

**ORDINANCE 2008-17**

**AN ORDINANCE AMENDING ORDINANCE 2007-11 (THE FREDERICKTOWN VILLAGE INCOME TAX) TO GIVE A FULL CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY AND DECLARING AN EMERGENCY**

WHEREAS, the Council of the Village of Fredericktown passed an ordinance to collect an income tax on October 15, 2007 with an effective date of January 1, 2008;

**WHEREAS**, an error was made when writing Ordinance 2007-11 regarding the credit given to residents for tax paid to another municipality;

**NOW, THEREFORE, BE IT ORDAINED**, by the Council of the Village of Fredericktown, Knox County, Ohio, as follows:

Section 1. That Section 6 "Declarations of Estimated Tax" (C) (1) of Ordinance 2007-11 be amended to read "Such Declaration shall be filed upon a form furnished by, or obtainable from, the Tax Administrator, and in accordance with Section 11 of this Ordinance, credit shall be taken against this municipality's income tax for income tax paid to another municipality in an amount not to exceed a tax rate of one percent (1%)".

Section 2. All other provisions of Ordinance 1993-29 and any previous amendments thereto, if any, not in conflict with the amendment contained in this Ordinance shall remain in full force and effect.

Section 3. That Council declares this to be an emergency measure immediately necessary for the preservation of the public peace, health, safety, welfare, and morals.

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

PASSED: July 21, 2008

Roger D. Reed

Mayor

ATTEST: Patricia A. Stelzer

Fiscal Officer

**ORDINANCE NO. 2007 - 11**

**AN ORDINANCE REPEALING AND REENACTING ORDINANCE 1993-29  
(VILLAGE INCOME TAX ORDINANCE) AND DECLARING AN EMERGENCY**

**WHEREAS**, the Council of the Village of Fredericktown approved Ordinance 1993-29 on December 27, 1993 creating a municipal income tax;

**WHEREAS**, Ordinance 1993-29 needs to be updated to insure the fair and proper collection of income tax revenues in the Village of Fredericktown and to comply with changes in Ohio law;

**NOW, THEREFORE, BE IT ORDAINED**, by the Council of the Village of Fredericktown, Knox County, Ohio, that Ordinance 1993-29, approved December 27, 1993 and amended December 10, 2001, is hereby repealed and reenacted by the following ordinance, which shall be entitled Fredericktown Municipal Income Tax Ordinance and shall be enacted as follows:

**SECTION 1. PURPOSE.**

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

**SECTION 2. DEFINITIONS.**

(A) 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:

(1) "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:

(a) 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;

(b) Add an amount equal to five percent (5%) of intangible income deducted under division (A) (1) (a) 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;

(c) 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;

(d) (i) Except as provided in division (A) (1) (d) (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) (1) (d) (i) of this Section does not apply to the extent the income or gain is income or gain described in Section 1245 or Section 1250 of the Internal Revenue Code.

(e) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(f) 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 federal taxable income;

(g) 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, and 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) (1) of this Section shall be construed as allowing the taxpayer to add or deduct any amount more than once nor shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(2) "Association" means partnership, limited partnership, limited liability company, or any other form of unincorporated enterprise owned by one or more persons.

(3) "Board of Tax Appeals" means the Board created by and constituted as provided in Section 13 of this Ordinance.

(4) "Business" means an enterprise, activity, profession, or undertaking of any nature 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.

(5) "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 or dependency, but not including a subchapter S corporation.

(6) "Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.

(7) "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.

(8) "Fiscal Year" means an accounting period of twelve (12) months or less ending on any day other than December 31st.

(9) "Gross Receipts" means the total income from any source whatsoever.

(10) "Net Profits" means the 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 used by the taxpayer for Federal Income Tax purposes, without deduction of taxes imposed by this Ordinance, Federal, State or other taxes based on income exclusive of the amount of Ohio franchise tax computed on the net worth basis; and in case of an association, adjusted federal taxable income without deduction of salaries paid to partners and other owners; and otherwise adjusted to the requirements of this Ordinance and shall be taxed as an entity on net profits before deduction of net operating loss or dividends paid to owners/members.

