

VILLAGE OF OCTA
FAYETTE COUNTY, OHIO
SUBSTITUTE INCOME TAX ORDINANCE #2005-08

Effective Date of Amended

Income Tax Ordinance

Effective Date December 12, 2005

Village of Octa Mayor

Robert E. Ison

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VILLAGE OF OCTA

SUBSTITUTE ORDINANCE NO. 2005-08

AN ORDINANCE IMPOSING AN INCOME TAX FOR THE PURPOSE OF GENERAL MUNICIPAL OPERATION, MAINTENANCE, NEW EQUIPMENT AND CAPITAL IMPROVEMENTS FOR THE VILLAGE AT THE RATE OF ONE PERCENT PER YEAR

WHEREAS, THE VILLAGE OF OCTA COUNCIL HAS DETERMINED THERE EXISTS A NEED TO REVISE AND SUBSTITUTE THE VILLAGE INCOME TAX ORDINANCE.

NOW THEREFORE BE IT ORDAINED, THAT THE VILLAGE INCOME TAX ORDINANCE #96-007 AS AMENDED BE REVISED AND SUBSTITUED AS FOLLOWS:

SECTION 1

- 98.01 Purpose
- 98.02 Definitions
- 98.03 Imposition of tax
- 98.04 Effective period
- 98.05 Return and payment of tax
- 98.06 Collection at source
- 98.07 Declarations
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- 98.09 Investigative powers of the Administrator; penalty for divulging confidential information
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- 98.17 Deposit of income tax collections to the Capital Improvement Fund
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Now therefore be it Ordained by the Council of the Village of Octa, Fayette County, Ohio

98.01 PURPOSE

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the village , there is hereby levied a tax on salaries, wages, commissions and other compensation, and on net profits as hereinafter provided.

98.02 DEFINITIONS

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATOR. The individual designated by this chapter, whether appointed or elected, to administer and enforce the provisions of this chapter.

ASSOCIATION. A partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.

BOARD OF REVIEW. The Board created by and constituted as provided in 98.13.

BUSINESS. An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity.

CORPORATION. A corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory or foreign country or dependency.

EMPLOYEE. One who works for wages, salary, commission or other type of compensation in the service of an employer.

EMPLOYER. 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.

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

GROSS RECEIPTS. The total income from any source whatsoever.

NET PROFITS. A net gain from the operation of a business, profession, enterprise or other activity whether or not such business, profession enterprise or other activity is conducted for profit or is ordinarily conducted for profit after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, without deduction of taxes imposed by this 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.

NONRESIDENT. An individual domiciled outside the village.

NONRESIDENT UNICORPORATED BUSINESS ENTITY. An unincorporated business entity not having an office or place of business within the village.

OFFICE. See **PLACE OF BUSINESS** herein.

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

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

RESIDENT. An individual domiciled in the city.

RESIDENT UNINCORPORATED BUSINESS ENTITY. An unincorporated business entity having an office or place of business within the city.

TAXABLE INCOME. Wages, salaries, commissions, gambling income of over \$10,000 and other compensation paid by an employer or employers before any deductions and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this chapter.

TAXABLE YEAR. The calendar year, or the fiscal year upon 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.

TAXING MUNICIPALITY. 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.

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

98.03 IMPOSITION OF TAX

(A) (1) An annual tax of 1% (one-percent) shall be imposed on or after May 7, 2003.

(2) The above tax shall be imposed upon the following:

(a) On all salaries, wages, commissions and other compensation, including all gambling income over \$10,000 earned by the residents of the village.

(b) On all salaries, wages, commissions and other compensation, including all gambling income over \$10,000 earned by nonresidents for work done or services performed or rendered in the village.

(c) 1. On the portion attributable to the city, of the net profits earned 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 the city.

2. On the portion of the distributive share of the net profits earned of a resident partner or owner of a resident unincorporated business entity not attributable to the village, and not levied against such unincorporated business entity. However, the liability of an individual partner or owner taxable hereunder on income attributable to another taxing municipality shall be subject to the relief and reciprocity provisions of 98.15.

(d) 1. On the portion attributable to the city, of the net profits earned of all nonresident unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the city, whether or not such unincorporated business entity has an office or place of business in the city.

2. On the portion of the distributive share of the net profits earned of a resident partner or owner of a nonresident unincorporated business entity not attributable to the village and not levied against such un-incorporated business entity. However the liability of an individual partner or owner taxable hereunder on income attributable to another individual taxing municipality shall be subject to the relief and reciprocity provisions of 98.15.

