

**ORDINANCE NO. 2008 - 12**

**AN ORDINANCE TO ENACT CHAPTER 171 OF THE VILLAGE OF COMMERCIAL POINT CODIFIED ORDINANCES ESTABLISHING A ONE PERCENT ( 1%) INCOME TAX TO PROVIDE FUNDS FOR THE PURPOSES OF GENERAL VILLAGE OF COMMERCIAL POINT OPERATIONS, MAINTENANCE, NEW EQUIPMENT, EXTENSION AND ENLARGEMENT OF VILLAGE OF COMMERCIAL POINT SERVICES AND FACILITIES AND CAPITAL IMPROVEMENTS OF THE VILLAGE OF COMMERCIAL POINT AND DECLARING AN EMERGENCY.**

WHEREAS, pursuant to the laws of the State of Ohio, the Village of Commercial point is authorized to adopt local tax provisions that are not in conflict therewith; and,

WHEREAS, the Council of the Village of Commercial Point has determined that there is a need to provide funds for the purpose of general Village of Commercial Point functions in the Village of Commercial Point; and,

WHEREAS, the Council of the Village of Commercial Point has determined that the levying of an income tax would best serve the needs of the Village of Commercial Point.

NOW THEREFORE, BE IT ORDAINED by the council of the Village of Commercial Point, County of Pickaway, State of Ohio, a majority of the members elected thereto concurring:

**SECTION ONE.** Chapter 171 of the Codified Ordinances of the Village of Commercial Point is hereby enacted to read as follows:

**TITLE SEVEN – Taxation  
Chap. 171. Income Tax Code**

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**CHAPTER 171  
Income Tax**

<b>171.01</b>	<b>Purpose.</b>	<b>171.14</b>	<b>Interest and penalties.</b>
<b>171.02</b>	<b>Definitions.</b>	<b>171.15</b>	<b>Exceptions.</b>
<b>171.03</b>	<b>Imposition of tax.</b>	<b>171.16</b>	<b>Collection of unpaid taxes and refunds of overpayments.</b>
<b>171.04</b>	<b>Allocation of net profits.</b>		
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<b>171.09</b>	<b>Amended returns.</b>	<b>171.21</b>	<b>Mandatory Registration.</b>
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<b>171.11</b>	<b>Declarations.</b>	<b>171.23</b>	<b>Amendments.</b>
<b>171.12</b>	<b>Duties of the Tax Commissioner.</b>	<b>171.99</b>	<b>Penalty.</b>
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## **171.01 PURPOSE.**

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

## **171.02 DEFINITIONS.**

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

- (a) "Adjusted Federal Taxable Income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:
- (1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
  - (2) Add an amount equal to five percent (5%) of intangible income deducted under division (a)(1) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;
  - (3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;
  - (4) (i) Except as provided in division (a)(4)(ii) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;
  - (ii) Division (a)(4)(i) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.
  - (5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
  - (6) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

(7) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except;

(i) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and

(ii) Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in division (a) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax. Nothing in this chapter shall be construed as limiting or removing the ability of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

- (b) "Association" means a partnership, limited partnership, S Corporation or any other form of unincorporated enterprise owned by one or more persons.
- (c) "Board of Review" means the Board created by and constituted as provided for in Section 171.17.
- (d) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, including but not limited to the renting or leasing of property, real personal or mixed.
- (e) "Corporation" means 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.
- (f) "Domicile" means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A taxpayer has only one domicile even through he may have more than one residence.
- (g) "Employee" means one who works for wages, salary, commission or other types of compensation in the services of an employer.

- (h) "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other compensation basis.
- (i) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.
- (j) "Generic Form" means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a refund claim that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income.
- (k) "Gross receipts" means total income of taxpayers from whatever source derived.
- (l) "Income From a Pass-through Entity" means partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from other pass-through entities.
- (m) "Intangible Income" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.
- (n) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
- (o) "Internet" means the international computer network of both Federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.
- (p) "Limited Liability Company" means a limited liability company formed under Chapter 1705 of the Ohio Revised code or under the laws of another state.
- (q) "Municipality" means the Village of Commercial Point in the County of Pickaway, Ohio.
- (r) "Net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than the amounts described in Section 171.03, required to be reported on schedule C, schedule E or Schedule F.