(11) "Nonqualified Deferred Compensation Plan" means a compensation plan described in Section 3121(v) (2) (C) of the Internal Revenue Code.

(12) "Non-resident" means an individual domiciled outside this municipality.

(13) "Non-resident Unincorporated Business Entity" means an unincorporated business entity not having an office or place of business within this municipality.

(14) "Organization" means a not for profit corporation, joint venture, unincorporated association, estate, trust or other commercial or legal entity organized as or by a governmental agency for the execution of a government program.

(15) "Owner" means a partner or member of a partnership, subchapter S corporation, limited liability company, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.

(16) "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.

(17) "Person" means every natural person, organization, partnership, fiduciary, association, business, corporation, or other entity. Whenever used in any clause prescribing and imposing a penalty, the term "Person", as applied to any unincorporated entity, shall mean the partners, owners or members thereof, and as applied to the corporation and the officers thereof.

(18) "Place of Business" means any Bona Fide office (other than a mere statutory office), factory, warehouse or other space which is occupied by the taxpayer in carrying on any business activity individually or through one or more of its regular employees regularly in attendance.

(19) "Qualifying Wages" means wages, including salaries, commissions, and other compensation, 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)(2) of the Ohio Revised Code.

(20) "Real property" shall include commercial property, residential property, farm property, and any and all other types of real estate.

(21) "Resident" means an individual domiciled in this municipality.

(22) "Resident Unincorporated Business Entity" means an unincorporated business entity having an office or place of business within this municipality.

(23) "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.

(24) "Tax Administrator" means the individual designated by this Ordinance, whether appointed or elected, to administer and enforce the provision of this Ordinance.

(25) "Taxable Income" means qualifying wages, salaries, and other compensation paid by an employer or employers for personal services, other income defined by statute as taxable and/or the adjusted federal taxable income from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this Ordinance.

(26) "Taxable Year" means 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.

(27) "Taxpayer" means a person, whether an individual, partnership, association, business, organization, corporation, employer, or other entity, required to file a return or pay a tax pursuant to this Ordinance. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

### **SECTION 3. IMPOSITION OF TAX.**

(A) Subject to the provisions of Section 14 of this Ordinance, an annual tax for the purposes specified in Section 1 of this Ordinance shall be imposed on and after the first day of January, 2008 at the rate of one percent (1%) per annum upon the following:

(1) Upon all qualifying salaries, wages, commission, and other compensation earned during the effective period of this Ordinance by residents of this municipality.

(2) Upon all qualifying salaries, wages, commission, and other compensation earned during the effective period of this Ordinance by non-residents for work done or services performed or rendered in this municipality.

(3) On and after January 1, 2008, compensation paid to an individual for personal services performed within the municipal corporation cannot be taxed by this municipality, if all of the following three factors apply: (a) The individual does not reside in this municipality, (b) The individual performs such personal services in this municipality on twelve or fewer days in the calendar year, and, (c) The individual is an employee and the principal place of business of the individual's employer is located outside this municipality. This Section does not apply to professional entertainers or professional athletes or to promoters of professional entertainment or sports events and their employees, as reasonably defined by this municipality.

(4) (a) Upon the portion attributable to this municipality of the net profits earned, received, accrued or in any other way set apart during the effective period of this Ordinance unto a resident unincorporated business, a pass-through entity, a profession, or other entity, derived from sales made, work done, services performed, rendered and business or other activities conducted in this municipality.

(b) Upon the portion of the distributive share of the net profits earned, received, accrued or any other way set apart during the effective period of this Ordinance unto a resident partner, member, or owner of a resident association, a resident unincorporated business entity, or a pass-through entity not attributable to this municipality and not levied against such unincorporated business entity or pass-through entity by this municipality.