(e) On the portion attributable to the city of the net profits earned of all corporations derived from sales made, work done, services performed or rendered and business or other services performed or rendered and business or other activities conducted in the city, whether or not such corporations have an office or place of business in the city.

(B) *Business within and outside the village.* The portion of the net profits attributable to village of a taxpayer conducting a business, profession or other activity both within and without the boundaries of the city shall be determined as provided in R.C. § 718.02 and in accordance with the rules and regulations adopted by the Administrator pursuant to this chapter.

(C) *Operating loss carry forward.*

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

(2) For the purpose of division (C) (1) of this section, the portion of a net operating loss sustained shall be allocated to the village in the same manner as provided herein for allocating net profits to the village.

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

(D) *Consolidated returns.*

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

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

(E) *Exceptions.* The tax provided for herein shall not be levied upon the military pay or allowances of members of the armed forces of the United States, upon the net profits of any civic, charitable, religious, fraternal or other organization specified in R.C. § 718.01 to the extent that such net profits are exempted from municipal income taxes under such section.

98.04 EFFECTIVE PERIOD

The tax shall be levied, collected and paid in accordance with the rate set forth in 98.03 with the respect to the salaries, wages, commission and other compensation and with respect to the net profits of businesses, professions or other activities earned from and after May 7, 2003.

98.05 RETURN AND PAYMENT OF TAX

(A) Each person residing in the Village and eighteen years of age or older shall be required to file with the Administrator a village income tax return on or before April 30th of each year. 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 such fiscal year or period. The Administrator is hereby authorized to provide by regulation that the return of an employer from the salaries, wages, commissions or other compensation of an employee and paid by him to the Administrator shall be accepted as the return required of any non-resident employee whose sole income, subject to the tax under this chapter, is such salary, wages, commissions or other compensation.

(B) Each taxpayer who engages in business, or whose salaries, wages, commissions and other compensation are subject to the tax imposed by this section, shall whether or not a tax is due thereon, make and file a return on or before April 30 of each year with the Administrator on a form furnished by or obtainable from the Administrator setting forth the aggregate amount of salaries, wages, commissions and other compensation earned and or net profits earned and/or gross income from such business less allowable expenses in the acquisition of such gross income earned during the preceding year and subject to the tax, together with such other pertinent information as the Administrator may require. However, when the return is made for a fiscal year or other period different from the calendar year, the return shall be made on or before the thirtieth (30th) day of the fourth (4th) month after the close of such fiscal year or other period.

(C) The net loss from an unincorporated business activity conducted in the village or elsewhere may not be used to offset salaries, wages, commissions or other compensation. However, if a taxpayer is engaged in two or more taxable business activities to be included in the same return, the net loss of one unincorporated business activity conducted in the village (except any portion of a loss separately reportable for municipal tax purposes to another taxing entity) may be used to offset the profits of another unincorporated business activity conducted in the village for the purposes of arriving at overall net profits. A husband and wife, in any taxable year, may elect to file separate or joint returns. No loss, in whatever form or manner, can be taken against gambling income.

(D) If a net operating loss has been sustained in any taxable year, such losses may be carried forward for a period not to exceed five (5) years, however, no net operation loss may be carried backward to any other taxable year.

(E) Affiliated corporations may not deduct a loss from any other corporation having a taxable profit, and operations of any affiliated corporation having a loss may not be taken into consideration in computing net profits or business allocation percentage formula.

(F) The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as due thereon. However, where any portion of the tax so due has been deducted at the source pursuant to the provisions of Sections 98.05 and/or 98.06 or where any portion of such tax has been paid by the taxpayer pursuant to the provisions of Section 98.07, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Sections 98.05

and/or 98.06 shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing such return.

(G) A taxpayer who has overpaid his income tax in any taxable year may request a refund, provided there is no other tax liability and provided, further, that no amount of less than Five Dollars (\$5.00) will be refunded or collected.

The return shall be filed with the Administrator on a form furnished by or obtainable upon request from such Administrator setting forth for the period indicated thereon:

(1) The aggregate amount of salaries, wages, commissions and other compensation earned including gambling income over \$10,000, and the gross income from a business, profession or other activity less allowable expenses incurred in the acquisition of such gross income. 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;

(2) The amount of the tax imposed by this chapter on such earnings and profits;

(3) Any payments or credits to which the taxpayer may be entitled under the provisions of this chapter; and

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

(H) The Administrator may extend the time for filing of the annual return upon the written request of the taxpayer for a period of not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the federal income tax return. The Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date normally due. No failure to file penalty pursuant to 98.10 (C) shall be assessed in those cases in which the return is filed within the period as extended. Penalty for failure to pay tax pursuant to Section 98.10 (B) (1) shall be assessed on all taxes due after the due date of the return, regardless of extension. An extension to file the return does not extend the date for payment of tax due. Interest shall be charged on all taxes paid after the due date of the return, regardless of extension, until paid, at the rate provided in Section 98.10.