- (s) "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.
- (t) "Nonresident" means an individual domiciled outside the Village of Commercial Point.
- (u) "Nonresident incorporated business entity" means an incorporated business entity not having an office or place of business within the Village of Commercial Point.
- (v) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Village of Commercial Point.
- (w) "Other Payer" means any person, other than an individual's employer or the employer's agent that pays an individual any amount included in the federal gross income of the individual.
- (x) "Owner" means a partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.
- (y) "Owner's Proportionate Share" with respect to each owner of a pass-through entity, means the ratio of (a) the owner's income from the pass-through entity that is subject to taxation by the municipal corporation, to (b) the total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.
- (z) "Pass-through Entity" means a partnership, limited liability company, S corporation, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.
- (aa) "Person" includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any association shall include the partners or members thereof, and as applied to corporations, the officers thereof.
- (bb) "Place of business" means 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 employees regularly in attendance.
- (cc) "Principal Place of Business" means in the case of an employer having headquarters' activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated. In the case of any employer not having its headquarters' activities at a place of business within a taxing municipality, the term means the largest place of business located in a taxing municipality.

- (dd) "Qualified Plan" means a retirement plan satisfying the requirements under section 401 of the Internal Revenue Code as amended.
- (ee) "Qualifying Wages" means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with Section 718.03(A) of the Ohio Revised Code.
- (ff) "Resident" means domiciled in the Village of Commercial Point.
- (gg) "Resident Incorporated Business Entity" means an incorporated business entity whose office, place of operations or business situs is within the Village of Commercial Point.
- (hh) "Resident Unincorporated Business Entity" means an unincorporated business entity whose office, place of operations or business situs is within the Village of Commercial Point.
- (ii) "Return Preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.
- (jj) "Schedule C" means Internal Revenue Service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.
- (kk) "Schedule E" means Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.
- (ll) "Schedule F" means Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.
- (mm) "S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
- (nn) "Tax year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.
- (oo) "Tax Commissioner" means the Tax Commissioner of the Municipality or the person executing the duties of the aforesaid Commissioner.
- (pp) "Taxpayer" means a person subject to a tax on income levied by a municipal corporation. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any other person who owns the disregarded entity of qualifying subchapter S subsidiary.
- (qq) "Taxable income" means qualifying wages paid by an employer or employers, compensation for personal services, other income defined by statute as taxable, and/or

adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this Chapter.

- (rr) "Taxing Municipality" means a Municipality levying a tax on income earned by nonresidents working with such Municipality or on income earned by its residents.

### **171.03 IMPOSITION OF TAX.**

Subject to the provisions of Section 171.19, an annual tax for the purpose specified herein is hereby levied at the rate of one percent (1%) per year on the following:

- (a) On all qualifying wages, commissions, other compensation and other taxable income earned or received by residents of the Municipality during the effective period of this chapter.
- (b) On all qualifying wages, commissions, other compensation and other taxable income earned by non residents for work done or service performed or rendered in the Municipality during the effective period of this chapter.
- (c) On the portion attributable to the Municipality of the net profits earned during the effective period of this chapter, of all resident unincorporated businesses, pass through entities, professions or other activities, derived from sales made, work done, services performed or rendered or business or other activities conducted in the Municipality. On the portion of the distributive share of the net profits earned by a resident owner of a resident unincorporated business entity or pass-through entity not attributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.
- (d) On the portion attributable to the Municipality of the net profits, earned during the effective period of this chapter, by all nonresident unincorporated businesses, pass-through entities, professions or other activities derived from sales made, work done or services performed or rendered or business or other activities conducted in the Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality. On the portion of the distributive share of the net profits earned by a resident owner of a nonresident unincorporated business entity or pass-through entity not attributable to the Municipality and not levied against such incorporated business entity or pass-through entity.
- (e) On the portion attributable to the Municipality of the net profits earned during the effective period of this chapter by all corporations that are not pass-through entities derived from sales made, work done or services performed or rendered, and business or other activities conducted in the Municipality whether or not such corporations have an office of place of business in the Municipality.
- (f) On all income received as gambling winnings as reported on IRS Form W-2G, Form 5754 and/or any other Form required by the Internal Revenue Service that reports winnings from gambling, prizes and lottery winnings.