(5) (a) Upon the portion attributable to this municipality of the net profits earned, received, accrued or in any way set apart during the effective period of this Ordinance unto a non-resident unincorporated business, a pass-through entity, a profession, or other entity, derived from sales made, work done, services performed or rendered and business or other activities conducted in this municipality, whether or not such unincorporated business, pass-through entity, or profession or other entity has an office or place of business in this municipality.

(b) Upon the portion of the distributive share, whether or not distributed, of the net profits earned, received, accrued or in any other way set apart unto a non-resident partner, member or owner of a nonresident association, or non-resident unincorporated business entity not attributable to this municipality and not levied against such unincorporated business entity by this municipality.

(6) Upon the portion attributable to this municipality 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 this municipality, whether or not such corporations have an office or place of business in this municipality.

(7) (a) Upon rentals received by the taxpayer only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by the taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in

whole or in part. Upon request by the Tax Administrator or his representative, a taxpayer is required to provide a list of current tenants occupying the taxpayer's rental units.

(b) Where the gross monthly rental of any real properties, regardless of number and value, aggregates in excess of two hundred dollars (\$200.00) per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to municipal income tax; provided that in case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds two hundred dollars (\$200.00) per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of gross or net receipts derived from the farm whether or not the gross income exceeds two hundred dollars (\$200.00) per month; provided further that a person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds two hundred dollars (\$200.00) per month.

(c) In determining the amount of gross monthly rental of any real property, periods during which (by reason of vacancy or any other cause) rental are not received shall not be taken into consideration by the taxpayer.

(d) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.

(e) In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for federal income tax purposes.

(f) Residents of this municipality are subject to taxation upon the net income from rentals (to the extent above specified) regardless of the location of the real property owned.

(g) Non-residents of this municipality are subject to taxation upon the net income from rentals only if the real property is situated within this municipality. Non-residents in determining whether gross monthly rentals exceed two hundred dollars (\$200.00) shall take into consideration only real estate situated within this municipality.

(h) Corporations owning or managing real estate are taxable only on that portion of income derived from property located in this municipality.

(8) Upon all income in excess of \$5,000.00, which is 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, games of chance and lottery winnings.

(B) Businesses Operating Within and Without the Municipal Boundaries. The portion of the net profits attributable to this municipality of a taxpayer conducting a business, profession, or

other activity, both within and without the boundaries of this municipality shall be determined as provided in Section 718.02 of the Ohio Revised Code and in accordance with the Rules and Regulations adopted by the Tax Administrator pursuant to this Ordinance. This division does not apply to taxpayers that are subject to and required to file reports under Chapter 5745 of the Ohio Revised Code. Except as otherwise provided in division (C) this of Section, net profit from a business, profession, or other activity conducted both within and without the boundaries of this municipality, shall be considered as having a taxable situs in this municipality for the purposes of municipal income taxation in the same proportion as the average ratio of the following:

(1) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in this municipality 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 this paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

(2) Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in this municipality 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 this municipality under Section 718.011 of the Ohio Revised Code.

(3) Gross receipts of the business or profession from sales made and services performed during the taxable period in this municipality to gross receipts of the business or profession during the same period from sales and services, wherever made or performed. As used in this division, "sales made" means:

(a) All sales of tangible personal property delivered within this municipality regardless of where title passes if shipped or delivered from a stock of goods within this municipality;

(b) All sales of tangible personal property delivered within this municipality regardless of where title passes even though transported from a point outside this municipality if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within this municipality and the sales result from such solicitation or promotion;

(c) All sales of tangible personal property shipped from a place within this municipality to purchasers outside this municipality 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.

(4) Add together the percentages determined in accordance with divisions (B)(1),(2), and (3) above, or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving such total; provided however, that in the event a just and equitable result cannot be obtained under the formula provided for herein, the Tax Administrator upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

(5) Division (B) of this Section does not apply to individuals who are residents of this municipality and, except as otherwise provided in Section 718.01 of the Ohio Revised Code, this municipality may impose a tax on all income earned by residents of this municipality to the extent allowed by the United States Constitution.