(I) The taxpayer making the return shall, at the time of filing thereof, pay to the Administrator the balance of tax due, if any, after deducting:

(1) The amount of city income tax deducted or withheld at the source pursuant to Section 98.06;

(2) The portion of the tax which has been paid on declaration by the taxpayer pursuant to Section 98.07;

(3) Any credit allowable under the provisions of Section 98.15. Should the return, or the records of the Administrator, indicate an overpayment of the tax for which the city is entitled under the provisions of this chapter, such overpayment shall first be applied against any existing 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, overpayments of less than \$5 shall not be refunded or credited.

(J) (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 Sections 98.11 and 98.15. The 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 months from the final determination of any federal tax liability affecting the taxpayer's village tax liability, such taxpayer shall make and file an amended village return showing income subject to the village tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

Penalty, see Section 98.16

98.06 COLLECTION AT SOURCE.

(A) (1) Each employer within or doing business within the village who employs one or more persons on a salary, wage, commission or other compensation basis shall, at the time of payment thereof, deduct the tax as set forth in Section 98.03 from the gross salaries, wages, commissions or other compensation earned by residents of this village regardless of where such compensation was earned and shall deduct the tax as set forth in Section 98.03 from the salaries, wages, commissions or other compensation earned within the village by nonresidents.

(2) Notwithstanding the provisions of division (A) (1) of this section, where such employer employs a resident of the village in another taxing municipality requiring such employers to deduct this tax from all employees engaged therein, such employer shall withhold for and remit to the village the tax imposed by this chapter subject to the relief and reciprocity provision of Section 98.15.

(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 the tax hereby required to be withheld. Such 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 therefore by the Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such taxes have in fact been withheld;

(4) On or before January 31, following any calendar year, such employer shall file with the Administrator an information return for each employee for whom the village income tax has been, or should have been withheld, showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of village income tax withheld from such employee.

Penalty see Section 98.16

98.07 DECLARATIONS

(A) Every person who anticipates any taxable income which is not subject to Section 98.06, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 98.03 shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any.

However, if a person's income is wholly from wages, salaries, commissions or other compensation from which the tax will be withheld and remitted to the village in accordance with Section 98.06, such person need not file a declaration.

(B) Such declaration shall be filed on or before April 30 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. 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) Such declaration shall be filed upon a form furnished by, or obtainable from, the Administrator. Credit shall be taken for village income tax to be withheld, if any, from any portion of such income. In addition, credit may be taken for tax payable to other taxing municipalities in accordance with the provisions of Section 98.15.

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

(D) (1) Taxpayers making a declaration shall, at the time of the filing thereof, pay to the Administrator at least one-fourth of the estimated annual tax due after deducting:

(a) Any portion of such tax to be deducted or withheld at the source pursuant to Section 98.06;

(b) Any credits allowable under the provisions of Section 98.15;

(c) Any overpayments of previous year's tax liability that the taxpayer has not elected to have refunded.

(2) At least a similar amount shall be paid on or before the last day of the sixth, ninth and twelfth months after the beginning of the taxpayer's taxable year, provided that in the case an amended declaration has been duly filed, or the taxpayer is taxable for a portion of the year only, the unpaid balance shall be in equal installments on or before the remaining payment dates.

(E) On or before the last day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the city shall be paid therewith in accordance with the provisions of Section 98.05.

(F) Notwithstanding any provision or requirement of this chapter to the contrary, if a taxpayer resides or proposes to reside in the village or engages in business or proposes to engage in business therein for a period of less than three months or if the Administrator determines that the residences of any taxpayer in the village or the period during which any taxpayer will engage in business in the village may reasonably be expected to be less than three months, the Administrator may require any such taxpayer to file a declaration and/or a return within such time as he may reasonably fix and to pay or secure the payment of any tax due or to become due and/or any tax withheld or required to be withheld during the period of residence or engagement in business or the period of such residence or engagement in business estimated by the Administrator.

