

ORDINANCE NO. 2004-47

AN ORDINANCE LEVYING A TAX TO PROVIDE FUNDS FOR THE PURPOSES OF GENERAL MUNICIPAL OPERATION, MAINTENANCE OF EQUIPMENT, EXTENSION, ENLARGEMENT AND IMPROVEMENT OF MUNICIPAL SERVICES AND FACILITIES AND CAPITAL IMPROVEMENTS, ON ALL INCOME, SALARIES, QUALIFYING WAGES, COMMISSIONS, TIPS, GRATUITIES, GROSS LOTTERY WINNINGS AND OTHER COMPENSATION EARNED AND/OR RECEIVED BY RESIDENTS OF THE CITY OF MARTINS FERRY, OHIO; AND ON ALL INCOME, SALARIES, QUALIFYING WAGES, COMMISSIONS, TIPS GRATUITIES AND OTHER COMPENSATION EARNED AND/OR RECEIVED BY NON-RESIDENTS OF THE CITY OF MARTINS FERRY, OHIO FOR WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE CITY OF MARTINS FERRY, OHIO; ON THE NET PROFITS EARNED AND/OR RECEIVED ON ALL BUSINESSES, PROFESSIONS OR OTHER ACTIVITIES CONDUCTED BY RESIDENTS OF THE CITY OF MARTINS FERRY, OHIO; ON THE NET PROFITS EARNED AND/OR RECEIVED ON ALL BUSINESSES, PROFESSIONS OR OTHER ACTIVITIES CONDUCTED IN THE CITY OF MARTINS FERRY, OHIO BY NON-RESIDENTS, AND ON THE NET PROFITS EARNED AND/OR RECEIVED BY ALL CORPORATIONS DOING BUSINESS IN THE CITY OF MARTINS FERRY, OHIO AS THE RESULT OF WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE CITY OF MARTINS FERRY, OHIO; REQUIRING AND MAKING MANDATORY 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 CITY OF MARTINS FERRY, OHIO; PROVIDING FOR THE ADMINISTRATION, COLLECTION AND ENFORCEMENT OF SAID TAX; AND DECLARING VIOLATION THEREOF TO BE A MISDEMEANOR AND IMPOSING PENALTIES THEREFOR, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARTINS FERRY, COUNTY OF BELMONT, STATE OF OHIO:

SECTION 1. PURPOSE

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services, facilities and capital improvements of the City of Martins Ferry, there shall be, and is hereby, levied a tax on income, salaries, qualifying wages, commissions, tips, gratuities, gross lottery winnings, and other compensation, and on net profits as hereinafter provided in Ordinance No. 2001-56, passed 10-4-01, and as amended by Ordinance No. 2004-47, passed August 27, 2004.

SECTION 2. 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.

Adjusted Federal Income Tax - A “C” corporation’s federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute “Adjusted Federal Taxable Income” as if the pass-through entity was a “C” corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

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

Association – A partnership, limited partnership, limited liability company, or any other form of unincorporated enterprise, owned by one or more persons.

Board of Review - The Board created by and constituted as provided in Section 14 of the ordinance.

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

Corporation – A corporation, including Chapter S Corporations as defined in the federal tax code, 26 U.S.C. 1361, or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.

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

Employee - One who works for income, qualifying wages, salary, commission, tips, gratuities or other type of compensation in the service and under the control 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 an income, salary, wage, commission, tip(s), gratuity or other compensation basis.

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

Fundamental Change – Any substantial alteration by an employer including liquidation, dissolution, bankruptcy and reorganizations such as merger, consolidation, acquisition, transfer or change in identity, from or to any organization.

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

Gross Receipts - The total income from any source whatsoever revenue derived from sales, work done, or services rendered.

Income - All monies, subject to limitations imposed by ORC 718, derived from any source whatsoever, including but not limited to:

A. All income, qualifying wages, commissions, other compensation and other income from whatever source received by residents of Martins Ferry.

B. All salaries, wages, commissions, other compensation and other income from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in Martins Ferry.

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

Manager – Any of the employer’s officers, responsible persons, employees having control or supervision, and employees charged with the responsibility of filing the return, paying taxes, and otherwise complying with the ordinance.

