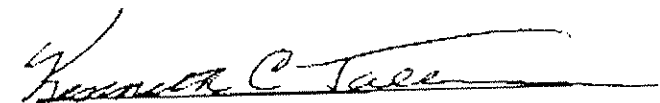
B. Annual returns due for all of any part of the last effective year of this Ordinance shall be due on the date provided in Sections Seven and Eight of this Ordinance as though the same were continuing.

SECTION TWENTY-TWO: ADOPTION OF ORDINANCE

All formal actions of the Village Council of New Franklin Village, Ohio relating to the adoption of this ordinance, and all deliberations of the Village Council and New Franklin Village, Ohio and any of its committees leading to such action, were in meetings open to the public as required by law.

ADOPTED: July 20, 2005


Susan M. Cooke, Clerk/Treasurer


President, Pro-Tem

APPROVED: July 20, 2005


Al Bolas, Mayor

ENACTED EFFECTIVE: September 1, 2005

ROLL CALL:

Mr. Adamson, yes.

Mrs. Jones, no.

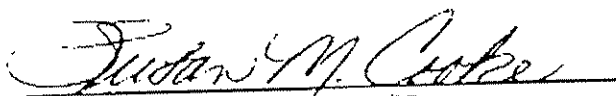
Mr. Lee, yes.

Mr. Mobley, no.

Mr. Stock, yes.

Mr. Tallman, yes.

Akron Legal News publications on August 1, 2005 and August 8, 2005.


Susan M. Cooke, Clerk/Treasurer