

AN ORDINANCE AMENDING CHAPTER 181 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF ELMORE INCOME TAX, AND DECLARING AN EMERGENCY.

WHEREAS, it is necessary to amend Chapter 181 of the Codified Ordinances of Elmore to comply with changes in State Law regarding the collection of municipal income tax;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ELMORE, OTTAWA COUNTY, OHIO:

SECTION 1: That Section 181.01 is hereby amended and shall now read as follows:

181.01. PURPOSE.

To provide funds for the purpose of general Municipal operation, capital improvements, debt retirement, maintenance, equipment, extension/enlargement of Municipal services and facilities of the Village of Elmore, there shall be, and hereby is, levied a tax on salaries, wages, commissions and other compensation, and on net profits as hereinafter provided.

SECTION 2. That Section 181.02 is hereby amended and shall now read as follows:

181.02. DEFINITIONS.

As used in this chapter, the following words shall have the meaning ascribed to them in this section, except as, and if the context clearly indicates or requires a different meaning.

- (a) "Administrator" means the individual designated by this chapter to administer and enforce the provisions of this chapter.
- (b) "Assignment" means the assignment made by a resident of Elmore of a claim for a refund due from another taxing municipality granting credit to non-resident thereof.
- (c) "Association" means a partnership, limited partnership, limited liability company, or any other form of unincorporated enterprise, owned by two or more persons.
- (d) "Board of Review" means the Board created by and constituted as provided in Section 181.12.
- (e) "Business" means an enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation, (or any other entity, including but not limited to, the renting or leasing of property, real, personal or mixed).
- (f) "Corporation" means a corporation, including a subsection "s" 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.
- (g) "Employee" means one who works for wages, salary or commission, or other type of compensation in the service of an employer, and whose wages, salaries or commissions are subject to withholding of federal income tax, and social security, and/or medicare tax.
- (h) "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission, or other compensation basis.
- (i) "Fiduciary" means a guardian, trustee, executor, commissioner, or any other person acting in any fiduciary capacity for any individual, trust, or estate.
- (j) "Fiscal Year" means an accounting period of twelve months or less ending on any day other than December 31.
- (k) "Gross Receipts" means the total income from any source whatsoever.

- (l) "Net Profits" means a net gain from the operation of a business, profession, enterprise, or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for the federal income tax purposes, without deduction of taxes imposed by this chapter, 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 chapter.
- (m) "Non-resident" means an individual domiciled outside the Village of Elmore.
- (n) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Village.
- (o) "Pension" means income earned or received as a result of retirement from an employment from an IRS qualified retirement plan and which is generally, although not exclusively, reported to the taxpayer by the payor on a Form 1099-R or similar form.
- (p) "Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity, means the partners or members thereof, and as applied to corporation, the officers thereof.
- (q) "Place of Business" means any bonafide office (other than a mere statutory office), factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance.
- (r) "Resident" means an individual domiciled in the Village of Elmore.
- (s) "Resident unincorporated business entity" means an unincorporated business entity have an office or place of business within the Village of Elmore.
- (t) "Taxable Income or "Qualifying Wages" means qualifying wages as defined in Ohio Revised Code 718.03(A), and includes, but is not limited to, compensation paid to an individual in cash or in kind on an hourly, daily, weekly, monthly, annual or other basis, including, but not limited to, the following: severance or termination pay; wage continuation payments made as a result of an early retirement or employment termination; wage continuation payments made as a result of sickness or temporary disability and whether paid by the recipient's employer or by a third party; vacation or holiday pay; tips or gratuities received; group term insurance premiums paid on an employee's behalf; employee contributions to tax sheltered annuities, non-qualified pension plans; or into employer or third-party trusts or pension plans permitted by IRS and which may be excludable from wages for federal purposes; employee contributions to "Cafeteria Plans" as permitted by IRS under IRS Code Section 127 or 129 or similar plans which may be excludable from wages for federal purposes; ordinary income portion of stock options or employee stock purchase plans; supplemental unemployment benefits (SUB Pay); strike pay; jury duty pay; employer or employee contributions to amounts credited to non-qualified pension plans or deferred compensation plans at the time of deferral and to the extent subject to medicare tax; working conditions, fringe benefits subject to tax by IRS; guardian, executor, conservator, trustee, or commissioner fees; bonuses; ordinary income portion of lump sum distributions which become subject to federal tax because the recipient did not roll over the distribution within the time required by IRS.

- (u) "Taxable Year" means the calendar year, or the fiscal year upon which the basis of which the net profits are to be computed under this chapter 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.
- (v) "Taxing Municipality" means any municipal corporation levying a municipal income tax on salaries, wages, commissions and other compensation earned by individuals, and on the net profits earned from the operation of a business, profession or other activity.
- (w) "Taxpayer" means a person, whether an individual, partnership, association, or any corporation or other entity, required hereunder to file a return or pay a tax.