Net Profits - For taxable years prior to 2004, a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary, reasonable and necessary expenses either paid or accrued in accordance with the accounting system (i.e., either cash or accrual) used by the taxpayer for federal income tax purposes, without deduction of taxes imposed by this ordinance, federal, state, and other taxes based on income exclusive of the amount of Ohio franchise tax computed on the net worth basis; and in the case of an association, without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of this ordinance. (For taxable years 2004 and later, see “adjusted federal taxable income”).

Non-Resident - An individual domiciled outside the City of Martins Ferry, Ohio.

Non-Resident Unincorporated Business Entity - An unincorporated business entity not having an office or place of business within City of Martins Ferry, Ohio.

Person - Every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term “person” as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

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

Qualifying wage - Wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. “Qualifying wage” represents employees’ income from which municipal tax shall be deducted by the employer, and any wages not considered a part of “qualifying wage” shall not be taxed by the City of Martins Ferry. This definition is effective January 1, 2004, for taxable years 2004 and later.

Resident - An individual domiciled in the City of Martins Ferry, Ohio.

Resident Unincorporated Business Entity - An unincorporated business entity having an office or place of business within City of Martins Ferry, Ohio.

Rules and Regulations - An explanatory text, in printed form, amplifying and interpreting certain articles and sub-sections thereof of this ordinance. Copies of these are on file in the Department of Public Service, Income Tax Department, Martins Ferry, Ohio, and are available to the public. (See Section 18.)

Taxable Income - Income minus the deductions and credits allowed by this ordinance. (See “Income” definition.)

Taxable Year - The calendar year, or the fiscal year, upon the basis of which net profits are to be computed under this ordinance and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

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

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

SECTION 3. IMPOSITION OF TAX

A. Basis of Imposition

Subject to the provisions of Section 16 of this ordinance, an annual tax for the purposes specified in Section 1 hereof shall be imposed on and after January 1, 2002, at the rate of three-fourths of one percent (0.75%) per annum upon the following:

1. Resident Individuals

On all income, qualifying wages, commissions, tips, gratuities, and other compensation earned and/or received during the effective period of this ordinance by the residents of the City of Martins Ferry. This includes, but is not limited to, Separation pay, termination pay, reduction-in-force pay, and other compensation paid as a result of an employee leaving the service of an employer and shall be allocable only to Martins Ferry. This also includes, but is not limited to, gross lottery, gambling, games of chance, and sports winnings. In no circumstance shall deductions be allowed against these winnings. However, deductions shall be allowed against gambling and sports winnings if the taxpayer is considered a professional gambler for federal income tax purposes.

2. Non-Resident Individual

(a) On all income, qualifying wages, commissions, tips, gratuities and other compensation earned and/or received during the effective period of this ordinance by non-residents for work done or services performed or rendered as measured by time spent on job in City of Martins Ferry, as a percentage of total time spent on job. Separation pay, termination pay, reduction-in-force pay, and other compensation paid as a result of an employee leaving the service of an employer shall be allocable only to Martins Ferry.

(b) The City of Martins Ferry shall not tax the compensation of a non-resident individual if all of the following apply:

1. The individual does not reside in the City of Martins Ferry.

2. The compensation is paid for personal services performed by the individual in the City of Martins Ferry on twelve or fewer days during the calendar year. A day is a full day or any fractional part of a day.

3. In the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the City of Martins Ferry and the individual pays tax on compensation described in subsection 3(a) hereof to the City, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual.

4. The individual is not a professional entertainer or professional athlete; the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the City of Martins Ferry.

3. **Resident Unincorporated Businesses**

- (a) On the portion attributable to the City of Martins Ferry of the net profits earned during the effective period of this ordinance 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 City of Martins Ferry.
- (b) On the portion of the distributive share of the net profits earned during the effective period of this ordinance of a resident partner or owner of a resident unincorporated business entity not attributable to the City of Martins Ferry and not levied against such unincorporated business entity by the City of Martins Ferry.

