

VILLAGE OF EMPIRE, OHIO

Income Tax Ordinance

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Section 1. PURPOSE

To provide funds for the purpose of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the Village of Empire, Ohio there shall be, and is hereby levied, a tax on qualifying wages and on the net profits as hereinafter provided.

Section 2. DEFINITIONS

As used in the ordinance, the following words shall have the meaning ascribed to them in this Section 2 except as and if 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.

Association: A partnership, limited partnership, limited liability company, or any other form of unincorporated enterprise, including S Corporations as defined in the federal tax code, 26 U.S.C. 1361, or any other form of unincorporated enterprise owned by one or more persons.

Board of Review: The Board created by and constituted as provided in Section 13 of the ordinance.

Business: An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity; including but not limited to the renting or leasing of property, real, personal or mixed.

Corporation: A corporation, but not including S Corporations as defined in the federal tax code, 26 U.S.C. 1361, 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.

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

Employee: A person, in the service of and under the control of an employer, who works for qualifying wages.

Employer: An individual, partnership, association, corporation, governmental body, unit or agency, or any entity, whether or not organized for profit, who or that employs one or more persons on a qualifying wage basis.

Fiscal Year: An accounting period of twelve (12) months or less ending on any day other than December 31th.

Generic Form: An electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or separate requests for refunds that contain all the information required on the Village of Empire's regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms without altering Empire's procedures for processing forms.

Gross Receipts: The total revenue derived from sales, work done, or service rendered.

Net Profits: 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 (i.e., cash or accrual) 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; and otherwise adjusted to the requirements of this ordinance.

Nonresident: An individual domiciled outside the Village of Empire, Ohio.

Nonresident Unincorporated Business Entity: An unincorporated business entity not having an office or place of business within the Village of Empire, Ohio.

Pass-through Entity: A partnership, S Corporation, Limited Liability Company, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code. Unless otherwise specified, of the purposes of the ordinance the tax treatment for pass-through entities is the same as "Association".

Person: Every natural person, partnership, fiduciary, association or corporation. Wherever 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 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.

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 a Municipality.

Resident: An individual domiciled in the Village of Empire, Ohio.

Resident Unincorporated Business Entity: An unincorporated business entity having an office or place of business within the Village of Empire, Ohio.

Tax Administrator: The individual designated by the ordinance, whether appointed or elected, to administer and enforce the provisions of the ordinance.

Taxable Income: Income minus the deductions and credits allowed by this ordinance.

Taxable Year: 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, the period for which such return is required to be made.

Taxpayer: A person, whether an individual, partnership, association or any corporation or other entity, required hereunder to file a return and/or pay a tax.

Village: The Village of Empire, Ohio.

Section 3. IMPOSITION OF TAX

A. An annual tax for the purposes specified in Section 1 hereof shall be imposed on and after _____, 2014 at the rate of one percent (1%) per annum upon the following:

1. On qualifying wages earned and/or received during the effective period of the ordinance by residents of the village.

2. On Qualifying wages earned during the effective period of the ordinance by nonresidents for work done or services performed or rendered in the Village. Separation pay, termination pay, reduction-in-force pay, and other compensation paid as a result of an employee leaving the service of an employer shall be allocable only to h Village.

(a) The Village shall not, however, tax the compensation of a nonresident individual who will be deemed to be an occasional entrant if all of the following apply:

(1) The compensation is paid for personal services performed by the individual in the Village on twelve or fewer days during the calendar year, in which case the individual shall be considered an occasional entrant for purposes of the Village income tax. A day is a full day or any fractional part of a day.

(2) In the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the Village and the individual pays tax on compensation described in Section 3A2 to the municipality, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual.

(3) The individual is not a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the Village.

(b) Beginning with the thirteenth day an individual deemed to have been an occasional entrant to the Village performs services within the Village, the employer of said individual shall begin withholding the Village income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the Village in accordance with the requirements of this 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 Village 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 the Village.

3. (a) On the portion attributable to the Village of the net profits earned during the effective period of this ordinance of all resident unincorporated businesses, professions, associations, or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the Village.

(b) On the portion of the distributive share of the net profits earned and/or received during the effective period of this ordinance of a resident partner or owner of a resident unincorporated business entity not attributable to the Village and not levied against such unincorporated business entity. Distributive shares earned by S corporation shareholders shall only be taxable to the extent of wage income, if any, that is represented in the distributive share.

4. (a) On the portion attributable to Village of the net profits earned during the effective period of this ordinance of all nonresident unincorporated businesses, professions, associations, or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in the Village, whether or not such business entity has an office or place of business in the Village.