(C) Operating Loss.

(1) A net operating loss incurred during any taxable period, in a business or other activity subject to this Ordinance, is deductible from all taxable net profits included in the taxpayer's return for the same taxable period. A loss is deductible only in the taxable period in which it is incurred.

(2) The portion of the net operating loss sustained shall be apportioned to this municipality in the same manner as provided herein for apportioning net profits to this municipality.

(3) A net loss from an unincorporated business activity may not be used to offset salaries, wages, commissions or other compensation.

(D) Consolidated Returns.

(1) A group of corporations who are affiliated through stock ownership may file a consolidated return if such 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.

(2) Once a consolidated return has been filed for any taxable year, a consolidated return shall continue to be filed in subsequent years unless the applicable requirements of the Rules and Regulations prescribed by the Tax Administrator for discontinuing the filing of the consolidated returns have been met.

(3) 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 operated a division, branch, factory, office, laboratory or activity within this municipality constituting a portion only of its total business, the Tax Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to this municipality. If the Tax Administrator finds net profits are not properly apportioned to this municipality by reason of transactions with stockholders, or with other corporations related by stock ownership, interlocking directorates, or transactions with such division, branch, factory, office, laboratory or activity of by some other method, he shall make such apportionment as he deems appropriate to produce a fair and proper apportionment of net profits to this municipality.

(E) Exemptions.

The tax provided for in this Ordinance 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 Ohio National Guard.

(2) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

(3) Welfare payments, old age pensions, unemployment compensation, and disability benefits when paid by local, State or Federal governments, Social Security benefits, and Workman's Compensation.

(4) Alimony.

(5) The personal earning of any natural person under eighteen (18) years of age.

(6) A parsonage allowance, to the extent of the rental allowance or rental value of a house provided as part of an ordained minister's compensation, provided however, that such allowance is used by such minister to rent or provide a home, and provided further that the minister is duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination.

(7) 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 may be subjected to taxation by this municipality. The payer of such compensation is not required to withhold municipal tax from that compensation.

(8) An S corporation shareholder's distributive share of net profits or losses of the S corporation.

#### **SECTION 4. MUNICIPAL INCOME TAX RETURN AND PAYMENT OF TAX.**

(A) Date of Filing Returns. Each taxpayer shall, whether or not a tax is due thereon, make and file a municipal income tax return on or before April 15<sup>th</sup>, effective as of January 1, 2008 and each year thereafter. A taxpayer on a fiscal year accounting basis for federal income tax purposes shall file his return within four (4) months from the end of each fiscal year, beginning with taxable year 2008 and each year thereafter.

(B) Content of Returns. The return shall be filed with the Tax Administrator. The return shall contain the following information:

(1) The aggregate amount of qualifying salaries, wages, commissions, and other compensation earned and gross income from business, profession, or other activity, less expenses allowable in the calculation of adjusted federal taxable income;

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

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

(C) Generic Forms. The Tax Administrator shall accept for filing a generic form of its municipal income tax return, report, or document if the generic form, once completed and filed, contains all of the information required to be submitted with this municipality's prescribed returns, reports, or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with Rules and Regulations or ordinances of this municipality governing the filing of returns, reports, or documents. Forms are obtainable from the Tax Administrator upon request or on the Internet at <http://www.fredericktown.net>

(D) (1) Extensions. The Tax Administrator may extend the time for filing of the annual return upon the timely request by the taxpayer for a period not to exceed six (6) months, or one (1) month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income Tax Return. A copy of the Federal extension form shall be filed with the Tax Administrator on or before the original due date of the return. The Tax Administrator may require a payment to accompany the extension request in the amount of tax shown to be due thereon by the date of the original due date of the return. No penalty shall be assessed in cases in which the return is filed within the period as extended; however, the amount by which the actual tax due exceeds the payment submitted with the extension request shall bear interest from the original due date of the return, pursuant to the provisions of Section 9 of this Ordinance.