The singular includes the plural, and the masculine includes the feminine and the neuter.

SECTION 3. Section 181.03 is hereby amended and shall now read as follows:

181.03 IMPOSITION OF TAX

Taxable Income Subject to the provisions of Section 181.15, an annual tax for the purposes specified in section 181.01 hereof shall be imposed on and after January 1, 2006, at the rate of one and three quarters percent (1.75%) per year upon the following:

(a) On all qualifying wages as defined in Ohio Revised Code 718.03(A) earned or received, including tips, and on any proceeds of any lottery received, during the effective period of this chapter by residents of the Village.

(b) On all qualifying wages as defined in Ohio Revised Code 718.03(A) earned or received, including tips, during the effective period of this chapter by nonresidents for work done or services performed or rendered in the Village.

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

(d) On the portion of the distributive share of the net profits earned during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to Elmore and not levied against such unincorporated business entity.

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

(f) On that portion of the distributive share of the net profits of a resident individual, partner or owner of a nonresident unincorporated business entity.

(g) On the portion attributed to Elmore of the net profits earned during the effective period of this chapter of all corporations derived from sales made, work done or services performed or rendered and business or

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other activities conducted in Elmore whether or not such corporations have an office or place of business in Elmore.

(h) On all income derived anywhere from gaming, wagering, lotteries, or schemes of chance by residents of Elmore or by nonresidents of Elmore when the income derived anywhere from gaming, wagering, lotteries, or schemes of chance is won or received as a result of transactions conducted in Elmore.

(i) On covenants not to compete (for former employees only) and on cancellation of indebtedness to the extent includable on the taxpayer's federal tax return.

(j) Determination of Net Profits Attributable to the Village.

- (1) The portion of the net profits attributable to Elmore of a taxpayer conducting a business, profession or other activity both within and without the boundaries of Elmore shall be determined as provided in Ohio R.C. 718.02.
- (2) The net operating loss from a business entity may be used to offset salaries, wages, commissions, or the net profit from any other entity, activity or individual. Each business net operating loss may be carried forward for a period of five years, to offset future net profits from the same entity for the same owner in accordance with Section 181.03(k). Each business net profit that exceeds losses carried forward from the same entity must be included in taxable income.
- (3) A joint return may be filed. Each W-2, schedule or other source of income will be calculated separately and offsets against the other spouse's income will be allowed. A tax return may not be amended to change the form of filing from joint to separate or vice versa. Tax returns must be filed under the same status until a change in marital status occurs.

(k) Net Operating Loss Carry-Forward

- (1) The portion of a net operating loss sustained in any taxable year subsequent to the effective date of this chapter allocable to Elmore may be applied against the portion of the net profit of succeeding years allocable to Elmore, 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 net operating loss sustained shall be allocated to Elmore in the same manner as provided for allocating net profits to Elmore. Losses sustained in another taxing municipality shall be first allocated to that other taxing municipality to the same extent that net profits would have been allocated had there been a net profit.
- (3) The Administrator shall provide rules and regulations the manner in which such net operating loss carry-forward shall be determined.

(1) Consolidated Returns

- (1) Filing of consolidated returns may be permitted or required in accordance with the rules and regulations prescribed by the Administrator. Commencing on January 1, 2003, consolidated returns will be accepted from affiliated groups of corporations that file consolidated returns for Federal Income Tax purposes for the same reporting period.

(m) Exemptions - Source of Income Not Taxed The tax provided for herein shall not be levied on the following:

- (1) Pay or allowance of active members of the armed forces of the United States because of active duty service or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or has tax exempt activities and only to the extent that the said income is exempt from federal income tax.
- (2) Poor relief, social security benefits, unemployment insurance benefits except for supplemental unemployment benefits, IRS qualified retirement plan or similar payments, disability benefits received from local, state or federal governments or charitable religious or educational organizations.
- (3) Proceeds of insurance paid by reason of death of the insured, pensions, including industrial pensions, disability benefits paid for total and permanent disability, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
- (4) Receipts 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.
- (5) Spousal support received.
- (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.
- (7) Interest, dividends and other revenue from intangible property as set forth in O.R.C. 718.01.
- (8) Amounts included in an employee W-2 form for moving expense reimbursement when the taxpayer is moving out of Elmore.
- (9) Parsonage allowances paid to "Ministers of the Gospel" in the form of rental allowance as part of the minister's compensation to the extent excluded from Federal or Ohio income tax.
- (10) Payments to election workers.
- (11) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce.
- (12) Salaries, wages, commissions and other compensation and net profits, the taxation of

which 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.