(b) On the portion of the distributive share of the net profits earned and/or received during the effective period of this ordinance of a resident partner or owner of a nonresident unincorporated business entity not attributable to the Village and not levied against such unincorporated business entity. Distributive shares earned by S corporation shareholders shall only be taxable to the extent of wage income, if any, that is represented in the distributive share.

5. The tax imposed on resident associations or unincorporated entities, and non-resident associations and/or unincorporated entities doing business in the Village, and owned by one or more persons is upon the shareholders, owners, and partners, but the associations and entities shall collect and remit the tax on behalf of it's shareholders, owners, and partners.

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

B. Operating loss carry forward.

1. The portion of a net operating loss allocable to the Village may be applied against the portion of the profit of succeeding year(s) allocable to the Village until exhausted but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.

2. ~~The portion of a new operating loss sustained shall be allocated to the Village in the same manner as provided herein for allocating net profits to the Village.~~

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

C. Application of business losses.

1. Excluding rentals, a taxpayer's net profits and losses from businesses operating within the Village may be combined to determine the profit or loss attributable to operations within the Village.

2. A taxpayer's net profits and losses from rentals within the Village may be combined to determine the profit or loss attributable to rental operations within the Village.

3. A loss from the operation of a business (including rentals) may not be used to offset the income on a taxpayer's W-2 Form.

D. Consolidated returns.

1. 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 the Village.

2. In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, or in case any person operates

a division, branch, factory, office, laboratory or activity with 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 the Village. If the Tax Administrator finds net profits are not properly allocated to the Village by reason of transaction 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.

E. Exceptions.

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

1. The Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the National Guard.
2. 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 and only to the extent that the said income is exempt from federal income tax.
3. Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from seasonal or casual entertainment, amusement, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations, and only to the extent that the said income is exempt from Federal Income Tax.
4. Social security benefits, unemployment compensation (excluding supplemental unemployment compensation), payments from pension plans or similar payments, including disability payments received from private industry, or local, state, or federal governments, or from charitable, religious or educational organizations, and the proceeds of sick, accident, or liability insurance policies. The disability benefits excludable must be a permanent nature as determined by a physician or government entity and must not be subject to the federal Medicare tax.
5. Proceeds of insurance paid by reason of the death of the insured; pensions, annuities or gratuities not in the nature of compensation for services rendered, from whatever sources derived.
6. Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exclusion does not apply to compensation paid for lost salaries or wages or to compensation from punitive damages.

7. Gains from involuntary conversions, cancellations of indebtedness, items of income already taxed by the State of Ohio 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).

8. Compensation paid to a precinct election official, to the extent that such compensation does not exceed \$1,000 annually.

9. Income of all in individuals under 18 years of age, whether residents or nonresidents.

10. Alimony and child support received.

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

12. Unreimbursed employee business expenses deductible on federal form 2106. The deductions shall be subject to federal guidelines for 2106 expenses, and subject to review and audit by the Village's Tax Administrator. Expenses must be allocated proportionate to the related income.

13. 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/or is prohibited by the Constitution of the State of Ohio or any act of the Ohio general Assembly limiting the power of a municipality to impose net income taxes.

Section 4. EFFECTIVE DATE

Said tax shall be levied, collected and paid with respect to qualifying wages, and net profits of businesses, professions, or other activities, earned on and after Aug 1, 2014.

Section 5. RETURN AND PAYMENT OF TAX

A. Each taxpayer shall, whether or not a tax be due thereon, make and file a return on or before April 15th of the year following the effective date of this ordinance, and on or before April 15th 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 on or before the 15th day of the fourth month from the end

of such fiscal year or period. In any year in which the federal filing date is other than April 15th or other than the 15th day of the fourth month for a fiscal year or other period, the Village filing date shall be adjusted to match the federal filing date.

1. Retirees having no income considered taxable for Village income tax purposes may file, with the Tax Administrator, a written request for exemption from these filing requirements, and shall be exempt if the request is approved by the Tax Administrator. The request may be submitted by indicating, on the taxpayer's annual tax return, the retirement date and the entity from which retired.

2. The exemption shall be in effect until such time as the retiree receives income taxable to the Village, at which time the retiree shall be required to comply with all applicable provisions of this ordinance.

B. The return shall be filed with the Tax Administrator on a form or forms furnished by or obtainable upon request from the Tax Administrator, or on an acceptable generic form as defined in this Ordinance, setting forth:

1. The aggregate amounts of qualifying wages earned and/or received and gross receipts from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross receipts earned during the preceding year and subject to said tax;

2. The amount of the tax imposed by this ordinance on such earnings and net 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 of form 1040, 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, schedule F and any other Federal Schedules, if applicable.