(2) The Tax Administrator may deny an extension if the taxpayer fails to timely file the request, fails to file a copy of the request for the federal extension, owes any delinquent income tax or any penalty, interest, assessment, or other charge for the late payment or nonpayment of municipal income tax, or has failed to file any required income tax return, report, or other related document for any prior tax period.

(E) (1) Payment with Returns. A taxpayer making a return, shall at the time of the filing thereof, pay to the Tax Administrator the amount of taxes shown as due thereon; provided, however, that where any portion of the municipal income tax so due shall have been deducted at the source pursuant to the provisions of Section 5 of this Ordinance, or where any portion of such tax shall have been paid by the taxpayer pursuant to the provisions of Section 6 of this Ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 11 of this Ordinance 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 this municipality is entitled under the provisions of this Ordinance may have such overpayment applied against any subsequent liability hereunder, or at his election, as indicated on the return, such overpayment, or any part thereof, shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

(F) (1) Amended Returns. Where necessary, an amended return must be filed in order to report additional income and pay additional taxes due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 10 and 11 of this Ordinance. Such amended returns shall be in a form obtainable upon request of the Tax Administrator or on the Internet at <http://www.fredericktown.net>. A taxpayer may not change the method of accounting or the 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 this municipality, such taxpayer shall make and file an amended return, showing income subject to the income tax of this municipality based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make a claim for the refund of any overpayment.

#### **SECTION 5. COLLECTION AT SOURCE.**

(A) In accordance with the Rules and Regulations prescribed by the Tax Administrator, each employer doing business within this municipality shall deduct and withhold at the time of payment of a qualifying wage, salary, commission or other compensation, a tax of one percent (1%) of such qualifying wage, salary, commission, or other compensation due by the employer to the employee and shall, on or before the last day of the month following the close of each calendar quarter, make a return and pay the Tax Administrator the amount of taxes so deducted and withheld. Said returns shall be on a form or forms prescribed by or acceptable to the Tax Administrator and shall be subject to the Rules and Regulations prescribed therefore by the Tax Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have, in fact, been withheld.

(B) Such employer, in collecting such tax, shall be deemed to hold the same until payment is made by such employer to this municipality, as a trustee for the benefit of this municipality, and any such tax collected by such employer from his employees shall, until the same is paid to this municipality, be deemed a trust fund and in the hands of such employer.

(C) On or before the last day of February of each year, beginning with the year 1994, 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 Tax Administrator. All payments not subject to withholding shall be reported on a form required by the Tax Administrator.

(D) The Tax Administrator, for good cause, may require immediate returns and payments to be submitted to his office.

#### **SECTION 6. DECLARATIONS OF ESTIMATED TAX.**

(A) Every person who anticipates any taxable income which is not subject to the withholding provisions of Section 5 of this Ordinance, or who engages in any business, profession, enterprise, or other activity subject to the tax imposed by Section 3 of this Ordinance shall file a declaration setting forth such estimated income with the estimated profit or loss from such business activity during the year covered by the declaration, together with estimated tax due thereon, if the amount payable as estimated tax is expected to be one hundred dollars (\$100.00) or more. However, if a taxpayer's income is wholly from wages from which municipal income tax will be withheld and remitted to this municipality in accordance with Section 5 of this Ordinance, such person need not file a declaration. Any person who has filed a declaration the previous year and who does not anticipate any further taxable income shall notify the Tax Administrator, in writing, within one hundred-twenty (120) days of the close of the previous tax year.

(B) (1) Such declaration shall be filed on or before April 15th of each year during the life of this Ordinance, or within four (4) months of the date the taxpayer becomes subject to the tax for the first time.

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the 15th day of the fourth (4th) month after the beginning of taxpayer's taxable year within four (4) months after the beginning of each fiscal year or period.