4. **Non-Resident Unincorporated Businesses**

- (a) On the portion attributable to the City of Martins Ferry of the net profits earned during the effective period of this ordinance of all non-resident unincorporated businesses, professions or other entities, derived from sales made, work done, or services performed or rendered and business or other activities conducted in City of Martins Ferry, whether or not such unincorporated business entity has an office or place of business in City of Martins Ferry.
- (b) On the portion of the distributive share of the net profits earned during the effective period of this ordinance of a resident partner or owner of a nonresident unincorporated business entity not attributable to City of Martins Ferry and not levied against such unincorporated business entity by City of Martins Ferry.

5. **Corporations**

- (a) On the portion attributable to the City of Martins Ferry, of the net profits earned during the effective period of this ordinance of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the City of Martins Ferry, whether or not such corporations have an office or place of business in City of Martins Ferry.
- (b) **Allocation Formula**
The portion of the net profits attributable to the City of Martins Ferry, of a taxpayer conducting a business, profession, or other activity both within and without the boundaries of City of Martins Ferry shall be determined as provided in Ohio Revised Code, Section 718.02, and in accordance with the rules and regulations adopted pursuant to this ordinance.

(c) **Operating Loss Carry Forward**

1. The portion of a net operating loss sustained in any taxable year subsequent to January 1, 2002, allocable to City of Martins Ferry may be applied against the portion of the profit of succeeding year(s) allocable to the City of Martins Ferry until exhausted, but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.
2. The portion of a net operating loss sustained shall be allocated to the City of Martins Ferry in the same manner as provided herein for allocating net profits to the City of Martins Ferry.
3. The Administrator shall provide by rules and regulations the manner in which such net operating loss carry forward shall be determined. (See Section 18.)

(d) **Consolidated Returns**

1. Filing of consolidated returns may be permitted, required, or denied in accordance with the rules and regulations. Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the City of Martins Ferry. However, once the affiliated group has elected to file a consolidated return or a separate return with the City of Martins Ferry, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the City of Martins Ferry.
2. In the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, or in case any person operates a division, branch, factory, office, laboratory or other activity in the City of Martins Ferry 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 City of Martins Ferry. If the Administrator finds net profits are not properly allocated to the City of Martins Ferry by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such division(s), branch, factory, office, laboratory or other activity or by some other method, he shall make such allocation(s) as are fair and equitable to produce a fair and proper allocation of net profits to the City of Martins Ferry.

B. Exemptions

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

1. The Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the National Guard.
2. Unemployment compensation, payments from pension plans or similar payments, including, disability payments received from private industry, or local, state, or federal governments, or from charitable, religious or educational organizations, and the proceeds of sick, accident, or liability insurance policies. The disability benefits excludable must be a permanent nature as determined by a physician or government entity.
3. Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exclusion does not apply to compensation paid for lost salaries or wages or to compensation from punitive damages.
4. Alimony received. Alimony used herein shall be as defined the Internal Revenue Service.
5. Child support received. Child support used herein shall be as defined by the Internal Revenue Service.
6. Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from casual entertainment, amusements, sports events, and health and welfare activities conducted by bona fide charitable, religious or educational organizations and associations, and only to the extent that the said receipts are income that is exempt from Federal Income Tax.
7. Income, dues, and contributions received by religious, fraternal, charitable, scientific, literary, educational institutions or organizations, labor unions and similar organizations.
8. Any association, organization, corporation, club or trust which is exempt from federal taxes on income by reason of its purpose(s), but only to the extent that the said income is exempt from federal income tax.
9. Gains from involuntary conversion, collection of indebtedness, interest income received by corporations not regularly engaged in the business of lending money or banking as described in Section 581 of the Internal Revenue Code, interest on federal, state, municipal, or other political subdivision obligations, items of income already taxed by the State of Ohio, gains from sale of capital assets as defined by the Internal Revenue

Code, any dividends received from any other corporation, but only to the extent that such dividends are included in net profits, and income of a decedent's estate during the period of administration (except such income from the operation of a business).

