

RESOLUTION NO. 1968-14

A RESOLUTION ESTABLISHING RULES AND REGULATIONS PURSUANT TO THE AUTHORITY GRANTED THE VILLAGE OF APPLE CREEK, WAYNE COUNTY, OHIO TO LEVY A MUNICIPAL INCOME TAX AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF APPLE CREEK, WAYNE COUNTY, OHIO, THREE-FOURTHS OF THE MEMBERS CONCURRING:

ARTICLE I-1

Definitions

For the purpose of these Regulations the following terms shall have the definitions hereafter given:

- (A) The definitions of the terms "Taxpayer", "Association", "Business", "Corporation", "Employee", "Employer", "Net Profits", "Non-Resident", "Person", "Resident", "Other Entity" shall be the same as set forth in Section I of the Village of Apple Creek Ordinance No. 4-73.
- (B) The term "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. A taxpayer does not have a regular place of business out side Apple Creek solely by consigning goods to an independent factor of contractor outside the Village for sale.
- (C) The term "Business Allocation Percentage", as used in these Regulations, means the average percentage arrived at by applying the formula set forth in Section 2, subsection H of the Ordinance. The "Business Allocation Percentage" is the percentage which may be applied to determine the Portion of the entire net profits of a taxpayer to be allocated as having been made within the Village of Apple Creek within the meaning of the provisions of said Section 2.
- (D) The term "The Ordinance" means Ordinance no. 4-73 enacted by the Council of the Village of Apple Ohio, on April 2, 1973, and any amendments of supplements thereto.

The singular shall include the plural and the masculine shall include the feminine and the neuter.

ARTICLE I-2

Commencement and Duration of the Tax

The tax imposed by the Ordinance is effective as to income and profits earned or accruing on and after April 2, 1973, and payroll deduction must be made against all salaries, wages, commissions, bonuses and other compensation earned or accruing on and after that date.

ARTICLE II-1

Imposition of Tax – Resident Employees

In the case of the residents of the Village of Apple Creek an annual tax of one percent is imposed on all salaries, wages, commissions and other compensation earned or accrued on and after April 2, 1973. For the purpose of determining the tax on the earnings of the resident taxpayers, taxed under subsection A or Section 2 of the Ordinance, the source of the earnings and the place or places in or at which the services were rendered are immaterial. All such earnings, wherever earned or paid are taxable.

The following are items which are subject to the tax:

- (A) Salaries, wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered on and after April 2, 1973:

- (1) As an officer director or employee of a corporation (including charitable and other non-profit corporations), joint stock association or joint stock company;
 - (2) As an employee (as distinguished from a partner or member) of a partnership, limited partnership, or any other form of unincorporated enterprise owned by one or more person;
 - (3) As an employee (as distinguished from the proprietor) of a business, trade or profession conducted by an individual owner;
 - (4) As an officer or employee (whether elected, appointed or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit of the State of Ohio or any of the political subdivisions thereof;
 - (5) As an officer or employee (whether elected, appointed or commissioned) of a governmental administration, agency, arm, authority, board, body branch, bureau, department, division subdivision, section or unit of the United States Government or of a corporation created and owned or controlled by the United States Government or any of its agencies;
 - (6) As an employee of any other entity or person.
- (B) Wages, bonuses, or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered on and after April 2, 1973:
- (1) Whether based upon hourly, daily, weekly, semimonthly, monthly, annual, unit of production or piece work rates; and
 - (2) Whether paid by an individual, limited partnership, partnership, association, corporation (including charitable and other non-profit corporations), governmental administration, agency, arm, authority, board, body branch, department, division, subdivision, section or unit, or any other entity.
- (C) Commissions received by a taxpayer whether directly or through an agent and whether in cash or in property for services rendered on and after April 2, 1973, regardless of how computed, by whom or wheresoever paid.

If amounts received as a drawing account exceed the commissions earned, the tax is payable on the gross amounts received.

Amounts received from an employer by way of expenses and not by way of compensation, and used as such by the individual receiving them, are not deemed to be compensation if the employer deducts such expense advances as such from his gross income for the purpose of determining his net profits taxable under the Ordinance.

If such commissions are included in the net earnings of a trade, business, profession, enterprise or activity regularly carried on by such individual and therefore subject to tax under subsection C of Section 2 of the Ordinance they shall not again be separately taxed. In such case, such net earnings shall be taxed as provided in Article II-9 of the Regulations.

- (D) The receipt of fees and other compensation for personal services rendered shall be deemed to be subject to taxation under the Ordinance.
- (E) Domestic servants are subject to Apple Creek tax under this Ordinance but are not subject to withholding provisions. That is to say, the domestic will report earnings and pay the tax directly to the Apple Creek Income Tax Department.

ARTICLE II-2

Imposition of Tax – Non-Residents

In the case of individuals who are non-residents of Apple Creek, there is imposed under the Ordinance an annual tax of one percent on all salaries, wages, commissions and other compensation, earned or accruing on and after April 2, 1973, for work done or services performed or rendered within the Village of Apple Creek, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property.

The items subject to tax under this section are the same as those listed and defined in Article II-1. For the part of the net profits which are taxable under the Ordinance, at its option:

- (a) Use the usual accounting system of the taxpayer corporation, so long as said usual accounting system shall be one acceptable to the Federal Internal Revenue Department as evidenced by acceptance and approval of income tax returns filed therein; or

- (b) Use the Business Allocation Percentage Formula set forth in Section 2, subsection H of the Ordinance.

ARTICLE II-6
Business Allocation Percentage

1. At the option of a corporate taxpayer or of a non-resident business entity, such taxpayers may, but are not obliged to, use the formula set forth in Section 2 of the Ordinance to compute the percentage of their entire net profits (derived from activities both within and outside the Village of Apple Creek which is taxable under the Ordinance and to determine the tax payable to the Village of Apple Creek thereunder.

If the taxpayer did not have a place of business outside Apple Creek during the period covered by any declaration and/or return required under the Ordinance, its business allocation percentage is 100 percent; in other works the taxpayer is required to pay a tax of one percent on the entire net profit of the business.