- (13) The amount of unreimbursed employee business expenses (2106 Expenses) which the employee deducted as an itemized deduction. The deduction must exceed two percent (2%) of the employee's AGI on his/her Federal Income Tax return. Taxpayer must furnish a copy of the form 2106, Schedule "A" of form 1040 and the first page of the 1040 as filed with IRS.
- (14) Compensation paid to a nonresident individual for personal services performed within Elmore if the personal services are performed during twelve (12) or fewer days during the calendar year.
- Compensation paid to a nonresident employee by a nonresident employer for work or services performed in Elmore if the services or work is performed during twelve (12) or fewer days during the calendar year.
- Compensation paid to a non-resident individual who is an employee for work or services performed in Elmore if the services or work is performed during twelve (12) or fewer days during the calendar year and further provided that the individual's employer is located outside of Elmore and the individual pays tax on the compensation in the municipal corporation in which the employer's principal place of business is located and no portion of the tax paid is refunded to the individual.

The foregoing three (3) paragraphs do not apply to professional entertainers, professional athletes, promoters for professional entertainment or sporting events and their employees.

For purposes of applying this section a day is a full day or any fractional part of a day. (ORC 718.011)

(n) Expenses Not Deductible.

- (1) No deduction for self-employment tax paid by self-employed taxpayers as permitted by IRS is permitted for the Village of Elmore.
- (2) No deduction for contributions to IRA or Keogh plans made by taxpayers as permitted by IRS is permitted for the Village of Elmore.

SECTION 4. Section 181.04 is hereby amended and shall now read as follows:

181.04. EFFECTIVE PERIOD.

The tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of businesses, professions, or other activities earned from January 1, 2006.

SECTION 5. Section 181.05 is hereby amended and shall now read as follows:

181.05 RETURN AND PAYMENT OF TAX.

(a) Dates: Exemption. Each taxpayer, except as herein provided, shall whether or not a tax due thereon, make and file a return on or before April 15 of the year following the effective date of this chapter, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of each fiscal year or period. The Administrator is hereby authorized to provide the regulation that

the W-2 form furnished by an employer(s), showing the amount of tax deducted by such employer(s) from the salaries, wages, commissions, or other compensation of an employee, as acquired by Section 181.06, and paid by him or them to the Administrator shall be accepted as the return required of an employee whose sole income, subject to tax under this chapter, is such salary, wages, commissions, or other compensation.

(b) Returns and Content thereof

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

1. (A) The aggregate amount of salaries, wages, commissions and other compensation earned; and
- (B) The gross income from a business, profession or other activity less allowable expenses incurred in the acquisition of such gross income to arrive at net profit.
- (C) Such income shall include income earned during the year, or portion thereof, covered by the return and subject to the tax imposed by this chapter,
2. (A) The amount of tax imposed by this chapter on income reported;
- (B) Any credits to which the taxpayer may be entitled under the provisions of Sections 181.06 and 181.07.
- (C) All individuals, businesses, employers, brokers and others doing business who engage persons either on a commission basis, or as independent contractor, and are not subject to withholding, shall submit a list with their Village income tax return of the names, addresses, commissions and bonuses to such as are residents of the Village of Elmore. providing the same information as is required on Federal form 1099.
- (D) All contractors shall submit with their Village Income Tax Return a list of names, addresses and total amount paid during the previous calendar year to any subcontractor or contract employee, who did business in, or is a resident of the Village of Elmore.

Such other pertinent statements, information returns, or other information as the Administrator may require.

c. Extensions.

The Administrator will extend the time for filing of the annual return upon the request of the taxpayer for a period not to exceed six months or one month beyond an extension requested of or granted by the IRS for the filing of the federal income tax return. The Administrator shall require a copy of the federal extension accompanied by payment of the amount of tax shown to be due by the date the return is normally due. Statutory interest will be charged from the original due date of the return until the date of actual payment. The extension does not extend the date for paying the tax due. The extension request may be denied if the taxpayer is delinquent in the filing of any tax return or payment of any tax, penalty or interest due.

d. Payment with Returns.

1. The taxpayer making a return shall, at the time of filing thereof, pay to the Administrator the balance of tax due, if it exceeds four dollars and ninety-nine cents after deducting:

- (A) The amount of Elmore income tax deducted or withheld at the source pursuant to Section 181.06;
 - (B) Such portion of the tax as had been paid as an estimate by the taxpayer pursuant to Section 181.07; and
2. Should the return or the records of the Administrator indicate an overpayment of the tax to which the Village of Elmore is entitled under the provisions of this chapter, such overpayment shall first be applied against

any existing penalty or interest, then liability, and the balance, if any, at the election of the taxpayer communicated to the Administrator, shall be refunded or transferred against any subsequent liability. However, overpayment of less than twenty dollars (\$20.00) shall not be refunded, but shall be credited, unless the return is a final return.