10. Earnings and income of all persons under eighteen (18) years of age whether residents or non-residents of the City of Martins Ferry.
11. Expenses deductible on federal form 2106, subject to audit and approval by the Administrator.
12. Compensation paid to a precinct election official, to the extent that such compensation does not exceed \$1,000 annually.
13. Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The minister must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and must have authority to perform all sacraments of the church.
14. The income of a public utility when that public utility is subject to the tax levied under Section 5727.24 or 5727.30 of the Ohio Revised Code. However, subject to Section 5745 of the Ohio Revised Code, starting January 1, 2002 this exemption does not apply to the income of an electric company or combined company, and starting January 1, 2004 it does not apply to the income of a telephone company, as both are defined in Section 5727.01 of the Revised code.
15. Income, salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce, and/or is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of a municipality to impose net income taxes.

SECTION 4. EFFECTIVE PERIOD

Said tax shall be levied, collected and paid with respect to the income, salaries, wages, commissions, tips, gratuities, gross lottery winnings, and other compensation, and with respect to the net profits of businesses, professions or other activities earned on and after January 1, 2002, and thereafter until repealed.

SECTION 5. RETURN AND PAYMENT OF TAX

- A. Each taxpayer, except as herein provided, shall, whether or not a tax be due thereon, make and file a return on or before April 15th of the year following the effective date of this ordinance, and on or before April 15th of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within one hundred five (105) days from the end of such fiscal year or period. Retirees having no taxable income for municipal income tax purposes may file, with the Administrator, a written request for exemption from these filing requirements, and shall be exempt if the request is granted by the Administrator. Such exemption shall be in effect until such time as the retiree receives income taxable for municipal income tax purposes, at which time the retiree shall be required to comply with all applicable provisions of this ordinance.
- B. The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from such Administrator, or on a generic form as defined in this ordinance, setting forth:
1. The aggregate amounts of income, salaries, wages, commissions, tips, gratuities and other compensation earned and/or received and gross receipts from business, professions, or other activity, less allowable ordinary, reasonable, and necessary expenses incurred in the acquisition of such gross receipts earned during the preceding year and subject to said tax;
 2. The amount of the tax imposed by this ordinance on such earnings and profits; and
 3. Such other pertinent statements, information returns, or other information as the Administrator may require, including but not limited to copies of all W-2 forms, 1099 Miscellaneous Income Forms, page one of form 1040, Page One and Two of Form 1120, 1120S (including (K-1), 2106, 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, schedule F and any other Federal Schedules if applicable.
- C. The Administrator may extend the time for filing of the annual return upon the month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income Tax Return for taxable years prior to 2004. for taxable year 2004 the extended due date shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. For taxable years subsequent to 2004 the extended due date shall be the last day of the month to which the due date of the federal income tax return has been extended. The administrator may deny the extension if the taxpayer's income tax account with the City of Martins Ferry is delinquent in any way. The Administrator may require a tentative return, accompanied by

payment of the amount of tax shown to be due thereon, by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

- D. 1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 6 of this ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 7 of this ordinance, or where income tax has been paid to another municipality, credit for the amount so paid, in accordance with Section 15 hereof, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.
2. A taxpayer who has overpaid the amount of tax to which the City of Martins Ferry is entitled under the provisions of this ordinance may have such overpayment applied against any subsequent liability hereunder, or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.
3. The officer or employee of such employer having control or supervision or charged with the responsibility of withholding the tax and making the payment, shall be personally liable for failure to withhold or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization or other fundamental change of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to withhold the tax or pay taxes, penalties, or interest due
- E. Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this ordinance.
- F. The failure of any employer, taxpayer or person to receive or procure a return, declaration, or other required form shall not excuse him from filing any information return, tax return, declaration, or other required form, or from paying the tax.
- G. 1. **Amended Returns**
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 11 and 15. Such amended returns shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the due date for filing the original return.