C. Extensions.

The extended due date for individuals shall be the last day of the month following the month to which the taxpayer's federal income tax due date has been extended. For businesses, if the extension is filed through the Ohio Business Gateway the extended due date shall be the last day of the month to which the due date of the federal income tax return has been extended. If not filed through the Ohio Business gateway 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 Tax administrator may deny the extension if the taxpayer fails to file the request timely, fails to file a copy of the federal extension request, or if the taxpayer's income tax account with the Village is delinquent in any way. The Tax 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.

D. 1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Tax Administrator the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 6 of this ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 7 of this ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 14 hereof, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.

2. 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 (\$1.00) shall be collected or refunded.

E. Amended returns.

1. Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 11 and Section 14. Such amended returns shall be on a form obtainable on request from the Tax Administrator. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the due date for filing the original return.

2. Within three (3) 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 income subject 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.

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

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

Section 6. COLLECTION AT SOURCE

A. Each employer within or doing business within the Village shall deduct at the time of the payment of qualifying wages the tax of one percent (1%) of the qualifying wages due by the employer to the employee, and shall make a return and pay to the Tax Administrator the amount of taxes so deducted. Said returns shall be on a form or forms prescribed by or acceptable to the Tax Administrator and shall be subject to the rules and regulations prescribed therefore by the Tax 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. Payments shall be remitted in accordance with the following provisions:

1. If the taxes withheld by an employer for the Village during the previous tax year averaged five hundred dollars (\$500) per month or more, the employer shall remit payment of the withheld taxes to the Village on or before the last day of the month following the month for which the taxes were withheld.

2. If the taxes withheld by an employer for the Village during the previous tax year averaged less than five hundred dollars (\$500) per month, payments may be remitted quarterly on or before the last day of the month following the end of the quarter for which the taxes were withheld. Authorization for any employer to remit taxes quarterly under this subsection may be withdrawn by the Tax Administrator, should the Tax Administrator determine that the employer is not in compliance with the withholding requirements and/or other requirements of this ordinance.

B. Such employer in collecting said tax shall be deemed to hold the same, until payment is made by such employer to the Village as a trustee for the benefit of the Village and any such tax collected by such employer from his employees shall, until the same is paid to the Village, be deemed a trust fund in the hands of such employer.

C. On or before February 28th of each year each employer shall file a withholding return setting forth the names, addresses, and social security numbers of all employees from whose compensation the tax was withheld, or should have been withheld, during the preceding calendar year for the Village and the amount of tax actually withheld from his employees, and such other information as may be required by the Tax Administrator.

D. On or before February 28th of each year all individuals, businesses, employers, brokers or other who engage persons, either on a fee or commission basis or as independent contractors and not employees (those who are not subject to withholding) must provide the Village with copies of all 1099 Miscellaneous Income Forms and/or a list of names, addresses, Social Security

numbers or federal identification numbers and a total amount of earnings, payments, bonuses, commissions and/or fees paid to each person.

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

F. The officer or employee having control or supervision, or charged with the responsibility of withholding the tax, filing the return and/or making the payment, shall be personally liable for the 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 an officer's or employee's liability for a prior failure of such business to file a return or pay taxes due.

Section 7. DECLARATIONS

A. Every person who anticipates any taxable income which is not subject to Section 6 hereof and/or from which tax will not be fully withheld, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 3 hereof, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any. However, if a person's income is income from which the tax will be fully withheld and remitted to the Village in accordance with Section 6 hereof, or the amount of the estimated tax not withheld or not fully withheld is less than one hundred dollars (\$100), such person need not file a declaration.

B. 1. Such declaration shall be filed on or before April 15th of each year during the life of this ordinance, or on or before the fifteenth day of the fourth month of the date the taxpayer becomes subject to the tax for the first time.

2. Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.

C. 1. Such declaration shall be filed upon a form furnished by or obtainable from the Tax Administrator, or on an acceptable generic form as defined in this Ordinance. Credit shall be taken for the Village tax to be withheld from any portion of such income. In accordance with the provisions of Section 14 hereof, credit may be taken for tax to be paid to or to be withheld and remitted to other taxing municipalities.

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

D. Such declaration of estimated tax to be paid to the Village shall be accompanied by a payment of at least one fourth (1/4) of the estimated non-withheld and/or under-withheld tax due, and at least a similar amount shall be paid on or before the 15th day of July and October of such year and January 15th of the following year.