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 181.11. Such amended returns shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

2. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's Elmore liability, such taxpayer shall make and file an amended Elmore tax return showing income subject to the Elmore tax based upon such final determination of federal tax liability and pay any additional tax shown due thereon or make claim to refund of any overpayment.

- (A) The aggregate amount of salaries, wages, commissions and other compensation earned or received;
- (B) The gross income from a business, profession or other activity less allowable expenses incurred in the acquisition of such gross income to arrive at a net profit;
- (C) Such income shall include only income earned during the year, or portion thereof, covered by the return and subject to the tax imposed by this chapter;
- (D) The amount of tax imposed by this chapter on income reported;
- (E) Any credits to which the taxpayer may be entitled under the provisions of Sections 181.06 and 181.07;
- (F) Such pertinent statements, information returns or other information as the Administrator may require;
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 requested herein. The dissolution, bankruptcy, or reorganization of 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, penalties or interest due;
- (G) The tax return is considered received if mailed on the date postmarked by the United States Postal Service on the date delivered without mailing to the Elmore Tax Office.

(H) Extension of Time for Filing Returns.

- (1) Taxpayers granted extensions of time for filing their federal income tax returns may have an extension for filing their Elmore tax return, provided that a copy of the federal extension is filed with the Administrator on or before the original date of the Elmore return. The extension request may be denied if the taxpayer is delinquent in the filing of any tax returns or payment of any taxes, penalties or interest due.
- (2) The extended time for filing the Elmore Tax Return will be the last day of the month following the month of the due date for the federal Income Tax Return regardless of the original due date of the tax return. Statutory interest will be charged from the original due date of the return until date of actual payment.

- (3) If a taxpayer wishes to extend the time for filing the Elmore Tax Return to a date other than that provided by the automatic federal extension, the taxpayer must file such a request in writing to the Administrator prior to the due date of the automatic extension. The extension may be granted by the Administrator upon terms and conditions set forth by him or her. The extension does not extend the date for paying the tax due. The extension request may be denied if the taxpayer is delinquent in the filing of any tax returns or payments of any taxes, penalties or interest due.
- (I) The failure of any taxpayer to receive procure a return, declaration or other required form shall not excuse the taxpayer from filing such forms or from paying the tax due;
- (J) Payments received for taxes due shall be allocated first to penalties due, then to interest due, and then to taxes due;
- (K) The Administrator is authorized, but not required, to arrange for the one-time payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that due to certain hardship conditions, he is unable to pay the full amount of tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the Codified Ordinances;

SECTION 6. Section 181.06 of the Codified Ordinances is hereby amended and shall now read as follows:

Section 181.06 COLLECTION AT SOURCE.

(a) Withholding by Employer.

- (1) Each employer within or doing business within the Village of Elmore who employs one or more persons on a salary, wage, commission or other compensation basis, as defined at Section 181.02 and 181.02(t) shall, at the time of payment thereof, deduct the tax of one and three quarters percent (1.75%) from the qualifying gross wages earned by residents of Elmore regardless of where such compensation is earned and shall deduct the tax of one and three quarters percent (1.75%) from the salaries, wages, commissions and other compensation earned within Elmore by non-residents.
- (2) Notwithstanding the provisions of subsection (a)(1) hereof, where such employer employs an Elmore resident in another taxing municipality requiring such employer to deduct its tax from all employees engaged therein, such employer shall withhold for and remit to the Village of Elmore one and three quarters percent (1.75%) of the gross salaries, wages, commissions or other compensation basis.
- (3) Each such employer shall, on or before the last day of the month following each calendar quarter make a return and remit to the Village of Elmore the tax hereby required to be withheld. The return shall be on a form or forms prescribed by or acceptable to the Administrator and shall be subject to the rules and regulations prescribed therefor by the Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such taxes have in fact been withheld as follows:
- (A) For the 3 months ending March 31, on or before April 30;
- (B) For the 3 months ending June 30, on or before July 31;
- (C) For the 3 months ending September 30, on or before October 31;

(D) For the 3 months ending December 31, on or before January 30.

- (4) On the last day of February 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 during the preceding calendar year and the amount of tax withheld from his employees and other information as may be required by the Administrator. All payments not subject to withholding shall be reported on a form required by the rules and regulations adopted by the Administrator. With the written permission of the Administrator this may be provided on an Excel spread sheet.
- (5) Any general contractor shall be liable (secondarily) for taxes or returns not filed by a subcontractor in Elmore for municipal income tax purposes.
- (6) Any employers withholding more than One Hundred Dollars (\$100.00) per month or more than One Thousand Dollars (1,000.00) per year shall file, report and make full payment on a monthly basis.