#### **171.04 ALLOCATION OF NET PROFITS.**

- (a) This section does not apply to taxpayers that are subject to and required to file reports under Chapter 5745 of the Ohio Revised Code.
- (1) Except as otherwise provided in Section 171.05 of this Chapter, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such a municipal corporation for the purposes of municipal income taxation in the same proportion as the average ratio of the following:
- (i) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. As used in the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;
  - (ii) Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in such municipal corporation to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under section 718.011 of the Ohio Revised Code;
  - (iii) Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed. If the foregoing apportionment formula does not produce an equitable result, another basis may be substituted, under uniform regulations, so as to produce an equitable result.
- (2) As used in division (a)(1) of this section, "sales made in a municipal corporation" mean:
- (i) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation;
  - (ii) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes even though transported from a point outside such municipal corporation if the taxpayer is regularly engaged

through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion;

- (iii) All sales of tangible personal property shipped from a place within such municipal corporation to purchasers outside such municipal corporation regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.
- (3) Except as otherwise provided in division (4) of this section, net profit from rental activity not constituting a business or profession shall be subject to tax only by the municipal corporation in which the property generating the net profit is located.
- (4) This section does not apply to individuals who are residents of the municipal corporation and, except as otherwise provided in section 171.22, a municipal corporation may impose a tax on all income earned by residents of the municipal corporation to the extent allowed by the United States Constitution.

#### **171.05 OPERATING LOSS CARRY FORWARD.**

- (a) The portion of net operating loss sustained in any taxable year, beginning with the year 2009, allocable to the Municipality, may be applied against the portion of the profit of succeeding tax years, allocable to the Municipality, until exhausted, but in no event for more than the five taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.
- (b) The portion of a net operating loss sustained shall be allocated to the Municipality in the same manner as provided herein for allocating net profits to the Municipality.
- (c) The Tax Commissioner shall provide by rules and regulations the manner in which such net operating loss carry forward shall be determined.

#### **171.06 CONSOLIDATED RETURNS.**

A consolidated return may be filed by a group of corporations who are affiliated through stock ownership if that affiliated group filed for the same tax period a consolidated return for Federal Income Tax purposes pursuant to Section 1501 of the Internal Revenue Code. A consolidated return must include all companies that are so affiliated.

#### **171.07 EFFECTIVE PERIOD.**

The tax imposed by this chapter shall be levied, collected and paid with respect to all income and net profits subject to the tax earned on or after January 1, 2009.

#### **171.08 RETURN AND PAYMENT OF TAX.**

- (a) Each person who engaged in business, or whose qualifying wages, commissions, other compensation, or other taxable income are subject to the tax imposed by this chapter, shall, whether or not a tax is due thereon, make and file on or before April 15 in each year, a return with the Tax Commissioner and on or before April 15 of each year thereafter. A taxpayer on a fiscal year accounting basis for Federal income tax purposes shall, beginning with his first fiscal year, any part of which falls within the effective period of this chapter, file his return within four months from the end of such fiscal year or period. The Tax Commissioner is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by such employer or employers from the salaries, wages, commissions or other compensation of an employee and paid by him or them to the Tax Commissioner, shall be accepted as the return required of any employee whose sole income, subject to tax under this chapter, is such salary, wages, commissions or other compensation.
- (b) The return shall be filed with the Tax Commissioner on a form or forms furnished by or obtainable upon request from the Tax Commissioner setting forth:
  - (1) The aggregate amounts of qualifying wages, commissions, other compensation received, allocated, apportioned or set aside, other income defined as taxable, and gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income, earned during the preceding year and subject to such tax; and
  - (2) The amount of the tax imposed by this chapter on such earnings and profits; and
  - (3) Such other pertinent statements, information returns, copies of federal or state tax returns and/or schedules, or other information as the Tax Commissioner may require, including a statement that the figures used in the return are the figures used in the return for Federal income tax, adjusted to set forth only such income as is taxable under the provisions of this chapter.
- (c) The return may be filed on a generic form, if the generic form, when completed and filed, contains all the information required to be submitted with the Municipality's prescribed returns, and if the taxpayer or return preparer filing the generic form otherwise complies with the Income Tax Code governing the filing of returns.
- (d) (1) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a municipal income tax return by filing a copy of the taxpayer's federal extension request with the Tax Commissioner. Any

taxpayer not required to file a federal income tax return may request an extension for filing a municipal income tax return in writing. The request for extension must be filed on or before the original due date for the annual return. If the request is granted, the extended due date of the municipal income tax return 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.