(C) (1) Such declaration shall be filed upon a form furnished by, or obtainable from, the Tax Administrator, and in accordance with Section 11 of this Ordinance, credit shall be taken against this municipality's income tax for income tax paid to another municipality in an amount not to exceed a tax rate of one-half percent (1/2%).

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

(D) (1) For taxpayers who are individuals, such declaration of estimated tax to be paid to this municipality shall be accompanied by a payment according to the following schedule:

(a) A payment of at least twenty-two and one-half percent (22-1/2%) of the taxpayer's estimated tax liability for the current year on or before April 15th;

(b) A payment of at least twenty-two and one-half percent (22-1/2%) of the taxpayer's estimated tax liability for the current year on or before July 31st;

(c) A payment of at least twenty-two and one-half percent (22-1/2%) of the taxpayer's estimated tax liability for the current year on or before October 31st; and

(d) A payment of at least twenty-two and one-half percent (22-1/2%) of the taxpayer's estimated tax liability for the current year on or before January 31st.

(2) For calendar year taxpayers who are not individuals, such declaration of estimated tax to be paid to this municipality shall be accompanied by a payment according to the following schedule:

(a) A payment of at least twenty-two and one-half (22-1/2) percent of the taxpayer's estimated tax liability for the current year or before April 15th;

(b) A payment of at least twenty-two and one-half percent (22-1/2%) of the taxpayer's estimated tax liability for the current year or before June 15th;

(c) A payment of at least twenty-two and one-half percent (22-1/2%) of the taxpayer's estimated tax liability for the current year or before September 15th; and

(d) A payment of at least twenty-two and one-half percent (22-1/2%) of the taxpayer's estimated tax liability for the current year or before December 15th.

(3) For fiscal year taxpayers that are not individuals, such declaration of estimated tax to be paid to this municipality shall be accompanied by a payment according to the following schedule:

(a) A payment of at least twenty-two and one-half (22-1/2) percent of the taxpayer's estimated tax liability for the taxpayer's taxable year on or before the fifteenth (15th) day of the fourth (4th) month;

(b) A payment of at least twenty-two and one-half percent (22-1/2%) of the taxpayer's estimated tax liability for the taxpayer's taxable year on or before the fifteenth (15<sup>th</sup>) day of the sixth (6th) month;

(c) A payment of at least twenty-two and one-half percent (22-1/2%) of the taxpayer's estimated tax liability for the taxpayer's taxable year on or before the fifteenth (15th) day of the ninth (9th) month; and

(d) A payment of at least twenty-two and one-half percent (22-1/2%) of the taxpayer's estimated tax liability for the taxpayer's taxable year on or before the fifteenth (15th) day of the twelfth (12th) month.

(E) On or before the 15th day of the fourth (4th) month of the year following that for which a declaration or amended declaration was filed, an annual return shall be filed and any balance that may be due this municipality shall be paid in accordance with the provisions of Section 4 of this Ordinance.

## **SECTION 7. DUTIES OF THE TAX ADMINISTRATOR.**

(A) It shall be the duty of the Tax Administrator 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.

(B) It shall be the duty of the Tax Administrator to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amount of payments thereof.

(C) The Tax 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 Appeals, to adopt, promulgate and enforce Rules and Regulations relating to any manner or thing pertaining to the collection of municipal income taxes and the administration and enforcement of the provisions of this Ordinance, including provisions for the examination and correction of returns, declarations and payments.

(D) The Tax Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Tax Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this Ordinance. Failure to make any installment payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand, and the provisions of Sections 9 and 10 of this Ordinance shall apply.

(E) 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 Administrator may determine the amount of tax appearing to be due this municipality from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalty due thereon, if any.

(F) The Tax Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 9 of this Ordinance.