If the taxpayer had a place of business outside Apple Creek and was doing business in Apple Creek during such period, the business allocation percentage shall be computed on the following basis:

OHIO REVISED CODE SECTION 718.02

Determination of Income Subject to Taxes

“(A) IN the taxation of income which is subject to municipal income taxes, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of a municipal corporation shall disclose with reasonable accuracy what portion of its net profit it attributable to that part of the business or profession conducted within the boundaries of the municipal corporation, then only such portion shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation it the same proportion as the average ratio of:

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

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

- (2) Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in such municipal corporation to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed;
- (3) Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

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

(C) As used in division (A) of this section “sales made in a municipal corporation” means:

- (1) All sales of tangible personal property which is delivered within such municipal corporation regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation;
- (2) All sales of tangible personal property which is delivered within such municipal corporation regardless of where title passes even though transported from a point outside such municipal corporation if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion;
- (3) All sales of tangible personal property which is shipped from a place within such municipal corporation to purchasers outside such municipal corporation to purchasers outside such municipal

corporation regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales out the place where delivery is made.”

The business allocation percentage is computed by determining the percentages (a) which Apple Creek real and tangible personal property bears to all real and tangible personal property (including that situated in Apple Creek) of taxpayer wheresoever situated;

- (c) which Apple Creek business sales bear to taxpayer’s entire business sales wheresoever derived (including those derived from Apple Creek)’ and (c) which payrolls paid by taxpayer within Apple Creek bear to taxpayer’s entire payroll wheresoever paid (including Apple Creek payrolls); adding together the three percentages so arrived at, then dividing the total by three. However, if one of the factors (property, sales or payrolls) is missing, the other two percentages are added and sum is divided by two, and if two of the factors are missing, the remaining percentage is the business allocation percentage.

EXAMPLE 1:

Corporation having places of business in Apple Creek, Detroit and Cleveland.
 Apple Creek real and tangible personal property \$10,000. All real and personal property (Apple Creek, Detroit and Cleveland) \$100,000. Percentage 10%
 Apple Creek sales \$15,000. All sales \$75,000. Percentage 20%.
 Apple Creek payroll \$6,000. All payroll \$20,000. Percentage 30%.
 Business Allocation Percentage:

10% plus 20% plus 30%
equals 20%
 3

EXAMPLE 2:

Same corporation owning no real or tangible personal property, anywhere. Apple Creek sales \$15,000.
 All sales \$75,000. Percentage: 20%
 Apple Creek payroll \$6,000. All payroll \$20,000. Percentage: 30%
 Business Allocation Percentage: 20% plus 30%

.....equals 25%
 2

EXAMPLE 3:

Same corporation owning real and tangible personal property in Apple Creek valued at \$10,000 and owning no real or tangible personal property outside Apple Creek. Other factors same as in Examples 1 and 2.

Business Allocation Percentage:
 100% plus 20% plus 30%
equals 50%

After determining such business allocation percentage, the tax shall be determined by applying that percentage to the entire net profits of the taxpayer, wherever derived (thus arriving at the taxable net profit), and computing one percent of the resultant taxable net profit.

In case it shall appear to the Village Clerk that any income or capital of the taxpayer is improperly or inaccurately reflected, the Village clerk may adjust items of income, expense, deductions and capital, And disregard assets in computing any allocation percentage, provided any income directly traceable thereto is also excluded from entire net income, so as equitably to determine the tax.

2. EXPLANATION OR “PROPERTY FACTOR”.

The percentage of the taxpayer’s real and tangible personal property within Apple Creek is determined by dividing the net book value (during the period covered by the report) of such property within Apple Creek, without deduction of any encumbrances, by the average net book value similarly computed, of all such property within and without Apple Creek, Only property owned by the taxpayer is considered in determining such percentage.

3. EXPLANATION OF SALES FACTOR.

Receipts from the following are allocable to Apple Creek:

- (a) Work done and performed or services rendered in Apple Creek

- (b) Rentals from property situated in Apple Creek, where the rental of such property is a usual or normal part of the taxpayer's business activity
- (c) For the purpose of determining business allocation percentage, no account shall be given to receipts, within or without Apple Creek, of income derived from intangibles (including stocks, bonds, royalties and the like) the income of which is taxable under the statutes of the State of Ohio.
- (d) Compensation and other receipts for work done or services performed within Apple Creek are allocable to Apple Creek and taxable under the Ordinance. All amounts so received, credited or charged by taxpayer in payment for such work or services are so allocable, irrespective of whether done or performed by employees or agents of taxpayer or by any other person. It is immaterial where such amounts were payable or where they were received.

Commissions or fees received by the taxpayer are allocated to Apple Creek if the services for which the commissions were paid were performed in Apple Creek. If the taxpayer's services for which commissions or fees were paid were performed for the taxpayer by salesmen or other agents or employees attached to or working out of an Apple Creek place of business of the taxpayer, the taxpayer's services will be deemed to have been performed in Apple Creek. Where a lump sum is received by the taxpayer in payment for services within and without Apple Creek, the amount attributable to services within Apple Creek is to be determined on the basis of the relative values of, or amounts of time spent in the performance of, such services within and without Apple Creek.

- (d) Receipts from sale of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) are not business receipts. Receipts from the sale of real property held by the taxpayer as a dealer for sale to customers in the regular course of business are business receipts and are allocable to Apple Creek if the real property was situated in Apple Creek. Receipts from sale of intangibles included in business capital, held by the taxpayer as a dealer for sale to customers in the regular course of business, are business receipts and are allocable to Apple Creek if the sales were made in Apple Creek or through a regular place of business of the taxpayer in Apple Creek.
- 5. PAYROLL FACTOR.** The percentage of the taxpayer's payroll allocable to Apple Creek is determined by dividing the wages, salaries and other personal service compensation of the taxpayer's employees within Apple Creek during the period covered by the report, by the total amount of compensation of all taxpayer's employees during such period.

Wages, salaries and other compensation are computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.

Employees within Apple Creek usually includes all employees regularly connected with or working out of a place of business maintained by the taxpayer in Apple Creek.

However, where an employee performed services both within and without Apple Creek, the amount treated as compensation for services performed within Apple Creek shall be deemed to be (a) in the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman or a commission basis, the amount received by him for the business attributable to his efforts within Apple Creek; (b) in the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation which the value of his services within Apple Creek bears to the value of all his services; and (c) in the case of an employee compensated on a time basis, the proportion of the total amount received by him which the working time employed in Apple Creek bears to the total working time.