- (2) The Tax Commissioner may deny a taxpayer's request for extension if the taxpayer:
  - (i) fails to timely file the request; or
  - (ii) fails to file a copy of the federal extension request, if applicable; or
  - (iii) owes the Municipality any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of income tax; or
  - (iv) has failed to file any required income tax return, report, or other related document for a prior tax period.
- (3) The granting of an extension for filing a municipal tax return does not extend the due date as provided in this section for payment of the tax; hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by section 171.14. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the extension period provided all other filing and payment requirements of the Income Tax Code have been met. Any extension by the Tax Commissioner shall be granted upon the condition that declaration filing and payment requirements have been fulfilled; however, if upon further examination it then becomes evident that declaration filing and payment requirements have not been fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.
- (e)
  - (1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Tax Commissioner the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due has been deducted at the source, pursuant to the provisions of this chapter, or where any portion of such tax has been paid by the taxpayer pursuant to the provisions of Section 171.11, credit for the amount so paid 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.
  - (2) A taxpayer, who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this chapter, 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 five dollars (\$5.00) shall be collected or refunded.

#### **171.09 AMENDED RETURNS.**

- (a) 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 limitations contained in Sections 171.16. Such amended returns shall be on a form obtainable on request from the Tax Commissioner or on a generic form.
- (b) Within three months from the final determination of any Federal tax liability affecting the taxpayer's municipal tax liability, such taxpayer shall make and file an amended municipal return showing income subject to the Municipality tax based upon such final determination of Federal tax liability, and shall pay any additional tax shown due thereon or make claim for refund of any overpayment.
- (c) Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be a violation of this Income Tax Code. Provided, however, that the taxpayer shall have ten days after notification by the Tax Commissioner to file the items required by this paragraph.

#### **171.10 COLLECTION AT SOURCE.**

- (a) Each employer within, or doing business within, the Municipality who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct at the time of the payment of such salaries, wages, commissions or other compensation, the tax of one percent (1%) of the qualifying wages due by such employer to each such employee and shall before the last day specified below make a return and pay to the Tax Commissioner the amount of taxes so deducted.

Employers with withholding of less than three hundred dollars (\$300.00) per month shall make returns on a quarterly basis, the due dates being the last day of April, July, October, and January. Employers with withholding of more than three hundred dollars (\$300.00) per month must make returns on a monthly basis, the due date being the fifteenth day of the following month; any other withholding schedule shall have prior approval of or by the Tax Commissioner in writing.

- (b) Each employer in collecting such tax shall be deemed to hold the same, until payment is made by such employer to the Municipality, as a trustee for the benefit of the Municipality, and any such tax collected by such employer from his employees shall, until the same is paid to the Municipality, be deemed a trust fund in the hands of such employer. Each employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax, in fact, has been withheld.
- (c) It shall be the responsibility, jointly and severally, of the president and treasurer of each corporation required to withhold the tax from wages of its employees under this section to see that all such taxes so withheld are paid to the Municipality in accordance with the

provisions of this section. In the event taxes withheld by a corporation from the salaries of its employees are not paid to the Municipality in accordance with the provisions of this section, the president and treasurer of such corporation shall each be criminally liable under the provisions of Section 171.20 and 171.99.