(G) The dates fixed by the Administrator for the filing of declarations and/or returns and/or for payments or security for payments of taxes pursuant to division (F) of this section, shall be in lieu of the dates for such filing or payment specified for taxpayers generally by this chapter.

Penalty, see Section 98.16

98.08 DUTIES OF THE ADMINISTRATOR.

(A) (1) The Administrator shall receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, keep an accurate record thereof and report all moneys so received.

(2) The Administrator shall enforce payment of all taxes owing the village, 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 show dates and amounts of payments thereof.

(B) The Administrator is hereby charged with the enforcement of the provisions 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.

(C) (1) 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 tax due. The authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this chapter.

(2) Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 98.11 and 98.12 shall apply.

(D) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the village from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(E) 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 98.10.

98.09 INVESTIGATIVE POWERS OF THE ADMINSTRATOR & PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

(A) The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or person subject to, or 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 examinations and investigations as are hereby authorized.

(B) The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income. For this purpose, he may compel the production of books, papers, records and federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

(C) The refusal to produce books, papers, records and federal income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by an 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 98.16.

(D) (1) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes, or except in accordance with proper judicial order. Any person divulging such information shall be deemed a violation of this chapter, punishable as provided in Section 98.16. Each disclosure constitutes a separate offense.

(2) In addition to the penalty set forth in Section 98.16, any village employee who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(E) Every taxpayer shall retain all records necessary to compute his tax liability for a period of five(5) years from the date his return is filed, or the withholding taxes are paid.

Penalty, see Section 98.16

98.10 INTEREST AND PENALTIES.

(A) All taxes imposed and all moneys withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of 1 ½% per month or fraction thereof.

(B) In addition to interest as provided in division (A) of this section, penalties based on the unpaid tax are hereby imposed as follows:

(1) For failure to pay taxes due, other than taxes withheld: 1 ½% per month or fraction thereof or \$25, whichever is the greater.

(2) For failure to remit taxes withheld 5% per month or fraction thereof or \$50, whichever is the greater.

(C) In addition to interest and penalties as provided in divisions (A) and (B) of this section, any person failing to file a return under Section 98.05 or 98.06 within the period set forth therein (or any extension period as may be granted under Section 98.05(C)) shall be penalized as follows:

(1) Complete tax return, whether or not a tax be due thereon, is filed not more than 30 days late, penalty shall be \$50.00.

(2) Complete tax return, whether or not a tax be due thereon, is filed more than 30 but not more than 180 days late, penalty shall be \$100.00

(3) Complete tax return, whether or not a tax be due thereon, is filed more than 180 days late, penalty shall be \$150.00.

(D) A penalty shall not be assessed on an additional 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. Further, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability.

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

98.11 COLLECTION OF UNPAID TAXES AND REFUNDS.

(A) All taxes imposed by this chapter shall be collectable, together with any interest and penalties thereon, by suit, as other debts of the amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three (3) years from the time the return was due or filed whichever is later. However, in those cases in which a Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitation, the period within which an additional assessment may be made by the Administrator shall be one (1) year from the time of the final determination of the federal tax liability.

(B) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date which such payment was made or the return was due, or within three(3) months after final determination of the federal tax liability, whichever is later.

(C) Amounts of less than \$5 shall not be collected, refunded nor credited to a declaration of estimated tax.

98.12 VIOLATIONS.

(A) No person shall:

(1) Fail, neglect or refuse to make any return or declaration required by this chapter;

(2) Make any incomplete, false or fraudulent return;

(3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;

(4) Fail, neglect or refuse to withhold the tax from his employees or remit such withholdings to the Administrator;

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

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

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

(8) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby;

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

(10) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and city 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.

(B) All prosecutions under this section must be commenced within three (3) years from the time of the offense complained of except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution must be commenced shall be six (6) 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 or declaration, from filing such form, or from paying the tax.

Penalty, see Section 98.16

98.13 BOARD OF REVIEW

(A) A Board of Review, consisting of the City Solicitor as Chairperson, the Administrator as Secretary and an appointee of Council is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 98.09 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.

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

(C) Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal therefrom to the Board within 30 days from the announcement of such ruling or decision by the Administrator, and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision or any part thereof.

98.14 ALLOCATION OF FUNDS

The funds collected under the provisions of this chapter shall be deposited in the village general fund and funds collected from the imposition date of the tax under this chapter shall be disbursed for the following:

- (A) Such part thereof as shall be necessary to defray all costs of collecting the taxes and the cost of administering and enforcing the provisions thereof.
- (B) The balance of any moneys collected shall be allocated to provide funds for the purposes of general municipal operations, including but not limited to, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements for the village.