- 6. ADJUSTMENT OF BUSINESS ALLOCATION PERCENTAGE FORMULA.** Generally, the Business Allocation Percentage Formula will result in a fair apportionment of the taxpayer's net profits within and without Apple Creek. However, due to the peculiar circumstances of certain businesses, the formula may work a hardship in some cases or result in a tax evasion in others, thus not do justice to the taxpayer or the Village. Accordingly, in such cases, the Village Clerk may substitute factors calculated to bring about a fair and proper allocation in any case where the taxpayer has adopted the optional use of the business allocation percentage formula.

ARTICLE II-7
On What Earnings or Net Profits Tax First Levied

The tax referred to in Article II-1 and II-2 shall first be levied, collected and paid with respect to the salaries, wages, bonuses, incentive payments, commissions, fees and/or other compensations earned on and after April 2, 1973.

The tax referred to in Article II-3, II-4, and II-5 with respect to net profits of trades, businesses, professions, enterprises, undertakings, and other activities shall first be levied, collected and paid with respect to such net profits earned or accrued (in accordance with the regular accounting system of taxpayer as approved by the Director of Internal Revenue) from and after April 2, 1973.

ARTICLE II-8
Fiscal Years

Where the fiscal year of a trade, business, profession, enterprise, undertaking and/or other activity differs from the calendar year, the tax shall be applicable to the net profits of the fiscal year, but for the first fiscal year with respect only to such portion thereof as was earned on and after April 2, 1973.

A fiscal year will be recognized only if it has been or may be recognized as such by the Director of Internal Revenue for the purpose of Federal Income Tax.

ARTICLE II-9
Net Business Profits

In amplification of the definition of the term "Net Profits: as set forth at Section 1 subsection G of the Ordinance, but not in limitation thereof, the following additional information and requirements respecting net business profits are furnished:

- (a) Where necessary to properly reflect income, inventories must be used. The basis of pricing used for the purpose of the Federal Income Tax must in each instance be used.
- (b) Where the books and records are kept on an "accrual basis", "long-term contract basis", or "installment basis", and said basis is used in the filing of Federal Income Tax Returns, the same basis must be used for the purpose of this tax.
- (c) If the return is made on a "cash basis", Gross Profit shall include (1) commissions, fees and interest earned, plus (2) the gross profit or loss from sales of merchandise, chattels, goods, wares, securities, notes, choses-in-action and services, except as hereinafter provided.
- (d) From Gross Profit there shall be subtracted allowable expense to arrive at the net profits subject to tax.
- (e) All ordinary and necessary expense of doing business, including reasonable compensation paid employees, shall be allowed (but no deduction may be claimed for "salary" or withdrawals of a proprietor or of the partners, members or other co-owners of an unincorporated business or enterprise).
- (f) If not claimed as part of the Cost of Goods Sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation...depletion...obsolescence, losses resulting from theft or casualty not compensated for by insurance or otherwise, of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the Federal Income Tax.
- (g) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, but in no event shall the amount allowed exceed the amount recognized as a deduction for the purpose of the Federal Income Tax.
- (h) Only taxes directly connected with the taxpayer's business may be claimed as a deduction. If for any reason the income from property is not subject to tax, then the tax on and other expenses of said property are not deductible. In any event, the following taxes are not deductible from income:
 - (1) The tax under the Ordinance;
 - (2) Any Federal taxes based upon income;
 - (3) Gifts, estate or inheritance taxes and
 - (4) Taxes and/or special assessments for local benefits or improvements to property which tend to appreciate the value thereof

- (i) Capital gains and losses (including gains or losses from the sale, exchange, or other disposition of depreciable business property, and real property used in the taxpayer's trade or business) shall not be taken into consideration in arriving at Net Profits Earned.
- (j) If the taxpayer is a non-resident, only the amount of net profits applicable to the activities of the business in Apple Creek shall be subjected to tax. If the non-resident taxpayer's records do not disclose the actual net profits for the Apple Creek branch, office, store, or activity separately, then the basis of allocation shall be disclosed in the return. If such basis of allocation is not deemed correct, in view of all the know circumstances, the Village Clerk will make a reallocation based upon gross receipts of any other basis which shall, under the circumstances of the case, more accurately reflect the net profits.
- (k) In general, all business expense recognized and to the extent allowed as such for the purpose of determining Federal Income Tax will be recognized and allowed for ...determining Apple Creek income tax under the provisions of this Ordinance... However, all expense connected with the acquisition or carrying of securities, the income from which is not recognized as taxable under this Ordinance, may not be deducted in determining taxable net profits hereunder.
- (l) In general, unearned income is not to be included in computing the tax levied hereunder. Income from intangibles...by way of dividends, interest and the like, should not be included if the property from which such income is derived is subject to taxation under the Intangible Personal Property Tax Laws of the State of Ohio, or is specifically exempted from taxation under said laws.
- (m) Rentals received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part. Following are the circumstances under which, in any instance, the rental of any real property shall or shall not be deemed to be a "Business Activity":
 - (1) Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of \$100 per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax; provided that incase of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$100 per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when shares in the crops or when the rental is based on a percentage of the gross or net receipts derived from the farms, whether or not the gross income exceeds \$100 per month; and provided further that the person who operates a rooming house shall be considered in business whether or not the gross income exceeds \$100 per month. Where rental nets a loss it shall be prima-facie evidence that said rental is not a business activity.
 - (2) In determining the amount of gross monthly rental of any real property, periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.
 - (3) Rentals received by a taxpayer engaged the business of buying and selling real estate shall be considered as part of business income.
 - (4) Real property, as the term is used in this regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.
 - (5) In determining the taxable net income from rentals, the deductible expense shall be of the same nature, extent and amount as are allowed by the Department of Internal Revenue for Federal Income Tax Purposes.
 - (6) Residents of Apple Creek are subject to taxation upon the net income from rentals (to the extent above specified) regardless of the location of the real property owned; Non-residents of Apple Creek are subject to such taxation only if the real property is situated within the Village of Apple Creek. Non-residents, in determining whether gross monthly rentals exceed \$100 shall take into consideration only real estate situated within Apple Creek.
- (n) Income...from royalties or copyrights is not to be included.