- (d) On or before February 28 of each year, each employer shall file a withholding tax reconciliation on a form or forms prescribed by and obtainable from the Tax Commissioner or a generic form, setting forth the sum total of all compensation paid all employees, the portion of which (if any), was not subject to withholding along with an explanation for the same, and the portion of which was subject to withholding, together with the amount of such withholdings remitted. Such return shall include information concerning each employee from whom the Municipal tax was withheld, showing the name, address, zip code and social security number of each such employee, the total amount of compensation paid during the year and the amount of municipal tax withheld. If the total tax withheld from any employee included tax withheld and remitted to another Municipality, the amount of same shall be separately shown on the return of information to the Municipality concerning each employee.
- (e) In addition to the wage reporting requirements of this section, any person required by the Internal Revenue Service to report on Form 1099-Misc. payments to individuals not treated as employees for services performed shall also report such payments to the Municipality when the services were performed in the Municipality. The information may be submitted on a listing, and shall include the name, address, and social security number (or federal identification number), and the amount of the payments made. Federal form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before February 28 following the end of such calendar year.
- (f) No person shall be required to withhold the tax on the qualifying wages, commissions, other compensation and other taxable income paid to domestic servants employed exclusively in or about such person's residence. However, such domestic servants shall be responsible for the filing and paying their own returns and taxes.

#### **171.11 DECLARATIONS.**

- (a) Every person who anticipates any taxable income which is not subject to Section 171.10, or who engages in any business, profession, enterprise or activity 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.
- (b)
  - (1) Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or on or before the fifteenth day of the fourth month following date the taxpayer becomes subject to tax for the first time.
  - (2) Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month following the start of each fiscal year or period.

- (c) (1) Such declaration shall be filed upon a form furnished by or obtainable from the Tax Commissioner or a generic form. Credit shall be taken in such declaration for Municipal tax to be withheld from any portion of such income.
  - (2) Except as hereinafter specified, a declaration of estimated tax to be paid the Municipality shall be accompanied by a payment of at least one-fourth of the estimated tax, less credit for taxes withheld or paid to another municipality 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 tax year.
  - (3) A declaration may be amended at any time; provided however, that in case an amended declaration is filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.
  - (4) The mere submission of a declaration estimating a tax liability shall not constitute filing unless accompanied by the required payment.
- (d) An amended declaration must be filed on or before January 31 of any year, or in the case of a taxpayer on a fiscal year accounting basis, on or before the date fixed by regulation of the Tax Commissioner, if it appears that the original declaration made for such year underestimated the taxpayer's income by thirty percent or more, unless the taxpayer has paid 100% of the previous year's tax. At such time a payment which, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability shall be made. If, upon the filing of the return on or before January 31 or the date fixed by regulation, whichever is applicable, the difference between seventy percent of the taxpayer's tax liability and the amount of estimated tax he actually paid on or before January 31 or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Section 171.14
- (e) On or before the fifteenth day of the fourth month of the calendar or fiscal year following that for which the declaration was filed, an annual return shall be filed and any balance which may be due the Municipality shall be paid therewith in accordance with the provisions of Section 171.08.

#### **171.12 DUTIES OF THE TAX COMMISSIONER.**

- (a) (1) The Tax Commissioner shall collect and receive the tax imposed by this chapter in the manner prescribed herein, shall keep an accurate record thereof and shall report all moneys so received.
- (2) The Tax Commissioner shall enforce payment of all income taxes owing the Municipality, shall keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration or make any return, including a return of taxes withheld, and shall show the dates and amounts of payments thereof.

- (b) The Tax Commissioner 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 authorized or required by this chapter, relating to any matter or thing pertaining to the collection and payment of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.
- (c) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Commissioner may determine the amount of tax appearing to be due to the Municipality from the taxpayer and may send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.
- (d) Subject to the consent of a majority of the Board of Review or pursuant to regulation approved by the Board of Review, the Tax Commissioner shall have the power to compromise any liability imposed by this chapter.
- (e) Upon the demonstration and documentation of good cause, the Tax Commissioner shall have the power to compromise penalty and interest liabilities imposed by this Chapter, consistent with this Chapter.

**171.13 INVESTIGATIVE POWERS OF THE TAX COMMISSIONER; PENALTY FOR DIVULGING INFORMATION.**

- (a) The Tax Commissioner, or any of his authorized agents, is hereby authorized to examine the books, papers, records and Federal income tax returns of any employer or taxpayer or any person subject to, or whom the Tax Commissioner 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 or withholdings due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request of the Tax Commissioner or his duly authorized agent or employee, the means, facilities and opportunities for making such examinations and investigations as are hereby authorized.
- (b) The Tax Commissioner is hereby authorized to order any person presumed to have knowledge of the facts to appear at the office of the Tax Commissioner and to examine such person, under oath, concerning any income which was or should have been reported for taxation or withheld, or any transaction tending to affect such income, and for this purpose 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 to 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 any officer, agent or employee of a person subject to the tax or

required to withhold tax or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Tax Commissioner authorized herein shall be deemed a violation of this chapter punishable as provided in Sections 171.20 and 171.99.