(b) Employer considered as Trustee.

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

- (c) Each employer who maintains a place of business within the state in an area which has either no municipal income tax or a municipal income tax less than that imposed by the Village shall withhold the tax from the employees residing in the Village notwithstanding the fact that such employees work at a place of business outside the Village and notwithstanding the fact that payroll records and place of payment are outside the Village.
- (d) Every employer or principal officer of a subchapter C or S Corporation, partner of a general partnership, or general partner of a limited partnership, or Limited Liability Corporation, in collecting the tax shall be deemed to hold the same, until payment is made by such employer to this Municipality, as a trustee for the benefit of this Municipality. Any such tax collected by such employer from its employees shall, until the same is paid to this Municipality, be deemed a trust fund in the hand of such employer or principal officer of a corporation, partner of a general partnership, or general partner of a limited partnership or Limited Liability Corporation.
 - (1) Every such employer required to deduct and withhold the tax at the source is primarily liable directly to this Municipality for the payment of the tax, whether actually collected by the employer or not.
 - (2) The failure of any employer residing either within or outside this Municipality, to collect the amounts prescribed herein, shall not relieve the employee from the payment of the tax in compliance with this chapter respecting the making of returns and the payment of taxes.
- (e) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him exclusively in or about the person's residence, even though the residence is in this Municipality, but the employee shall be subject to all of the requirements of this chapter.
- (f) The Administrator for good cause may require immediate returns and payments to be submitted to his office.

- (g) All individuals, businesses, employers, brokers or others who are required under the Internal Revenue Code to furnish forms 1099 to the Internal Revenue Service for individuals or businesses to whom or which they have non-employee compensation shall furnish on or before January 31, copies of said form 1099's to the Commissioner or in lieu thereof, a list containing the same information as required by the Internal Revenue Service on the 1099's. Failure to provide the foregoing information may result in any deduction for payment by the taxpayer taken on the taxpayer's return to be disallowed.
- (h) Every employer shall retain all records necessary to compute withholding taxes due Elmore for a period of five (5) years from the date the Reconciliation Form, W-2 forms, and 1099 forms are filed.
- (i) All returns and forms required to be filed by an employer are considered received on the date postmarked by the United States Postal Service or on the date delivered without mailing by the taxpayer in the Elmore Tax Office.
- (j) The failure of any employer to receive or procure a return, or other required from shall not excuse the employer from preparing any information return, withholding tax returns or from filing such forms or from paying the tax due.
- (k) Payments received for withholding taxes due shall be applied first to penalties due, then to interest due and then to taxes due.
- (l) Each person who applies for a zoning permit pursuant to Section 1107.01 shall provide to the Village Tax Administrator, or within thirty days thereafter, a complete list of names and addresses of all contractors and sub-contractors who will be performing or are expected to perform work within the Village of Elmore pursuant to a proposed building, building addition, structural modification or new use of vacant land. This obligation to report such names and addresses is a continuing obligation on the part of the person applying for a zoning permit and shall require such applicant to provide the names and addresses of all contractors and sub-contractors subsequently hired within thirty days of their hiring. Whoever violates or fails to comply with the provision of this section is guilty of a minor misdemeanor and shall be fined not more than One Hundred Dollars (\$100.00). A separate offense shall be deemed committed each day during or on which a violation or non-compliance occurs or continues.

SECTION 7. Section 181.07 is hereby amended and shall now read as follows:

181.07 DECLARATIONS.

(a) Requirements for Filing.

Every person who anticipates any taxable income which is not subject to Section 181.06 hereof, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 181.03 hereof, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any; provided, however, if a person's income is wholly from wages from which the tax will be withheld and remitted to the Village of Elmore in accordance with Section 181.06 hereof, such person need not file a declaration.

(b) Calendar Dates for Filing.

- (1) Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or within four months of the date the taxpayer becomes subject to tax for the first time.

(2) Fiscal Dates for Filing.

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

- (c) (1) Forms.
Such declaration shall be filed upon a form furnished by, or obtainable from, the Administrator.
- (2) Amended Declarations.
The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment date as provided herein. An explanation as to the change is required as is IRS form 2210 at the time the tax return is filed.
- (d) Payments with Declarations.

- (1) The estimated annual tax liability due is determined by deducting any portion of such tax withheld at the source pursuant to §181.06 and/or any overpayment of the previous year's tax liability which taxpayer has not elected to have refunded.
- (2) At the time of the filing of the declaration the taxpayer shall pay to the administrator in the following manner:
- (a) Twenty-two and one-half percent (22.5%) of the taxpayers estimated tax liability for the current year shall be remitted on or before the 15th day of April.
- (b) The declaration for the second, third and fourth quarters shall be due on July 31st, October 31st and January 31st of the subsequent year. The amounts due on those dates are forty-five percent (45%), sixty-seven and one-half percent (67½) and ninety percent (90%) respectively of the tax payers estimated tax liability to be due.