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

SECTION 6. COLLECTION AT SOURCE

- A. In accordance with Rules and Regulations, each employer within or doing business within the City of Martins Ferry, Ohio shall deduct at the time of the payment of such income, salary, wage, commission or other compensation, the tax of three-fourths of one percent (0.75%) per annum of the income, salaries, wages, commissions or other compensation, including tips and gratuities, due by the said employer to said employee and, if said employer is required to withhold One Hundred Dollars (\$100.00) or more monthly, based on the previous tax year's monthly average for employees collectively, the employer shall, on or before the last day of each calendar month, make a return and pay to the Administrator the amount of taxes so deducted. If said employer is required to withhold less than One Hundred Dollars (\$100.00) monthly, said employer shall, on or before the last day of the month following the close of each calendar quarter, make a return and pay to the Administrator the amount of taxes deducted as required herein. Said returns shall be on a form or forms prescribed by or acceptable to the Administrator, or on any acceptable generic form, and shall be subject to the Rules and Regulations. 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.
- B. Such employer in collecting said tax shall be deemed to hold the same, until payment is made by such employer to the City of Martins Ferry, as a trustee for the benefit of the City of Martins Ferry and any such tax collected by such employer from his employees shall, until the same is paid the City of Martins Ferry, Ohio, be deemed a trust fund in the hands of such employer.
- C. On or before February 28th of each year, beginning with tax year 2003, each employer shall file a withholding return setting forth the names and addresses of all employees from whose compensation the tax was withheld during the preceding calendar year and the amount of tax withheld from his employees and such other information as may be required by the Administrator. All payments not subject to withholding shall be reported on a form required by the Administrator.

- D. The officer or employee of such employer having control or supervision or charged with the responsibility of withholding the tax and making the payment, shall be personally liable for failure to withhold or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization or other fundamental change of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to withhold the tax or pay taxes, penalties, or interest due.
- E. The tax Administrator, for good cause, may require immediate returns and payments to be submitted to his office.
- F. All employers that provide any contractual service within the Municipality, and who employ subcontractors in conjunction with that service, shall provide the Municipality the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withholding requirements under this ordinance.
- G. No person shall be required to withhold the tax on salaries, wages, commissions, other compensation and other income paid domestic workers employed by such person exclusively in or about such person's residence, even though the residence is in the city of Martins Ferry, but such employee shall be subject to all of the requirements of this ordinance.

SECTION 7. DECLARATIONS

- A. **Requirements for Filing**
Every person who anticipates any taxable income which is not subject to Section 6 hereof, or who engages in any business, profession, enterprise, or activity subject to the tax imposed by Section 3 hereof, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereof, if any; provided, however, if a person's income is wholly from wages from which the tax will be withheld and remitted to the City of Martins Ferry, Ohio in accordance with Section 6 hereof, or if a person's annual income tax liability is less than Sixty Dollars (\$60.00), such person need not file a declaration.
- B. 1. **Calendar Dates for Filing**
Such declaration shall be filed on or before April 15th of each year during the life of this ordinance. However, no penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the City of Martins Ferry, Ohio on the first day of January in the year in which they became subject to estimated payments, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-

month period and the taxpayer filed a return for that year, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to ninety percent of the final tax liability for the tax year due on or before April 15th of the current year.

2. Such declarations of estimated tax to be paid by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth the estimated tax required to be paid by this section, and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year; provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.
3. Estimated tax to be paid by taxpayers who are corporations and associations shall be accompanied by a payment of at least one-fourth the estimated tax required to be paid by this section, and at least a similar amount shall be paid on or before the fifteenth day of the sixth, ninth, and twelfth of the taxable year. Provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

4. **Fiscal Dates for Filing**

Those taxpayers reporting on a fiscal year basis shall file a declaration within four (4) months after the beginning of each fiscal year or period.

C. 1. **Forms; Credit for Tax Withheld or Paid to Another**

Such declaration shall be filed upon a form furnished by, or obtainable from the Administrator, or on any acceptable generic form, provided, however, credit shall be taken for the City of Martins Ferry, Ohio income tax to be withheld from any portion of such income. In accordance with the provisions of Section 15 hereof, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.

2. **Amended Declarations**

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

D. **Annual Return Required**

On or before the fifteenth (15th) day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City of Martins Ferry, Ohio shall be paid therewith in accordance with the provisions of Section 5 hereof.