- (d) Every taxpayer shall retain all records necessary to compute his tax liability for a period of five years from the date his return is filed, or the taxes required to be withheld are paid.
- (e) Any information gained as a result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, and no disclosure thereof shall be made except to municipal, County, State or Federal taxing agencies, or except for official purposes or except in accordance with proper judicial order. Any person divulging such information in violation of this section shall be fined and/or imprisoned as provided in Section 171.99. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the Municipality who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

#### **171.14 INTEREST AND PENALTIES.**

- (a) All taxes imposed and moneys withheld or required to be withheld by employers under the provisions of this chapter, remaining unpaid after they become due, shall bear interest at the rate of one percent (1%) per month.
- (b) In addition to interest as provided in subsection (a) herein, penalties for failure to pay taxes and to withhold and remit taxes pursuant to the provisions of this chapter are hereby imposed as follows:
  - (1) In the case of taxpayers failing to pay the full amount of tax due, a penalty of the higher of five dollars (\$5.00) or one percent per month, or fraction thereof, of the amount of the unpaid tax, if the tax is paid during the first six months after such tax became due; a penalty of one and one-half percent per month, or fraction thereof, of the unpaid tax, if such tax is paid between the seventh and twelfth months after such tax became due; and a penalty of two percent per month or fraction thereof of the amount of the unpaid tax, if such tax is paid later than twelve months after it became due. The percentages herein specified when used shall apply from the first month of delinquency.
  - (2) In the case of employers who fail to withhold and remit to the Tax Commissioner the taxes to be withheld from employees, a penalty of the higher of ten dollars (\$10.00) or one percent per month, or fraction thereof of the unpaid withholding, if paid during the first three months after it was due; a penalty of one and one-half percent per month, or fraction thereof, of the unpaid withholding if paid during the fourth to sixth month, inclusive, after it was due; and a penalty of two percent per month, or fraction thereof, of the unpaid withholding if paid later than six months after it was due.

- (c) In addition to interest and penalties as provided in subsections (a) and (b) hereof, penalties for failure to file any return required by this chapter, whether annual or for any shorter period, within the times permitted by this chapter are imposed as follows:

<u>Penalty</u>	<u>Complete Tax Return is Filed</u>
\$25.00	Not more than 30 days after due date.
\$50.00	More than 30 days but less than 120 days after due date.
\$100.00	120 or more days after due date.

#### **171.15 EXCEPTIONS.**

- (a) A penalty shall not be assessed on an additional tax assessment made by the Tax Commissioner when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Commissioner; 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 months after final determination of the Federal tax liability.
- (b) Upon an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and interest, the Board of Review may abate such penalty or interest, or both.

#### **171.16 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.**

- (a) All taxes imposed by this chapter shall be collectible, with any interest and penalties thereon, by suit as other debts of like amount are recoverable. No additional assessment shall be made after three years from the time of payment of any tax due or the time the return was filed, whichever is later hereunder; provided however, there shall be no period of limitation on an additional assessment in a case of a return that omits gross income in excess of twenty-five percent of that required to be reported or in the case of filing a false or fraudulent return with intent to evade the tax or in the case of failure to file a return. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an additional assessment may be made by the Tax Commissioner shall be extended one 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 years from the date on which such payment was made or the return was due, or within three months after final determination of the federal tax liability, whichever is later.
- (c) After the time period allowed for a refund of the tax, a nonrefundable credit shall be allowed against the tax erroneously paid equal to the tax with respect to such income or wages.

- (1) If the tax rate is less than the tax rate paid or withheld on such income or wages, the credit described in section (c) above shall be calculated using the tax rate in effect.
  - (2) Nothing in this section permits any credit carry forward.
- (d) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment, with the following exception: No interest shall be allowed on any overpayment that is refunded within ninety days after the final filing date of the annual return or ninety days after the complete return is filed, whichever is later. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the interest prescribed by Ohio R.C. 5703.47.
- (e) Amounts of less than five dollars (\$5.00) shall not be collected or refunded.