1. If the taxpayer is an individual, at least a similar amount shall be paid on or before the last day of the seventh, tenth, and thirteenth months after the beginning of the taxpayer's taxable year, provided that in case an amended declaration has been filed, or the taxpayer is taxable for a portion of the year only, the unpaid balance shall be paid in equal installments on or before the remaining payment dates.

2. If the taxpayer is a corporation or association, at least a similar amount shall be paid on or before the fifteenth day of the sixth, ninth, and twelfth months of the taxable year; provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

E. No penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who qualifies under one or more of the following:

1. The resident taxpayer was not domiciled in the Village on the first day of January in the year in which they became subject to estimated payments.

2. The resident 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 and the taxpayer filed a return for that year.

3. Taxpayer has remitted an amount equal to ninety percent of the final tax liability for the tax year due on or before April 15th of the current year.

F. On or before the 15th 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 to the Village of Stratton shall be paid therewith in accordance with the provisions of Section 5 hereof.

Section 8. DUTIES OF THE TAX ADMINISTRATOR

A. 1. It shall be the duty of the Tax 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.

2. It shall be the duty of the Tax Administrator to enforce payment of all taxes owing to the Village, to keep accurate records for a minimum of six (6) 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.

B. 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 Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this ordinance, including provisions for the re-examination and correction of return. Taxpayers are hereby required to comply not only with the requirements of this ordinance, but the rules and regulations.

C. The Tax Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when 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 the ordinance. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Section 11 and Section 12 of the ordinance shall apply.

D. In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Administrator may determine the amount of tax appearing to be due the Village from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any. Such determination may be modified or amended based upon information or data subsequently secured by or made available to the Tax Administrator. If the taxpayer fails to respond to the assessment within thirty (30) days the tax, penalties, and interest assessed shall become due and payable and collectible as are other unpaid taxes, penalty, and interest.

E. Subject to the consent of the Board of Review or pursuant to regulation approved by said board, the Tax Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 10 of this ordinance.

**Section 9. 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 and State income tax returns of any employer or of any taxpayer or person subject to, or whom the 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 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, within ten (10) calendar days following a 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 are 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 affect such income, and for this purpose may compel the production of books, papers, records and federal and State 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 and State 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 9 or with an order or subpoena of the Tax Administrator authorized hereby shall be deemed a violation of this ordinance, punishable as provided in Section 12 hereof.

D. 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 with proper judicial order. Any person divulging such information in violation of this ordinance shall, upon conviction thereof, be deemed guilty of a misdemeanor of the third degree and shall be subject to a fine or penalty of not more than five hundred dollars (\$500) or imprisoned for not more than sixty (60) days, or both. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the Village who violates the provisions of this Section 9 relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

E. Retention of records.

Every taxpayer shall retain all records necessary to compute his tax liability for a period of six (6) years from the date his return is filed, or the withholding taxes are paid.

Section 10. INTEREST AND PENALTIES

A. All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this ordinance and remaining unpaid after they become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of one-half percent (.5%) per month or fraction of a month thereof.

B. In addition to interest as provided in paragraph A above, penalties based on the unpaid tax are hereby imposed as follows:

1. For failure to pay tax due, other than taxes withheld, one percent (1%) per month or fraction of a month thereof.

2. For failure to remit taxes withheld from employees, five percent (5%) per month or fraction of a month thereof. The total penalty shall not exceed fifty percent (50%) of the tax due.

3. Any person required to file a tax return with the Village and who fails to file, or to timely file, a return shall be liable to pay a penalty of twenty-five dollars (\$25.00) for the first instance and fifty dollars (\$50) for each subsequent instance, even if no tax is found to be due.

C. 1. 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.

2. In the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessments resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after final determination of the federal tax liability.

D. Upon recommendation of the Tax Administrator, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Tax Administrator to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest, or both.

Section 11. COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

A. All taxes imposed by this ordinance shall be collectible, together with any interest and penalties thereon, by suit, as other debts are recoverable. All additional assessments shall be made and all civil actions to recover municipal income taxes and penalties and interest thereon shall be brought within three (3) years after the tax was due or the return was filed, whichever is later. However, 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.

B. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made or the return was due, whichever is later. In addition, 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.

C. 1. Income tax that has been deposited with the Village, but should have been deposited with another municipality, is allowable by the Village as a refund but is subject to the three-year limitation on refunds.

2. Income tax that should have been deposited with the Village, but was deposited with another municipality, shall be subject to recovery by the Village. The Village will allow a non-refundable credit for any amount owed the Village that is in excess of the amount to be refunded by the other municipality,

as long as the tax rate of the other municipality is the same or higher than the Village's tax rate. If the Village's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the Village.