ARTICLE II-10

Reconciliation With Federal Return

In a form satisfactory to the Village Clerk, there shall be submitted with each return filed by a taxpayer subject to the Federal Income Tax, a reconciliation between the amount shown in the return filed with the Village Clerk and the business income reported to the Federal Internal Revenue Department.

If, as a result of a change made in business income by the Federal Internal Revenue Department, or by a judicial decision, an additional amount will result as owing to the Village of Apple Creek, a report of such change shall be filed by the taxpayer within thirty days after receipt of the final notice of such change from the Federal Authorities or after final decision of a Court adjudicating any such Federal Income Tax liability.

ARTICLE III

Return and payment of Tax

1. On or before April 15, 1974, every taxpayer engaged in any business, the net profits of which are subject in whole or in part to the tax imposed by the Ordinance, shall make and file with the Village Clerk a final return on a form furnished by or obtainable from the Village Clerk. Thereafter, each such taxpayer shall, on or before April 15 of each subsequent year, make and file a final return with the Village Clerk. Like returns shall be filed at the same time and in the same manner by all persons whose wages, salaries, bonuses, incentive payments, commissions, fees and other compensation received during the preceding taxable year are subject to the tax imposed by the Ordinance. However, where an employee's entire earnings for the year are paid by an employer and the Apple Creek tax thereon has in each instance been withheld and deducted by the employer from the gross amount of the entire earnings of such employee-taxpayer, and where the employer of such employee has filed a report or return in which such employee's entire and only earnings are reported to the Village Clerk, and where such employee has no taxable income other than such earnings, it shall not be necessary for such employee to file a return for any taxable year in which such conditions have prevailed.
Any person who receives both compensation for services performed for an employer, in whatsoever form, and in addition receives income from any business activity or occupation not subject to withholding under the Ordinance, must file a declaration and a final return.
2. In all returns filed hereunder there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation received and/or net profits earned (all as hereinbefore defined) by and during the preceding year and subject to said tax, together with such pertinent information as the Village Clerk may require.
3. If the return is made for a fiscal year or for any period other than a calendar year, the said return shall be made within two and one-half months from the end of said fiscal year.
4. The return shall also show the amount of the tax imposed by the Ordinance on such earnings, or net profits, or both.
5. The taxpayer making the return shall at the time of filing thereof, pay to the Village Clerk the amount of tax shown to be due and unpaid by the return. If, pursuant to the provisions of Article V-2, the taxpayer has at the time of making such final return overpaid his tax, such taxpayer shall show the amount of overpayment and may in said return either (a) request a refund therefor, or (b) request that the amount thereof be credited against the amount which will be required to be paid by taxpayer on the next succeeding installment of tax which may become due.
6. Where any portion of the tax otherwise due shall have been paid by the taxpayer pursuant to the provisions of Article IV-1 and Article V-1 of this Resolution, or where an income tax has been paid to another municipality, pursuant to Section 4 of the Ordinance, credit for the amount so paid shall be due and payable at the time of filing said final return.
7. Upon written request of the taxpayer, the Village Clerk may extend the time for filing the annual return for a period of not more than six(6) months or not more than thirty (30) days beyond any extension requested of and granted by the Federal Internal Revenue Department for the filing of the Federal Income Tax return.
For payments in installments, see Article V-2.

ARTICLE IV-1
Collection at Source

It is the duty of each employer (as hereinbefore defined) who employs one or more persons on a salary, wage, commission, or other compensation basis, to deduct from compensation paid to any employee subject to the Ordinance, the tax of one percent of such salary, wage, bonus, incentive payment, commission or other compensation due by said employer to said employee. The tax shall be deducted by the employer from:

- (a) All compensation paid to employees who are non-residents of the Village of Apple Creek for services rendered, work performed, or other activities engaged in to earn such compensation, within the Village of Apple Creek; and
- (b) From the gross amount of all salaries, wages, bonuses, incentive payments, commissions or other form of compensation paid to employees who are residents of the Village of Apple Creek, regardless of the place where the services are rendered.
2. All employers who or which maintain an office or other place of business in Apple Creek are required to make the collections and deductions in this article specified, regardless of the fact that the services on account of which any particular deduction is required as to residents of the Village of Apple Creek, were performed at a place of business of any such employer situated outside of the Village of Apple Creek.
3. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation received.
4. Commissions and fees paid to professional men, brokers, and others who are independent contractors and not employees of the payor, are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file returns and pay the tax pursuant to the provisions of Section 2 of the Ordinance. (See Article II-3 and II-4.)
5. In the case of employees who are non-residents of Apple Creek, the amount to be deducted is one percent of the compensation paid with respect to personal services rendered in Apple Creek.

Where a non-resident receives compensation for personal services rendered or performed partly within and partly outside Apple Creek, the withholding employer shall deduct, withhold and remit that portion of the compensation which is earned within Apple Creek in accordance with the following rules of apportionment.

- (a) If the non-resident is a salesman, agent, or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the Village of Apple Creek bears to the volume of business transacted by him within and outside the Village of Apple Creek.
- (b) The deducting and withholding of personal service compensation of all other employees (including officers of corporations) shall attach to the portion of the personal service compensation of such employee which the total number of working days employed within the Village of Apple Creek bears to the total number of working days employed within and outside the Village of Apple Creek.
- (c) If it is impossible to apportion the earnings as provided above, because of (1) the peculiar nature of the service of the employee, or (2) the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly.
- (d) The occasional entry into the Village of Apple Creek of a non-resident employee who performs the duties for which he is employed entirely outside the Village but enters the Village for the purpose of reporting, receiving instructions, accounting, etc., incidental to his duties outside the Village, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the Village.
6. An employer shall withhold the tax on the full amount of any advance made to an employee on account of commissions (whether by way of drawing account of otherwise – but see paragraph 7 below) where such advances are in excess of commissions earned.
7. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount of which the tax is to be withheld, ignore any amount allowed and paid by the employer to the employee for expense necessarily and actually incurred by the employee

in the actual performance of his services. Provided, that such expense must be of the kind and in the amount recognized and allowed as deductible expense for Federal Income Tax purposes.