(e) Effective January 1, 2006, no penalty or interest will be assessed for late payment or nonpayment of estimated taxes if the taxpayer was not domiciled in Elmore on the first day of January of the current calendar year or if the taxpayer had paid estimate payments equaling one hundred percent (100%) of the taxpayer's tax liability for the immediately preceding tax year reflected a twelve month tax period and the taxpayer filed a return for the immediately preceding year.

(f) On or before the 15th day of the 4th 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 for the Village of Elmore shall be paid therewith in accordance with the provisions of Section 181.08.

(g) Any money due the Village because of failure to pay an installment of estimated tax, or the proper amount of underestimation or otherwise, is subject to the interest and penalties provided for in Section 718.10.

(h) No interest and penalty shall be assessed if the taxpayer bases his or her estimate on the preceding three-month period, annualized for the remainder of the year, and updates this estimate by amendment as necessary each succeeding three-month period so that at least ninety percent (90%) of the annual liability to be ultimately determined has been paid by estimate by the close of each period as applicable. If the taxpayer files in this matter, but fails to have ninety percent (90%) of the ultimate tax liability paid in the fashion so described, interest and penalty shall be assessed on the portion of the estimated tax not equal to at least ninety percent (90%) of the final tax due when paid by the installment due date.

(i) If a taxpayer's total quarterly estimate payments do not equal at least 90% of the total liability as estimated on the taxpayer's annual tax return or if the taxpayer's total quarterly estimate payments do not equal 100% of the taxpayer's tax liability for the immediately preceding year, provided that such immediately preceding year's liability reflected as twelve-month tax period on the return filed by the taxpayer, interest and penalty shall be assessed at the following rates and in the following manner:

- (1) The taxpayer's annual tax liability as estimated on the taxpayer's return shall be divided by four (4) 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 shall subject to a penalty of one and one-half percent (1.5%), or fraction thereof, at a minimum of ten percent (10%) per quarter, and interest of one and one-half percent (1.5%) 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) In the event the taxpayer provides satisfactory evidence to the Administrator that the taxpayer's annual income fluctuated in such a manner that the penalty and/or interest as specified in paragraph (1) hereof should not be imposed, the Administrator may waive any portion of such penalty and interest upon request of the taxpayer and submission of evidence of such fluctuation to the Administrator.
- (3) Any credits from a previous year carrying over to the current year would reduce the estimates due and applied to the first quarter of the current year with any excess then applied to subsequent quarters of the current year to reduce the liability thereon.
- (4) Annual Return Required. On or before April 15 or the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the Village of Elmore shall be paid in accordance with the provisions in §181.05.

SECTION 8. Section 181.08 of the Elmore Codified Ordinances is hereby amended and shall now read as follows:

181.08 DUTIES OF THE ADMINISTRATOR

(a) Collection Responsibility.

- (1) It shall be the duty of the Administrator to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; to keep an accurate record thereon, and to report all moneys so received.
- (2) Responsibility for Maintenance of Records.
It shall be the duty of the Administrator to enforce payment of all taxes owed Elmore; to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld; and to show the dates and amounts of payments thereof.

(b) Enforcement Authority.

- (1) The Administrator is hereby charged with the enforcement of the provision of this chapter, 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 chapter, including provisions for the re-examination and correction of returns.
- (2) The Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the chapter. Penalties and interest may be added to such arrangements prescribed in section 181.10.
- (3) Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become due and payable on demand, of the provisions of section 181.11 and 181.99 shall apply. Failure to make subsequent required declarations constitutes default as to any current payment plan.

c. Determination of Taxes.

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

d. Compromise Authority.

Subject to the consent of the Board of Review or pursuant to regulation approved by the Board, the Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 181.10.

- (e) The Administrator shall be appointed by the Mayor, subject to the approval of Council. He/she may be removed at any time with or without cause by a two-thirds vote of Council. He/she shall give bond in such sum and shall receive such compensation as may be determined from time to time by Council or the Ohio Revised Code. Subject to the approval of Council he/she shall have authority to employ such assistants, clerks, investigators and other help on full or part time basis as he/she may determine is necessary for proper performance of duties under this chapter. Such assistants, clerks, investigators and other help shall receive such compensation as may be determined from time to time by Council.

SECTION 9. Section 181.09 is hereby amended and shall now read as follows:

SECTION 181.09. INVESTIGATIVE POWERS OF THE ADMINISTRATOR;
PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

(a) Examination of Taxpayer's Records.

The Administrator, any authorized employee, or any duly authorized agent, 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 Administrator believes is subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Administrator, or his duly authorized agent or employee, the means, facilities, and opportunity for making such examination and investigations as are hereby authorized.