#### **171.17 BOARD OF REVIEW.**

- (a) A Board of Review consisting of three persons appointed by the Mayor, with the consent of Council, is hereby created. Board members shall receive such compensation as Council may determine.
- (b) 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. All hearings by the Board shall be conducted privately unless the taxpayer requests a public hearing and the provisions of Section 171.13 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.
- (c) The Board of Review shall schedule a hearing within forty-five days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative.
- (d) The Board may affirm, reverse, or modify the Tax Commissioner's decision or any part of that decision. The Board shall issue a decision on the appeal within ninety days after the Board's final hearing on the appeal, and send notice of its final decision by ordinary mail to all of the parties to the appeal within fifteen days after issuing the decision. The taxpayer or the Tax Commissioner may appeal the board's decision as provided in section 5717.011 of the Ohio Revised Code.
- (e) The Board of Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under section 149.43 of the Ohio Revised Code. Hearings

requested by a taxpayer before a Board of Review created pursuant to this section are not meetings of a public body subject to section 121.22 of the Ohio Revised Code.

#### **171.18 ALLOCATION OF FUNDS.**

The funds collected under the provisions of this chapter shall be deposited in the General Fund and such funds shall be disbursed in the following order:

- (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 hereof.
- (b) All remaining moneys collected under the provisions of this chapter shall be used for general municipal operations, maintenance, equipment and capital improvements as Council shall annually determine.

#### **171.19 SAVINGS CLAUSE.**

This Chapter shall not apply to any person, firm or corporation, or to any property as to whom or which is beyond the power of Council to impose the tax herein provided for. If any sentence, clause, section or part of this chapter or any tax against or exception granted any individual or any of the several groups of persons or forms of income specified herein, is found to be unconstitutional or illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentences, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence or part thereof not been included therein.

#### **171.20 PROHIBITED VIOLATIONS.**

No person shall:

- (a) Fail, neglect or refuse to make any return, declaration or registration required by this chapter; or
- (b) File an incomplete, false, or fraudulent return; or
- (c) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
- (d) Fail, neglect or refuse to withhold the tax from his employees and remit such withholding tax to the Tax Commissioner; or
- (e) Refuse to permit the Commissioner or any duly authorized agent or employee to examine his or his employer's books, records, papers and Federal income tax returns; or

- (f) Fail to appear before the Commissioner and to produce his or his employer's books, records, papers of Federal income tax returns upon order or subpoena of the Commissioner; or
- (g) Refuse to disclose to the Commissioner any information with respect to such person's or such person's employer's income or net profits; or
- (h) Fail to comply with the provisions of this chapter or any order or subpoena of the Commissioner; or
- (i) Fail, neglect or refuse to make any payment on the estimated tax for any year as required by Section 171.11; or
- (j) Fail, as president or treasurer of a corporation, to cause the tax withheld from the wages of the employees of such corporation pursuant to this chapter to be paid to the Municipality in accordance with the provisions of Section 171.10; or
- (k) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter. All criminal prosecutions under this section and all civil actions shall be commenced within the time specified in the Ohio Revised Code. 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 or declaration, from filing such form or from paying the tax. "Person" as used in this section, shall in addition to the meaning prescribed in Section 171.02, include in the case of an association or corporation not having any partner, member or officer within the Municipality, any employee or agent of such association or corporation who can be found within the corporate limits of the Municipality.

#### **171.21 MANDATORY REGISTRATION.**

- (a) Each new resident of the Municipality shall register with the Tax Commissioner of the Municipality to become subject to the Municipal income tax within ninety days of residence in the Municipality.
- (b) All employers, contractors or subcontractors who do work in the Municipality shall register with the Commissioner and shall present a list of all employees, subcontractors, contractors or others who may do work for them whose profits, wages, or earnings are not presently subject to withholding of the Municipal income tax.

#### **171.22 EXCLUSIONS.**

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

- (a) Proceeds from welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.