ARTICLE IV-2

Returns of Tax Withheld and Payment

The deduction from salaries, wages and other compensation required to be made by employers are to begin with compensation earned on and after April 2, 1973. The first return and payment required to be made on account of such deductions shall be made, filed and paid to the Village Clerk between April 2, 1973, and June 30, 1973.

Each employer within the Village of Apple Creek who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct monthly, or more often than monthly, and at the time of the payment of such salary, wage, commission, or other compensation, the tax of one percent of salaries, wages, commissions or other compensation due by the said employer to the said employee and shall make a return and pay to the Village Clerk the amount of taxes so deducted as follows:

For the three (3) months ending March 31st, on or before April 30th;

For the three (3) months ending June 30th, on or before July 31st;

For the three (3) months ending September 30th, on or before October 31st;

For the three (3) months ending December 31st, on or before the following January 31st.

The reporting periods referred to in the preceding paragraphs are elastic to this extent: The employer will use the same quarterly accounting period for reporting taxes withheld under the Apple Creek Income Tax Ordinance as he uses in reporting quarterly taxes withheld to the Federal Government.

Said return shall be on a form prescribed by and obtainable from the Village Clerk and shall be subject to the rules and regulations prescribed therefore by Village Clerk.

For adjustment of errors in returns of tax withheld by employees see Article VI-2 of these Regulations.

ARTICLE IV-3

Limitation on Credit for Tax Paid at Source

The failure of any employer, residing either within or outside the Village of Apple Creek, to collect the tax and to make any return prescribed herein, shall not relieve the employee from the payment of such tax in compliance with these Regulations respecting the making of returns and the payment of taxes.

ARTICLE IV-4

Status and Liability of Employers

Every employer is deemed to be a trustee of the Village of Apple Creek in collecting and holding the tax required under the Ordinance to be withheld, and the funds so collected by such withholding are deemed to be trust funds until the same is paid to the Village of Apple Creek.

Every such employer required to deduct and withhold the tax at the source is liable directly to the Village of Apple Creek for the payment of such tax, whether actually collected by such employer or not.

ARTICLE V-1

Declarations

1. An employee whose entire wages, salaries, or other compensation for any taxable year will be subjected to the withholding provisions under Article IV-1 of these Regulations, whose tax will accordingly be withheld as to his entire earnings for such year by his employer, and who during such taxable year expects to derive no other compensation or other income which is subject to tax under the Ordinance, need not file a declaration as provided in this Article.
2. All other taxpayers (as defined in the Ordinance and in these regulations) subject to the taxes imposed in Section 2 of the Ordinance, and every taxpayer who anticipates any income or net profits not subject to total withholding as provided in the next preceding paragraph, shall file with the Village Clerk a declaration of his estimated tax as follows:
3. On or before April 15, 1973, every such calendar year taxpayer shall file a declaration of his estimated tax for the taxable period beginning April 2, 1973 and ending December 31, 1973.

4. A similar declaration shall be filed by each such calendar year taxpayer on or before the 15th day of April of each subsequent year, and each such declaration shall contain a statement of the taxpayer's estimated tax for the full taxable year in which such declaration is filed.
5. Taxpayers who or which are permitted, pursuant to the provisions of Article II-8, to return and pay their tax upon a fiscal year basis, shall file their first declaration within three and one-half months after the beginning of the first fiscal year beginning April 2, 1973, and the subsequent declaration for each year thereafter on or before the 15th day of the fourth month following the beginning of each such fiscal year. Those taxpayers on a fiscal year basis shall make quarterly payments on or before the 15th day of the fourth month and on or before the last day of the sixth, ninth and twelfth month following the beginning of such fiscal year. The first installment, equal to at least one-fourth of the estimated tax, must accompany the declaration.
6. The estimated tax for a calendar year taxpayer may be paid in full with the filing of the declaration or in equal installments on or before April 15, June 30, September 30, and December 31.
7. The declarations so required shall be filed upon a form furnished by or obtainable from the Village Clerk. Any taxpayer who has filed an estimate for Federal Income Tax purposes may, in making the declaration, required hereunder, simply state therein that the figures therein contained are the same figures used by the taxpayer in making the declaration of his estimate for the Federal Income Tax. However, in addition to such statement, any such taxpayer may, in such declaration, modify and adjust such declared income so as to exclude therefrom income which is not subject to tax under the Ordinance.
8. Any estimate filed hereunder may be amended by the filing of an amended estimate at the time prescribed for the payment of any installment of tax paid in accordance with Article V-2 of these regulations.

ARTICLE V-2
Payment of Tax Installments

1. At the time of filing each declaration (required by Article V-1) each taxpayer shall pay to the Village Clerk one-fourth (1/4) of the amount of his estimated annual tax. Thereafter, on or before the 30th day of June, September and December 31st of each year during the life of the Ordinance, such taxpayer shall pay at least a similar amount. However, if any such taxpayer shall, on or before any such payment date, file an amended declaration showing an increase or decrease of the estimated tax, the installments then and thereafter due shall be increased or diminished (as the case may be) in such manner that the balance of the estimated tax shall be fully paid on or before December 31st of the taxable year involved through the payment of quarterly installments in equal amounts during the quarterly periods remaining from and after the filing of any such amended declaration.
2. Taxpayers who or which are permitted to make returns and pay their tax on a fiscal year basis (see Article II-8), may make the quarterly payments on their declaration of estimated tax pursuant to Article V-1 (5) of these Regulations.
3. For final returns and final adjustment of tax due, see Article III.

ARTICLE VI-1
Records to be kept by Employers and Taxpayers

Employers and others subject to the tax under the Ordinance are required to keep such records as will enable the filing of true and accurate returns, whether of taxes withheld at source or of taxes payable upon earnings or net profits, or both, and such records are to be preserved to enable the Village Clerk, or any agent or employee of the Village Clerk, to verify the correctness of the returns filed.

ARTICLE VI-2
Collection of Deficiencies
Allowance of Credit for Overpayment

If, as a result of investigation conducted by the Village Clerk, a return is found to be incorrect, the Village Clerk is authorized to assess and collect any underpayment of tax withheld at source or any underpayment of tax owing by any taxpayer with respect to earnings or net profits, or both. If no return has been filed and

a tax is found to be owing, the tax actually owing may be assessed and collected with or without the formality of obtaining a delinquent return from the employer or taxpayer. Should it be disclosed, either as a result of an investigation by the Village Clerk or through the medium of the filing of a claim or petition for refund or credit, that an overpayment has been made, the Village Clerk will refund such overpayment.