## **SECTION 8. INVESTIGATIVE POWERS OF THE TAX ADMINISTRATOR; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.**

(A) The Tax Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Tax 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 upon written request by the Tax Administrator, or his duly authorized employee or agent, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

(B) The Administrator is hereby authorized to subpoena 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 income tax returns, and the attendance of all persons before him whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

(C) The refusal to produce books, papers, records, and federal income tax returns or the refusal to submit to such examination by any employer or person subject to 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 Administrator, authorized hereby, shall be deemed in violation of this Ordinance, punishable as provided in Section 12(A)(11) of this Ordinance.

(D) Any information acquired as a result of any returns, investigations, verifications, or hearings before the Tax Administrator, required by this Ordinance and authorized by the Rules and Regulations promulgated by the Tax Administrator pursuant to this Ordinance, shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00), or imprisonment 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 this municipality who violates the provisions of the Section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

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

## **SECTION 9. INTEREST AND PENALTIES.**

(A) All taxes imposed by this Ordinance and remaining unpaid after they become due shall bear interest, in addition to the amount of the unpaid tax, at the rate of twelve percent (12%) per annum, and the taxpayers upon whom such taxes are imposed by this Ordinance shall be liable, in addition thereto, to a penalty of ten (10) percent of the amount of the unpaid tax or a penalty of fifty dollars (\$50.00), whichever is greater, whether or not taxes are owed.

(B) In addition to any other penalties or interest, a penalty of fifty dollars (\$50.00) shall be assessed for failure to file a return on the deadline imposed by Section 4(A) of this Ordinance, unless the taxpayer has a valid federal extension.

(C) In addition to any other penalties or interest, a penalty of ten dollars (\$10.00) shall be assessed for the failure to file or pay a declaration of estimated tax by the due date.

(D) A penalty, interest penalty, or other similar assessment or charge shall not be imposed against a taxpayer for the late payment or nonpayment of an estimated tax liability in either of the following circumstances:

(1) The taxpayer is an individual who resides in the Fredericktown Corporation but was not domiciled here on the first day of January of the current calendar year.

(2) The taxpayer has remitted, pursuant to Section 6(D)(1)-(3), an amount at least equal to one hundred percent (100%) of the taxpayer's tax liability for the preceding year, as shown on the return filed by the taxpayer for the preceding year, provided that the return for the preceding year reflected a 12-month period and the taxpayer filed a return for the preceding year.

(E) A penalty shall not be assessed on an additional tax assessment made by the Tax Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Administrator; 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.

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

(A) All taxes imposed by this Ordinance shall be collectable, together with any interest and penalties thereon, by a civil action at law. All additional assessments shall be made and all civil actions to recover municipal income taxes and penalties and interest thereon shall be brought within three (3) years after the tax was due or the return was filed, whichever is later.

(B) Taxes erroneously paid shall not be refunded unless a claim for refund is made. Claims for refund of municipal income taxes must be brought within the time limitation provided in division (A) of this Section.

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

## **11. CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.**

(A) (1) An individual taxpayer who resides in this municipality and who received net profits, salaries, wages, commissions, or other personal service compensation for work done or services performed or rendered outside of this municipality shall be allowed a nonrefundable credit against the tax imposed by this Ordinance if the taxpayer has paid a municipal income tax to another municipality or municipalities on the same income taxable under this Ordinance. The credit shall be equal to the amount of the tax or withholding paid to such other municipality; provided however, that if the tax rate in this municipality is less than the tax rate of such other municipality, then the credit shall be calculated using the tax rate in effect in this municipality.

(2) Proof of payment of tax to another municipality shall be submitted either in the form of a copy of a canceled check(s) (both sides) or a receipt from any other taxing municipality. For withholding on wages, a W-2 form showing each municipality, wages, or the amount of tax withheld shall be submitted.

(B) A claim for a credit under this Section shall be made in such manner as the Tax Administrator may provide by rules and regulations.

(C) No credit shall be given to taxpayers for school district tax payments.