- (b) Proceeds of insurance, annuities, worker's compensation insurance, permanent disability benefits, compensation for damages for personal injury and the like reimbursements, not including damages for loss of profits and wages.
- (c) Dues, contributions and similar payments received by charitable, religious, educational organizations, or labor unions, trade or professional associations, lodges and similar organizations.
- (d) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations and income of a decedent's estate during the period of administration (except such income from the operation of a business).
- (e) Alimony.
- (f) Compensation for damage to property by way of insurance or otherwise.
- (g) Interest and dividends from intangible property.
- (h) Military pay or allowances of members of the Armed Forces of the United States and members of their reserve components, including the Ohio National Guard (ORC 718.01).
- (i) Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio Revised Code 718.01 to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.
- (j) Any association or organization falling in the category listed in the preceding paragraph receiving income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall not be excluded hereunder.
- (k) In the event any association or organization receives taxable income as provided in the preceding paragraph from real or personal property ownership or income producing business located both within and without the corporate limits of the Municipality, it shall calculate its income apportioned to the Municipality under the method or methods provided above.
- (l) If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from Municipal tax income.
- (m) The rental value of a home furnished to a minister as part of his compensation, or the rental allowance paid to a minister as part of his compensation, to the extent used by him to rent or provide a home pursuant to section 107 of the Internal Revenue Code.
- (n) Compensation paid under section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed

one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars shall be subjected to taxation. The payer of such compensation is not required to withhold Municipal tax from that compensation.

- (o) Compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the Municipality, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such tax by reason of residence or domicile in the Municipality, or the headquarters of the authority or commission is located within the Municipality.
- (p) The Municipality shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the Municipality on twelve or fewer days in a calendar year unless one of the following applies:
  - (1) The individual is an employee of another person, the principal place of business of the individual's employer is located in another municipality in Ohio that imposes a tax applying to compensation paid to the individual for services paid on those days; and the individual is not liable to that other municipality for tax on the compensation paid for such services.
  - (2) The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the Municipality.
- (q) 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, except a municipal corporation may tax the following, subject to Chapter 5745 of the Ohio Revised Code:
  - (1) The income of an electric company or combined company;
  - (2) The income of a telephone company.

As used in Section 171.07(17) of this section, "combined company", "electric company" and "telephone company" have the same meanings as in section 5727.01 of the Ohio Revised Code.
- (r) The above noted items in this section are the only forms of income not subject to the tax. Any other income, benefits, or other forms of compensation shall be taxable.

### **171.23 AMENDMENTS.**

This Chapter may be amended from time to time in the manner provided in the Ohio Revised Code.

**171.99 PENALTY.**

- (a) Whoever violates any provision of this chapter for which no other penalty is provided shall be fined not more than one hundred dollars (\$100.00) for a first offense; for each subsequent offense, such person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months or both.
- (b) Whoever violates Section 171.21 shall be fined five dollars (\$5.00) a day for every day of violation, up to a maximum amount of two hundred fifty dollars (\$250.00).

**SECTION TWO.** This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, peace, safety and general welfare of the citizens of the Village of Commercial Point. The Village of Commercial Point currently has no municipal income tax and has a primarily property tax generated source of municipal revenue. The Village is a growing municipality and this growth is substantially taxing and outpacing the demands for services in this growing municipality. Emergency passage is necessary in order to immediately ensure a continuous, uninterrupted, reliable and potentially expanding source of municipal revenue for the purposes of general operations, maintenance, new equipment, extension and enhancement of Village services and facilities and capital improvements of the Village. This Ordinance shall take effect immediately upon passage.

Vote on Passage of Ordinance and Declaring an Emergency:

Motion by: Margie Weaver 2<sup>nd</sup>: Jim Kuzelka

Roll Call:

<u>Yes</u> Jim Kuzelka	<u>Yes</u> Janet Hutchins	<u>Yes</u> Margie Weaver
<u>Yes</u> Anita McHugh	<u>No</u> Kimberly Gooden-Kinney	<u>N/A</u> Don Benedik

Adopted this 1<sup>st</sup> day of December, 2008.

Allan D. Goldhardt  
Allan D. Goldhardt, Mayor

Wendy Hastings  
Wendy Hastings, Fiscal Officer

Approved as to Form:

D. Michael Crites, Law Director