(b) Appearance Orders to Taxpayers.

The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine any such person, under oath, concerning any income which was or should have been reported 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) Result or Refusal to Submit Information.

The refusal to produce papers, records and federal or 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, or with an order or subpoena of the Administrator authorized hereby, shall be deemed a violation of this chapter, punishable as provided in Section 181.99.

(d) Confidential Nature of Information.

Any information gained as the result of any returns, investigation, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes, which include the exchange of information with other tax authorities, or except in violation of this chapter shall be subject to prosecution as provided in Section 181.17. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the Village of Elmore who violates the provision of this section 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 five years from the date his return is filed, or the withholding taxes are paid.

f. Responsibility of Property Owners.

All property owners of real property, whether residential, commercial or otherwise, shall, within thirty days after a new tenant occupies or vacates rental property within the Village, file with the Administrator a report showing the names, addresses,

telephone numbers, if available, social security numbers and places of employment of each such tenant and any forwarding address.

(g) Commencing January 1, 2006 and thereafter, within thirty days after a tenant vacates an apartment, trailer park or other rental property located in the Village, the owner of such property shall file with the Administrator a report showing the date of such vacation and identifying each such vacating tenant.

SECTION 10. Section 181.10 is hereby amended and shall now read as follows:

SECTION 181.10 Interest and Penalties.

(a) All taxes imposed and all monies withheld or required to be withheld by the employers under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of one and one-half (1.5%) per month or fraction thereof.

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

- (1) For failure to pay taxes when due other than taxes withheld, the greater one and one-half percent (1.5%) of the unpaid tax or twenty-five dollars (\$25.00) per month, or fraction thereof;
- (2) For failure to remit taxes withheld from employees when due, the greater of six percent (6%) of the unpaid tax or fifty dollars (\$50.00) per month or fraction thereof;
- (3) For failure to file a return in cases where an office subpoena of the Administrator is authorized, as contemplated by section 181.09(b), twenty-five dollars (\$25.00);
- (4) For failure to file a timely return where there is a tax liability, the amount of the tax liability or twenty-five dollars (\$25.00), whichever is less.
- (5) When any check or other negotiable instrument used in the payment of any tax liability pursuant to this chapter is dishonored, an additional charge shall be added to the tax liability of the person owing the same. The amount of such charge shall be Twenty-Five Dollars (\$25.00)

(c) A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator; and provided further, that in the absence of fraud, neither penalty for interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination on the federal tax liability.

(d) Upon recommendation of the Administrator, the Board of Review may abate penalty or interest, or both, or upon any appeal from the refusal of the Administrator to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest or both. The Board may authorize the Administrator to abate penalty or interest, or both, under conditions and circumstances as may be determined from time to time.

SECTION 11. Section 181.11 is hereby amended and shall now read as follows:

SECTION 181.11. COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENT.

(a) All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable, provided suit shall be brought within three (3) years after the tax was due or the return was filed, whichever is later as specified in ORC 718.12(A).

(b) Time Limitations on Refunds. 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.

(c) Minimum Amounts. Amounts of less than five dollars (\$5.00) shall not be collected or refunded. A refund under twenty dollars (\$20.00) shall be credited to the next tax year unless it is the final return of the taxpayer.

SECTION 12. Section 181.12 is hereby amended and shall read as follows:

Section 181.12. BOARD OF REVIEW.

(a) Composition and Procedures.

A Board of Review consisting of a chairperson, and two other individuals, each to appointed by the chief executive officer of Elmore, is hereby created. Each member of this Board of Review shall exercise one vote. A majority of the members of the Board of Review shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 181.09 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(b) Any member who misses more than three consecutive meetings or more than half of the meetings in any calendar year shall be deemed to have vacated his/her position and shall be replaced.

(c) Appeals: Alternative Method of Allocation.

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

(d) Time Limitations for Appeals.

Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter (see 181.08(c)) may appeal therefrom in writing to the Board of Review within thirty (30) calendar days from the issuance of such ruling or decision by the Administrator. The appeal must state the alleged errors in the Administrator's ruling or decision. The Board must schedule a hearing within forty-five (45) calendar days of receiving the appeal unless the taxpayer expressly waives the hearing and chooses instead to let the Board render its decision on the writings submitted by the Administrator and the Appellant. If the taxpayer does not waive the hearing, the taxpayer is entitled to appear before the Board and bring with him or her representation of his or her choosing. The Board must issue a written decision within ninety (90) days after the final hearing and send a notice of its decision to the taxpayer within fifteen (15) days after rendering its decision. If the Board fails to comply with the provisions of this section, the taxpayer's appeal will default in favor of the taxpayer. The records of the hearing are not open to the public nor is the hearing subject to the Ohio open meeting law. The Board may reverse, affirm, or modify any such ruling or decision or any part thereof.