## **12. VIOLATIONS AND PENALTIES.**

(A) Any person who shall:

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

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

(3) Willfully fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this Ordinance; or

(4) Willfully fail, neglect, or refuse to withhold the tax from his employees or remit such withholding to the Tax Administrator; or

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

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

(7) Refuse to disclose to the Tax 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 and any order or subpoena of the Tax Administrator authorized hereby; or

(9) Give to an employer false information as to his true name, correct social security number, and residence address, or fail to promptly notify an employer of any change in residence 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 knowingly give the Tax 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 and shall be fined not more than five hundred dollars (\$500.00), or imprisoned not more than sixty (60) days, or both, for each offense.

(B) Prosecutions for an offense made punishable under this Section or any other provision of this Ordinance shall be commenced within three (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) months after the commission of the offense.

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

### **SECTION 13. BOARD OF TAX APPEALS.**

(A) A Board of Tax Appeals is hereby created, which shall consist of three (3) members to be appointed by the Mayor, with the approval of Council. The term of all members shall be four years, except that the terms of two of the members of the first commission so appointed shall have terms of four years and the third member of the first commission so appointed shall have a term of two years. Members of the Board of Tax Appeals shall not hold any other office or employment with the Village. A majority of the members of the Board of Tax Appeals shall constitute a quorum. Members of the Board of Tax Appeals shall serve without pay.

(B) Whenever a Tax Administrator issues a decision regarding a municipal income tax obligation that is subject to appeal as provided in this Section or in an Ordinance or Regulation of this municipality, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

(C) Any person who is aggrieved by a decision by the Tax Administrator and who has filed with this municipality the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Tax Appeals by filing a request with the Board. The request shall be in writing, shall state why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Tax Administrator issues the decision complained of.

(D) The Board of Tax Appeals shall schedule a hearing within forty-five (45) 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.

(E) The Board of Tax Appeals may affirm, reverse, or modify the Tax Administrator's decision or any part of that decision. The Board shall issue a final decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and shall send a copy of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the Tax Administrator may appeal the Board's decision, as provided in Section 5717.011 of the Ohio Revised Code.

(F) The Board of Tax Appeals 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 the Board of Tax Appeals are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code.

#### **SECTION 14. 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 this council of this municipality that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not been included herein.

#### **SECTION 15. COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE.**

(A) This Ordinance shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes so levied or enforcing any provisions of this Ordinance are concerned, it shall continue effective until all of municipal income taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this Ordinance shall have been fully terminated, subject to the limitations contained in Sections 10 and 12 of this Ordinance.

(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 Sections 4 and 5 of this Ordinance as though the same were continuing.

#### **SECTION 16. CONTRACT PROVISIONS.**

No contract on behalf of this municipality for works or improvements of this municipality shall be binding or valid unless such contract contains the following provisions: "Said (\_\_\_\_\_) agrees to withhold all municipal income taxes due or payable under the provisions of this Ordinance for qualifying wages, salaries, and commissions paid to its employees, and further agrees that any of its subcontractors shall be required to agree to withhold any such municipal income taxes due under this Ordinance for services performed."

#### **SECTION 17. CONFLICTS.**

Any and all other terms, provisions, and conditions of any and all other ordinances and/or resolutions of the City of Fredericktown heretofore enacted by this Council, which are in conflict with the terms, provisions, and conditions hereof, shall be, and the same are herewith, repealed to the extent they are in conflict with the terms, provisions, and conditions of this Ordinance.

**SECTION 18. EFFECTIVE DATE.**

Ordinance 1993-29, approved December 27, 1993 and amended December 10, 2001, is hereby repealed at midnight on December 31, 2007 and reenacted by this Ordinance, which shall take effect and be in full force from and after the 1<sup>st</sup> day of January, 2008.

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

PASSED: October 15, 2007

\_\_\_\_\_  
Roger Reed, Mayor

ATTEST: \_\_\_\_\_  
Patricia Stelzer, Fiscal Officer