98.15 TAX RECIPROCITY

Notwithstanding any other provisions of this chapter:

- (A) When a resident is subject to or has paid, or has acknowledged a liability for a municipal income tax in another municipality on the same income taxable under this chapter and such other municipality does not allow a credit to its nonresidents, such resident of the city may claim a credit in the amount of one-half of the amount of such tax paid to such other municipality, but not in excess of one-half of the tax assessed by this chapter.
- (B) (1) When a resident is subject to and has paid or has acknowledged liability for a municipal income tax in another municipality on the same income taxable under this chapter, and such other municipality allows a credit to its nonresidents on the same basis as provided in division (C) of this section, a credit shall be allowed against the city income tax of 50% of the tax due hereunder or 50% of the tax due under the ordinance of such other municipality, whichever is the lesser.
- (2) If the tax due such other municipality has been paid to or withheld in such other municipality, a city resident may claim credit for and assign to the city any claim for refund to which he may be entitled from such other municipality. In the event an amount is not received by the village equal to such credit claimed by reason of tax payment made to or withheld in such other municipality, then the taxpayer shall be liable to the city for an amount by which the claimed credit exceeds the amount recovered on such assignment by the city, together with penalty and interest. If satisfactory evidence is offered, however, the taxpayer is entitled to the

claim covered by the assignment, such taxpayer shall not be deprived of credit therefor because of fault or neglect on the part of either municipality.

(3) Assignment of any claim for refund to which a resident may be entitled from another municipality shall be tentatively accepted as payment of that portion of city income tax represented by such assignment. However, should an overpayment result from the credit allowed by reason of such assignment, no refund thereof shall be made until such assignment has been accepted for payment by such other municipality.

(C) (1) When a nonresident is subject to the tax imposed by this chapter and is also subject to tax on the same income in the municipality of his residence, a credit of 50% of the tax due under this chapter or 50% of the tax due under the ordinance of such other municipality, whichever is the lesser, shall be allowed against the tax due under this chapter, provided:

(a) The other municipality imposed on its residents a tax on the same income and reciprocal provision is made in the ordinance of such other municipality granting to nonresidents thereof a credit on the same basis as provided on this division against the tax levied thereby;

(b) Such nonresident is subject to and has paid, or has acknowledged liability in the municipality of his residence for any tax due after such reciprocal credit is allowed; and

(c) The municipality of his residence furnishes evidence of payment of tax therein or evidence of assignment by the taxpayer of his claim for reciprocal credit to such other municipality.

(2) The amount due a nonresident as a result of having overpaid the tax due the city, or arising from allowance of a credit provided for herein may, under regulations adopted by the Administrator, be assigned and paid to such other municipality.

(D) The credits provided for in divisions (A), (B) and (C) of this section will not be allowed unless the same are claimed in a timely return or form acceptable to, and filed with the Administrator. In the event that a taxpayer fails, neglects or refuses to file such timely return or form he shall not be entitled to such credit and shall be liable for the full amount of tax assessed by this chapter together with such interest and penalties, both civil and criminal, as are prescribed in this chapter.

(E) Any credit for income taxes paid in another municipality on the same income taxable hereunder, or claim for assignment of any refund due to the credit provided for herein, must be filed with the Administrator on or before December 31 of the year following that for which such credit is claimed. However, in the event such claim for reciprocity refunds has been assigned to the municipality of residence, such municipality of residence must file a claim for refund with the Administrator on or before January 31 next following such December 31. Failure to file such claim for reciprocity credit or refund, or assignment thereof, within the time prescribed herein shall render such credit, claim for refund or assignment null and void.

98.16 PENALTY

A violation of each provision of this ordinance constitutes a separate offense.

A first violation of any provision of this ordinance shall constitute a misdemeanor of the second degree punishable by a fine of up to \$500.00 and/or ninety (90) days in jail.

SECTION 2 That this ordinance shall substitute Village Income Tax Ordinance#96-007and all other ordinances or resolutions in conflict herein are expressly repealed.

SECTION 3 That this ordinance shall take immediate effect upon passage.

Passed this 12TH day of December, 2005

Attest:

Jeanette S. Ranson, Fiscal Officer

Robert Ison, Mayor

Mike Turner, President of Council

1ST Reading: October 10, 2005

2nd Reading November 16, 2005

3rd Reading December 12, 2005

Approved As To Form:

Law Director