Whenever the Administrator issues a decision that is appealable to the Board, the taxpayer must be informed of his/her right to appeal and the manner in which the appeal is to be filed.

SECTION 13. Section 181.13 is hereby amended and shall now read as follows:

SECTION 181.13. ALLOCATION OF FUNDS.

As of February 28, 2006 45.71% of all monies received from the tax imposed by this chapter shall be allocated to the General Fund of the Village. 42.86% of the monies received from the tax imposed by this chapter shall be allocated to the Sewer Capital Fund and 11.43% to the Capital Improvement Fund of the Village.

SECTION 14. Section 181.14 is hereby amended and shall now read as follows:

181.14. TAX CREDITS TO RESIDENTS ELIMINATED.

When the taxable income of a resident of the Village of Elmore is subject to a municipal income tax in any other municipality on the same income taxable under this chapter and prior ordinances established by Council, such resident shall not be allowed a credit for any municipal taxes paid to any other municipality.

SECTION 15. Section 181.15 is hereby amended and shall now read as follows:

181.15. COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

Insofar as the collection of taxes levies hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, this chapter shall continue as effective, in any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Section 181.11 and 181.99.

SECTION 16. Section 181.16 is hereby established and shall read as follows:

181.16. SEPARABILITY.

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

SECTION 17. Section 181.99 is hereby amended and shall now read as follows:

181.99 PENALTY

(a) Any person who shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter, 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 chapter, or
- (4) Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator, or
- (5) Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers federal and state income tax returns relating to the income or net profits of a taxpayer, or

- (6) Fail to appear before the Administrator and to produce books, papers, records, federal or state income tax returns relating to the income or net profits of a taxpayer, or
- (7) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer, or
- (8) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby, or
- (9) Give to an employer false information as to his true name, correct residence address, social security number, 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 employee's residence addresses, total wages paid and Elmore tax withheld, or to knowingly give the 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 chapter, or
- (12) Shall divulge any information gathered pursuant to Section 181.09(d);
- (13) shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six months or both for each offense.

(b) All prosecutions under this section must be commenced within three years from the time of the offense complained of except in the case of failure to file a return or in the case of filing a false or fraudulent return, or omission of twenty-five percent (25%) or more of income required to be reported, in which event the limitation of time within which prosecution must be commenced shall be six years from the date the return was due or the date the false or fraudulent return was filed.

(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.

(d) A refusal by any employer, employee, taxpayer, contractor or subcontractor to furnish returns or other information required by the Administrator, failure or neglect to file a return, filing of a false return, refusal to withhold tax from employees; shall constitute a misdemeanor of the first degree and subject to summons or warrant to appear before the appropriate municipal court.

(e) Whoever violates any of the provisions of this chapter, for which no penalty is otherwise provided, is guilty of a misdemeanor of the third degree.

(f) Whoever violates Section 181.09(f) or (g) is guilty of a minor misdemeanor on a first offense and shall be fined not more than \$100.00. On a second offense within one year after the first offense, such person is guilty of a misdemeanor of the fourth degree and shall be fined not more than \$200.00 or imprisoned not more than thirty days, or both. On each subsequent offense within one (1) year after the first offense, such person is guilty of a misdemeanor of the third degree and shall be fined not more than \$500.00 or imprisoned not more than sixty (60) days, or both.

SECTION 18. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public

in compliance with all legal requirements of the Village of Elmore and the State of Ohio.

SECTION 19. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the citizens of the Village of Elmore, Ottawa County, Ohio and shall take effect immediately after its passage and approval by the Mayor.

PASSED: February 27 2006

Pass
Vote on Emergency Measure

Yeas 4
Yeas _____

Nays 0
Nays _____

Vote to Suspend the Rules

Yeas _____

Nays _____

ATTEST:

[Signature]
Fiscal Officer

[Signature]
President of Council

[Signature]
Mayor

P. MARTIN AUBRY
VILLAGE SOLICITOR

FISCAL OFFICER'S CERTIFICATE AS TO PUBLICATION

This is to certify that publication of the foregoing Ordinance was duly made as provided in Ordinance No. 09-05, adopted March 28, 2005, by the following method:

By posting certified copies thereof in the five (5) public places specified in Codified Ordinance No. 09-05, said posting having been accomplished on the following date:

April 21 2006

[Signature]
Fiscal Officer

FISCAL OFFICER'S CERTIFICATE AS TO AUTHENTICITY

I hereby certify that the foregoing Ordinance is a true copy of the aforesaid Ordinance No. _____, together with a true and accurate record of the adoption by the Village of Elmore, Ohio.

Fiscal Officer