D. Payments on delinquent amounts shall be applied in the following manner:

1. To the taxes owed for any previous year in the order in which such taxes became due, then to interest for that year, then to penalties for that year, and then to court costs (if any) for that year.

2. Payments will then be applied to each subsequent year in the same order as specified in point #1 above, until all delinquent liabilities have been satisfied.

E. 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 Tax Administrator shall be one year from the time of the final determination of the Federal tax liability.

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

Section 12. VIOLATIONS

A. No person shall:

1. Fail, neglect or refuse to make any return or declaration required by this ordinance; or

2. Make any incomplete, false or fraudulent return; or

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

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

5. Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his books, records, papers and federal and State income tax returns relating to the income or net profits of a taxpayer; or

6. Fail to appear before the Tax Administrator and to produce his books, records, papers and federal and State income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator; or

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

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

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

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

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

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

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

Section 13. BOARD OF REVIEW

A. A Board of Review, consisting of a chairman and two other individuals, each to be appointed by the Mayor, is hereby created. Each member shall be appointed for a three-year term. 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 shall be conducted privately and the provisions of Section 9 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 on appeal.

B. 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 Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision on the Tax Administrator and, at the request of the taxpayer or Tax Administrator, is empowered to substitute alternate methods of allocation.

C. Any person dissatisfied with any ruling or decision of the Tax Administrator which is made under the authority conferred by this ordinance and the rules and regulations, and who has filed the required returns or other documents pertaining to the contested issue, may appeal therefrom to the Board of Review within thirty (30) days from the announcement of such ruling or decision by the Tax Administrator. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision or any part thereof. The Board must schedule a hearing within forty-five (45) calendar days of receiving the appeal. The Board must issue a written decision within ninety (90) days after the final hearing and send a notice of its decision by ordinary mail to the taxpayer within 15 days after issuing the decision.

D. Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision. Any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

Section 14. CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES

A. Where a resident of the Village is subject to a municipal income tax in another municipality he shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.

B. Every individual taxpayer who resides in the Village and who receives net profits, income, qualifying wages, commissions or other personal service compensation for work done or services performed or rendered outside of the Village, if it be made to appear that he had paid a municipal income tax on the same income taxable under this ordinance to another municipality, shall be allowed a credit against the tax imposed by this ordinance of the amount so paid by him or in his behalf to such other municipality. The credit shall not exceed the tax assessed by this ordinance on such income earned in such other municipality or municipalities where such tax is paid.

C. The provisions for claiming a refund or credit under this Section 14 shall be made in such manner as the Tax Administrator may be regulation provide. A claim for refund must be made within three (3) years from the date on which such payment was made or the return was due, whichever is later.

Section 15. ALLOCATION OF FUNDS

The funds collected under the provisions of this ordinance shall be deposited in the General Fund and said funds shall be disbursed in accordance with the provisions contained in the annual "Appropriations Ordinance".

Section 16. SAVING CLAUSE

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

Section 17. COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE

A. This ordinance shall continue effective insofar as the levy of taxes is concerned until repealed and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax is levied or enforcing any provisions of this ordinance are concerned, it shall continue effective until all of said taxes levied in the aforesaid period are fully paid and any punishment of violations of this ordinance shall have been fully terminated, subject to the limitations contained in Section 11 and 12 hereof.

B. Annual returns due for all or any part of the last effective year of this ordinance shall be due on the date provided in Sections 5 and 6 of this ordinance as though the same were continuing.

C. This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Section 18. RULES AND REGULATIONS

The Village Council hereby adopts the Regional Income Tax Agency (RITA) Rules & Regulations, including amendments that may be made from time to time, for use as the Village of Empire's Income Tax Rules & Regulations. In the event of a conflict with any provision(s) of the Village of Empire Income Tax Ordinance and the RITA Rules & Regulations, the Ordinance will supersede.

Section 99. PENALTIES

A. Any person who is in violation of this ordinance as enumerated by the provisions in Section 12, and/or violates any of the provisions of this ordinance for which no penalty is otherwise provided, is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both, for each offence.

B. Whoever violates Section 9D is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both. Each disclosure shall constitute a separate offense. In addition, any employee or member of the Board of Review who violates the provisions of Section 9D shall be guilty of an offense punishable by immediate dismissal.

PASSED: 07-02-14

1ST Reading: June 4 2014 and rule suspended to go to 2nd & 3rd reading by title only.

2nd Reading: July 2 by title only.

3rd Reading: July 2 by title only.

Frank Martin
Mayor Frank Martin

Brenda Stone
Clerk

Brenda Stone
Certification Clerk