The employer will in every instance be required to pay the full tax which should have been withheld, even though he may fail to withhold from the employee. If too much has been withheld the excess shall be refunded by the employer to the employee. While the withholding agent (employer) will be expected to maintain complete records of such adjustments with the employees, any such adjustment made during any month will not need to be reflected in the withholding return or disclosed by schedules or statements thereto attached.

In those cases in which too much has been withheld by an employer from an employee and remitted to the Village Clerk and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain an adjustment by application to the Village Clerk.

ARTICLE VII

Collection of Unpaid Taxes

All taxes imposed by the Ordinance remaining unpaid when the same have become due, together with all interest and penalties thereon, become a debt due the Village from the taxpayer, and are recoverable as other debts by suit instituted by the Village Law Director.

Employers who or which, although obliged under the Ordinance to withhold and remit to the Village Clerk the taxes required to be withheld at the source (Article iv-1), shall fail to so withhold and/or remit, become liable to the Village in a civil action to enforce the payment of the debt created by such failure.

When a final return is filed as prescribed in Article III hereof and a deficiency is determined to be due to the Village of Apple Creek, action to collect the same shall not be commenced after two (2) years from the due date of said return, and when a taxpayer fails to file a return action to collect tax due to the Village of Apple Creek shall not be commenced after five (5) years from the due date of said return.

ARTICLE VIII

Identification Required

Agents and employees charged with the duty of inspection or auditing of records of employers and taxpayers will carry proper identification, which shall be subject to examination by any person whose records are sought to be examined.

ARTICLE IX

Applicability

This resolution is inapplicable to any person or corporation upon whom or which it is beyond the legal power of Council to impose the tax; it is likewise inapplicable as to any property, income or profits (or part thereof) as to which it is beyond the legal power of Council to levy the tax.

ARTICLE X

Savings Clause

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

ARTICLE XI

Reciprocity Provision

Every individual taxpayer who resides in the Village of Apple Creek but who receives net profits, salaries, wages, commissions or other personal service compensation, for work done, or services performed or rendered outside of said Village, if it be made to appear that he has paid a municipal income tax on such net profits, salaries, wages, commissions or other compensation 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 net profit, salary, wages, commissions or compensation earned in such other municipality or municipalities where such tax is paid.

ARTICLE XII

This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, welfare and safety, the emergency being the necessity of immediately raising additional funds for the operation of necessary governmental functions imposed by law, including proper police and fire protection, but not limited thereto, and, as such, this resolution shall take effect and be in force immediately upon passage by Council and approval by the Mayor.

LAWRENCE BECKER Passed: April 2, 1973 ATTEST: WALDO PFOUTS
Mayor Clerk

ORDINANCE NO. 4-73

AN ORDINANCE levying a tax to provide funds for the purpose of general municipal operations, maintenance of equipment, new equipment. Extension, enlargement and improvement of municipal services, and facilities and capital improvements, on all salaries, wages, commissions and other compensation earned by residents of the Village of Apple Creek; on all salaries, wages, commissions and other compensation earned by non-residents of the Village of Apple Creek for work done or services performed or rendered in the Village of Apple Creek; on the net profits earned on all businesses, professions or other activities conducted in the Village of Apple Creek by non-residents, and on the net profits earned by all corporations doing business in the Village of Apple Creek as the result of work done or services performed or rendered in the Village of Apple Creek; requiring the filing of returns and furnishing of information by employers and all those subject to said tax; imposing on employers the duty of

collecting the tax at the source and paying the same to the Village of Apple Creek; providing for the administration, collection and enforcement of said tax; declaring violation thereof to be a misdemeanor and imposing penalties therefor; and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF APPLE CREEK, OHIO, THREE FOURTHS (3/4) OF THE MEMBERS CONCURRING:

SECTION 1. DEFINITIONS

As used in this Ordinance, 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. "TAXPAYER" - - A person, whether an individual, partnership, limited partnership, corporation, association or other entity, required hereunder to file a return or pay a tax hereunder.
- B. "ASSOCIATION" -A partnership, limited partnership, or any other form of unincorporated enterprise, owned by two (2) or more persons.
- C. "BUSINESS" - An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, limited partnership, corporation, association or any other entity.
- D. "CORPORATION" - A corporation or joint stock association organized under the laws of the United States, The State of Ohio, or any other state, territory, foreign country or dependency.
- E. "EMPLOYEE:-- An individual whose earnings are subject to the withholding of Federal Income Tax or Social Security Tax.
- F. "Employer:-- An individual partnership, limited partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit who or that employees one (1) or more persons on a salary, wage, commission or other compensation basis.
- G. "NET PROFITS"—The net gain from the operation of a business, profession or enterprise after provision for all cost and expense incurred in the conduct thereof, including reasonable allowance for depreciation, depletion, amortization and reasonable additions to reserve for bad debts, either paid or accrued in accordance with recognized principles of accounting applicable to the method of accounting regularly employed and without deduction of Federal taxes based on income, and without deducting taxes imposed by this Ordinance.
- H. "NON-RESIDENT"—An individual, partnership, limited partnership, corporation, association or other entity domiciled outside the Village of Apple Creek
- I. "PERSON"—Every natural person, partnership, limited partnership, corporation, fiduciary or association. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any association, shall mean the partners or members thereof, and as applied to corporation, the officers thereof.
- J. "RESIDENT" - An individual, partnership, limited partnership, corporation, association or other entity domiciled in the Village of Apple Creek.
- K. "OTHER ENTITY:-- The term "other entity" means any person or unincorporated body not previously named or defined and includes inter alia, fiduciaries located within the Village of Apple Creek. The singular shall include the plural and the masculine shall include the feminine and the neuter.

SECTION 2. IMPOSITION OF TAX

To provide funds for the purpose of general municipal operations, maintenance of equipment, new equipment, extension, enlargement and improvement of municipal services and facilities and capital improvements of the Village of Apple Creek, there be, and hereby is levied a tax upon the earnings at the rate of one percent upon the following:

- A. On all salaries, wages, commissions, and other compensation earned on and after April 2, 1973, by resident individuals of the Village of Apple Creek
- B. On all salaries, wages, commissions and other compensation earned on and after April 2, 1973, by non-resident individuals of the Village of Apple Creek for work done or services performed or rendered in the Village of Apple Creek.