SECTION 8. INCOME TAX DEPARTMENT; DUTIES OF THE ADMINISTRATOR

- A. 1. **Income Tax Department**
There is hereby created the Income Tax Department, which shall be a part of the Department of Public Service. The Income Tax Department shall be managed by the income tax Administrator, who shall be appointed by the Mayor, subject to confirmation by the Martins Ferry City Council.
2. **Department Employment**
The taxes imposed and levied pursuant to the provisions of this ordinance shall be administered by the income tax Administrator and by such employees as are provided for in the ordinance and determined by the Council of the City of Martins Ferry, Ohio and they shall receive such salary as may be determined by the Martins Ferry City Council.
3. **Collection Responsibility**
It shall be the duty of the Martins Ferry City Treasurer 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 monthly by written report to the Martins Ferry City Council.
4. **Responsibility for Maintenance of Records**
It shall be the duty of the Administrator to enforce payment of all taxes owing the City of Martins Ferry, Ohio, to keep accurate records for a minimum of six (6) years showing the amount due from each taxpayer required to file a declaration and/or to make any return, including taxes withheld, and to show the dates and amounts of payments thereof.
- B. **Enforcement Authority**
Said Administrator is hereby charged with the enforcement of the provisions of this ordinance, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce Rules and Regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this ordinance, including provisions for the re-examination and correction of returns. These Rules and Regulations are in addition to those adopted in Section 18. Taxpayers are hereby required to comply with all rules and regulations that have been adopted.
- C. **Determination of Taxes**
In any case where a taxpayer has failed to file a return, or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the City of Martins Ferry, Ohio from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any. Such determination may be modified or amended based upon information or data subsequently secured by or made available to the Administrator. If the

taxpayer fails to respond to the assessment within 30 days, the tax, penalties, and interest assessed shall become due and payable and collectible as are other unpaid taxes.

D. **Compromise Authority**

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

SECTION 9. INVESTIGATIVE POWERS OF THE ADMINISTRATOR; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION

A. **Examination of Taxpayer's Records**

The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and federal and State income tax returns of any employer or any taxpayer or person subject to, or whom the Administrator believes is subject to, the provisions of this ordinance for the purpose of verifying the accuracy of any return made or, if no return was made, to ascertain the tax due under this ordinance. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish within ten (10) calendar days following a written request by the Administrator, or his duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

B. **Appearance Orders to Taxpayers**

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

C. **Result of Refusal to Submit Information**

The refusal to produce books, papers, records and federal and State income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this Section 9 or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of his ordinance, punishable as provided in Section 12 hereof.

D. **Confidential Nature of Information**

Any information gained as the result of any returns, investigations, verifications or hearings before the Administrator, required by the ordinance, or authorized by these Rules and Regulations shall be confidential, and no disclosure thereof shall be made except for official tax purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this ordinance shall, upon conviction thereof, be deemed guilty of a misdemeanor of the first degree, and shall be subject to a fine or penalty of not more than one thousand dollars (\$1,000.00), or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the City of Martins Ferry, Ohio who violates the provisions of this Section 9 relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

E. **Retention of Records**

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

SECTION 10. INTEREST AND PENALTIES

A. **Interest**

All taxes imposed, including estimated taxes, and all monies withheld or required to be withheld by employers under the provisions of this ordinance and remaining unpaid after they become due shall bear interest at the rate of one-half of one percent (1/2%) per month or fraction thereof.

B. **Penalties**

In addition to interest as provided in Paragraph A hereof, penalties based on the unpaid tax are hereby imposed as follows:

1. For failure to pay taxes due—other than taxes withheld: one and one-half percent (1-1/2%) per month or fraction of a month thereof.
2. For failure to remit taxes withheld from employees: five percent (5%) per month or fraction of a month thereof.

C. **Exceptions**

A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator; and provided further that, in the absence of fraud, neither penalty 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 (3) months after final determination of the federal tax liability.

D. **Abatement by Board of Review**

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

SECTION 11. COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

A. **Time Limitations on Suits**

All taxes imposed by this ordinance shall be collectable, together with any interest and penalties thereon, by civil action at law, as other debts of like amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to this tax or failure to file an additional assessment shall not be made after three (3) years from the time the return was due or filed, whichever is later, provided, However, In the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover Municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. In those cases in which the Commissioner of the 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. **Time Limitations of Refunds**

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made or the return was due, or within three (3) months after final determination of the federal tax liability, whichever is later. However, the following shall apply regarding refunds of tax withheld from non-qualified deferred compensation plans (NDCP):

1. A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.
2. A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income

that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.