- C. ON the net profits attributable to Apple Creek, earned on and after April 2, 1973, of all resident unincorporated businesses, professions and other activities derived from work done or services rendered or performed and business or other activities conducted in the Village of Apple Creek.
- D. On the portion of the distributive share of the net profits earned on and after April 2, 1973, of a resident individual, partner or owner of a resident unincorporated business entity attributable to Apple Creek and not levied against such unincorporated business entity.
- E. On the net profits attributable to Apple Creek earned on and after April 2, 1973, of all non-resident, unincorporated businesses, professions or other activities, derived from work done or services performed or rendered and business or other activities conducted in the Village of Apple Creek.
- F. On the portion of the distributive share of the net profits earned on and after April 2, 1973, of a resident individual, partner or owner of a non-resident unincorporated business entity not attributable to Apple Creek and not levied against such unincorporated business entity.
- G. On the net profits earned on and after April 2, 1973, of all corporations derived from work done or services performed or rendered and business or other activities conducted in the Village of Apple Creek.
- H. The portion of the net profits attributable to the Village of Apple Creek of a taxpayer conducting a business, profession or other activity both within and without the boundaries of the Village of Apple Creek shall be determined as provided in Section 718.02 of the revised Code of Ohio, which by reference is incorporated herein and made a part hereof the same as if fully rewritten herein and the Rules and Regulations established by the Council of the Village of Apple Creek pursuant to the authority granting a municipality the right to levy an income tax and pursuant to this Ordinance.

SECTION 3. EFFECTIVE DATE

Said tax shall be levied, collected and paid with respect to salaries, wages, commissions and other compensation earned on and after April 2, 1973, and with respect to the net profit of businesses, professions and other activities earned on and after April 2, 1973. Provided however, that where the fiscal year of the business, profession or other activity differs from the calendar year, the tax shall be applied to that part of the net profit for the fiscal year as shall be earned on and after April 2, 1973 to the close of the taxpayer's fiscal year; thereafter the taxpayer shall report on its fiscal year basis.

SECTION 4. RECIPROCITY PROVISION- CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES

Every individual taxpayer who resides in the Village of Apple Creek but who receives net profits, salaries, wages, commissions or other personal service compensation, for work done or services performed or rendered outside of said Village, if it be made to appear that he has paid a municipal income tax on such net profits, salaries, wages, commissions or other compensation to another municipality, shall be allowed to 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 net profit, salary, wages, commissions or compensation earned in such other municipality or municipalities where such tax is paid.

SECTION 5. ADMINISTRATION – DUTIES OF THE VILLAGE CLERK

- A. It shall be the duty of the Village Clerk 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. All cashiers handling tax monies shall be subject directly to the Village Clerk and shall give daily accountings to the Village Clerk.
- B. It shall be the duty of the Village Clerk to enforce payment of all taxes owing the Village of Apple Creek, to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.
- C. Said Village Clerk is hereby charged with the enforcement of the provisions of this Ordinance and to enforce the rules and regulations of Council of the Village of Apple Creek, Ohio, relating to any matter or thing pertaining to the collection of Village income taxes and the administration and enforcement of

the provisions of this Ordinance, including provisions for the examination and correction of returns and payments.

- D. IN any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Village Clerk may determine the amount of tax appearing to be due the Village of Apple Creek from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon if any.
- E. Subject to the consent of the Board of Review or pursuant to regulations approved by the Council of the Village, the Village Clerk shall have the power to compromise any interest or penalty, or both, imposed by this Ordinance.
- F. A Department of Taxation is hereby created within the office of the Village Clerk of The Village of Apple Creek. Such Department of Taxation shall have such deputies, clerks and other employees as may be from time to time determined by the Council of the Village of Apple Creek, and shall receive such salary as may be determined by Village Council. The Village Clerk shall recommend all appointments of personnel and purchase all equipment, supplies and material for the Department of Taxation subject to the approval of Council. The Department of Taxation shall be charged with the administration and operation of this Ordinance, under the direction of the Village Clerk. The Village Clerk shall prescribe the form and method of accounts and reports for said department, as well as the forms for taxpayer's returns and declarations, and shall be charged with the internal examination and audit all such accounts, and shall exhibit accurate records showing the amount received from each taxpayer, and the date of said receipt. The Village Clerk shall also make written report to Council annually of all monies collected hereunder during the preceding year.

SECTION 6. INVESTIGATIVE POWER OF THE VILLAGE CLERK – PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION

- A. The Village Clerk or his duly authorized agent or employee, is hereby authorized to examine the books, papers and records of any employer, or of any taxpayer or person subject to the tax, or believed to be 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. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish to the Village Clerk or his duly authorized agent or employee, within thirty (30) days following a written request by the Village Clerk or his duly authorized agent or employee, the means, facilities, and opportunity for making such examination and investigations as are hereby authorized.
- B. The Village Clerk, or his duly authorized agent or employee, is hereby authorized to examine any person, employer or employee under oath, concerning any income which was or should have been returned for taxation, and for this purpose may compel the production of books, Federal income tax records, papers and records and the attendance of all persons before him, whether as parties or witnesses, whether he believes such persons have knowledge of such income.
- C. The refusal to produce books, papers, records and Federal income Tax returns, or the refusal to submit to such examination by any employer of person subject or presumed to be subject to the tax by any Officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this section or with any order or subpoena of the Village Clerk authorized hereby shall be deemed a violation of this Ordinance, punishable as provided in Section 8 hereof.
- D. Tax returns, investigations, hearings and all audit papers and information connected therewith are confidential and shall be carefully preserved so that they shall not be available of inspection by anyone other than the proper agents of the Village of Apple Creek for official purposes.
- E. Any information gained as the result of the filing of any tax returns, investigations, hearings or verifications required or authorized by this ordinance shall be confidential, except for official purposes and except in accordance with proper judicial order. Any person divulging such information shall upon conviction thereof be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than **FIVE HUNDRED DOLLARS** (\$500.00) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense. In addition to the above penalties, any employee of the Village of Apple Creek who violates the

provisions of this section relative to disclosures of confidential information shall be immediately dismissed from the service of the Village.