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

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

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

1. To unpaid penalty and interest assessments in the order in which such assessments became due.
2. To the taxes owed for any previous year in the order in which such taxes became due.
3. To the taxpayer's current estimated tax liability.

E. **Minimum Amounts**

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

SECTION 12. VIOLATIONS; PENALTIES

A. **Enumerations of, and Penalties**

Any person who shall:

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

3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this ordinance; or
4. Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
5. Refuse to permit the Administrator or any duly authorize agent or employee to examine his books, records, papers and federal and State income tax returns relating to the income or net profits of a taxpayer; or
6. Fail to appear before the 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; or
7. Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
8. Fail to comply with the provisions of this ordinance or any order or subpoena of the Administrator authorized hereby; or
9. Give to an employer false information as to his true name, correct social security number or residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
10. Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and this municipality's income tax withheld, or to knowingly give the Administrator false information; or
11. Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties, or interest imposed by this ordinance.

Shall be guilty of a misdemeanor of the first degree, and shall be fined not more than one thousand dollars (\$1,000.00), or imprisoned for not more than six (6) months, or both, for each offense.

B. Time Limitations on Prosecutions

All prosecutions under this Section 12 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 or in the case of omission of 25% or more of income subject to this tax, 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. **Failure to Obtain Forms Not a Defense**

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

SECTION 13. ALLOCATION OF FUNDS

The funds collected under the provisions of this ordinance shall be deposited as follows:

General Fund	-	100.0%
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SECTION 14. BOARD OF REVIEW

A. **Composition and Procedures**

A Board of Review, consisting of a chairman and two (2) other individuals, all to be appointed by the chief executive officer of the City of Martins Ferry, Ohio, 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 9 hereof with reference to the confidential character of information required to be disclosed by the ordinance shall apply to such matters as may be heard before the Board on appeal.

B. **Appeals; Alternative Method of Allocation**

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

C. **Time Limitations for Appeals; Authority over Administrator's Decision**

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

- D. Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

SECTION 15. CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY

- A. Where a resident of the City of Martins Ferry, Ohio is subject to a municipal income tax in another municipality, he shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.
- B. Every individual taxpayer who resides in the City of Martins Ferry, Ohio who received net profits, income, salaries, wages, commissions, tips, gratuities or other personal service compensation for work done or services performed or rendered outside the City of Martins Ferry, Ohio, if it be made to appear that he has paid a municipal income tax on the same income taxable under this ordinance to another municipality, shall be allowed a credit against the tax imposed by this ordinance of the amount so paid by him or in his behalf to such other municipality. This credit shall not exceed the tax assessed by this ordinance on such income earned in such other municipality or municipalities where such tax is paid.
- C. The credit referred to hereunder shall be one hundred percent (100%), up to three-fourths of one percent (0.75%).
- D. A claim for refund or credit under this section shall be made in such manner as the Administrator may by regulation provide.

SECTION 16. SAVING CLAUSE

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

SECTION 17. COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE

- A. This ordinance shall continue effective insofar as the levy of taxes in concerned until repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this ordinance are concerned, it shall continue effective until all of said taxes levied hereunder in the aforesaid periods are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this ordinance shall have been fully terminated, subject to the limitations contained in Section 11 and Section 12 hereof.
- B. Annual returns due for all or any part of the last effective year of this ordinance shall be due on the date provided in Section 5 and Section 6 of this ordinance as though the same were continuing.

SECTION 18. RULES AND REGULATIONS

The Council adopts the Regional Income Tax Agency (RITA) Rules & Regulations for use as the Martins Ferry Income Tax Rules and Regulations, and they are hereby incorporated by reference as part of this Ordinance. In the event of a conflict with any provision(s) of the Martins Ferry Income Tax Ordinance and the RITA Rules & Regulations, the Ordinance will supersede.

SECTION 19.

That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Revised Code of Ohio.

SECTION 20.

That this council hereby declare this Ordinance to be an emergency measure necessary for the preservation of the public peace, health, and safety of the citizens of the City of Martins Ferry, Ohio, and for the further reason that it is necessary to immediately provide necessary funds in order to ensure and usual daily operation of the government of the City of Martins Ferry, Ohio.

WHEREFORE, this Ordinance shall take effect and be in force from and after its passage and approval by the Mayor.