SECTION 7. INTEREST AND PENALTIES

All taxes imposed by this ordinance, including taxes withheld or required to be withheld from wages by an employer and remaining unpaid after they have become due, shall bear interest on the amount of the unpaid tax at the rate of six percent (6%) per annum, and the taxpayers upon whom said taxes are imposed, and the employers required by this Ordinance to deduct, withhold and pay taxes imposed by the Ordinance shall be liable, in addition thereto, to a penalty of one-half (1/2) of one percent (1%) of the amount of the unpaid tax for each month or fraction of a month for the first six (6) months of non-payment, or FIVE DOLLARS (\$5.00), whichever is the greater. Upon recommendation of the Village Clerk, the Board of Review may abate interest or penalties, or both, and upon appeal from the refusal of the Village Clerk to so recommend, the Board of Review may nevertheless abate interest or penalty.

SECTION 8. VIOLATIONS – PENALTIES

- A. The following shall be considered violations of this Ordinance:
1. Failing, neglecting or refusing to make any return or declaration required by this Ordinance; or
 2. Making any incomplete, false or fraudulent return; or
 3. Failing, neglecting or refusing to pay the tax, penalties or interest imposed by this Ordinance; or
 4. Failing, neglecting or refusing to withhold the tax from employees or to remit such withholding to the Village Clerk; or
 5. Refusing to permit the Village Clerk or any duly authorized agent or employee to examine books, records and papers and Federal income tax returns relating to the income or net profits of a taxpayer; or
 6. Failing to appear before the Village Clerk and to produce books, records, Federal income tax returns and papers relating to the income or net profits of a taxpayer under order or subpoena of the Village Clerk; or
 7. Refusing to disclose to the Village Clerk any information with respect to the income or net profits of a taxpayer; or
 8. Failing to comply with the provisions of this Ordinance or any order or subpoena of the Village Clerk authorized hereby; or
 9. Attempting 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. Any person who violates any of the provisions of Section 8 A above shall be guilty of a misdemeanor and shall be fined not more than FIVE HUNDRED DOLLARS (\$500.00) or imprisoned not more than six (6) months or both, for each offense.
- C. All prosecutions under this section must be commenced within two (2) years from the time of the offense complained of, except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which cases the limitation of time within which prosecution must be commenced shall be five (5) years from the date the return was due or the date the false or fraudulent return was filed.
- D. The failure of any employer or taxpayer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return or declaration, from filing such form, or from paying the tax.

SECTION 9. ALLOCATION OF FUNDS

The funds collected under the provisions of this Ordinance shall be deposited in the General Fund and said funds collected shall be disbursed to defray all costs of collecting the taxes and cost of administering and enforcing the provisions thereof; and the net available income tax receipts received annually shall be used to defray operating expenses of the Village or to pay for capital improvements.

SECTION 10. BOARD OF REVIEW

- A. A Board of Review, consisting of three (3) members, residents of the Village of Apple Creek to be appointed by the Mayor with approval of Village Council, is hereby created by the Ordinance. No member shall be appointed to the Board of Review who holds other public office or appointment. The members of the Board of Review shall serve without pay.
- B. A majority of the members of the Board of Review shall constitute a quorum. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions.
- C. Any hearing of the Board may be conducted privately and shall be conducted privately upon request of the taxpayer being heard. The provisions of Section 6 of the Ordinance 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 privately the Board of Review on appeal or otherwise.
- D. Any person dissatisfied with any ruling or decision of the Village Clerk which is made under the authority conferred by the Ordinance and the Rules and Regulations related thereto may appeal therefrom to the Board of Review within thirty (30) days from the announcement of such ruling or decision by the Village Clerk, and the Board of Review shall, on hearing have jurisdiction to affirm, reverse or modify and such ruling or decision, or any part thereof.
- E. 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.
- F. The Board of Review, as created, shall serve during the life of the Ordinance.

SECTION 11. APPLICABILITY

This Ordinance shall not apply to any person, firm, corporation, or to any property as to whom or which it is beyond the power of the Village Council of the Village of Apple Creek to impose the tax herein provided for.

SECTION 12. SAVINGS 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 sentence, clause, 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 Council of the Village of Apple Creek that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 13. EXEMPTIONS

The provisions of this Ordinance shall not be construed as levying a tax upon the following:

1. Funds received from local, state or Federal governments because of service in the Armed Forces of the United States, by the person rendering such service, or as a result of another person rendering such service.
2. Poor relief, pensions, social security, unemployment compensation and disability benefits received from private industry or local, state or Federal governments, or from charitable, religious or educational organizations.
3. Dues, contributions and similar payments received by charitable, religious, educational or literary organizations or labor unions, lodges and similar organizations.
4. Receipts from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide charitable, religious and educational organizations and associations.
5. Any association, organization, corporation, club or trust, which is exempt from Federal taxes on income by reason of its charitable, religious, educational, literary, scientific, its., purposes.

6. Gains from involuntary conversions, cancellation of indebtedness, interest on Federal obligations, and income of a decedent's estate during the period of administration (except such income from the operation of a business).
7. Interest received on savings.
8. Earnings of any person who has not attained the age of 18 years.

SECTION 14. REFUNDS

Should it appear that any taxpayer has paid more than the amount of the tax to which the Village of Apple Creek is entitled under the provisions of this Ordinance, a refund of the amount so overpaid shall be made, provided a proper claim for refund of such overpayment of tax has been filed by the taxpayer, or same may be applied toward the declaration of tax due for the ensuing year. Claims for refunds shall be made on forms prescribed by and obtainable from the Village Clerk.

All applications for refund shall be made within six (6) months of the due date of a final return or shall be forever barred thereafter. Provided, however, an extension may be granted by the Village Clerk on written application.

SECTION 15. EMERGENCY CLAUSE

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, welfare, and safety, the emergency being the necessity of immediately raising additional funds for the operation of necessary governmental functions imposed by law, including proper police and fire protection, but not limited thereto and, as such, this Ordinance shall take effect and be in force immediately upon its passage by Council and approval by the Mayor.

LAWRENCE BECKER

Mayor

Passed: April 2, 1973

ATTEST:

WALDO PFOUTS

Clerk

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