

VILLAGE OF NEW CONCORD, OHIO

ORDINANCE NO. I-2-02-1, AN ORDINANCE TO AMEND VILLAGE INCOME TAX RULES AND REGULATIONS AND REPEALING ORDINANCE I-12-82-1 AND RESOLUTION NO. 12-82-3 AND AMENDMENTS THERETO AND CONTINUING VILLAGE INCOME TAX AT THE EXISTING 1% RATE ON CERTAIN INCOME.

WHEREAS, the current Village of New Concord Earnings Tax Ordinance was enacted in 1982; and

WHEREAS, in the opinion of the Village Solicitor, and change in the Ohio Revised Code, the original Ordinance and subsequent amendments and changes in the law need to be recodified into one comprehensive Tax Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF NEW CONCORD, STATE OF OHIO, TWO THIRDS OF THE MEMBERS DULY ELECTED THERETO CONCURRING:

SECTION I. Ordinance No. I-12-82-1 and Resolution 12-82-3 and subsequent amendments are hereby repealed. Provided, however that any and all tax, interest and penalties generated in connection herewith shall remain in full force and effect.

SECTION II. The Tax Ordinance hereafter set forth is hereby adopted:

SECTION 1. PURPOSE

To provide funds for the purposes of general municipal operations, there is hereby levied a tax on salaries, wages, commissions, and other compensation, and on net profits as hereinafter provided.

SECTION 2. DEFINITIONS

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

- A. "Tax Administrator" – The individual designated by the ordinance, appointed to administer and enforce the provisions of the ordinance.
- B. "Association" - A partnership, limited partnership, limited liability company, or any other form of unincorporated enterprise, owned by one or more persons.
- C. "Board of Review" – The Board created by and constituted as provided in Section 14.
- D. "Business" – An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, including but not limited to the renting or leasing of property, real, personal, or mixed.

- E. "Corporation" – A corporations, Sub-S 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. "Day" – A full day or any fractional part of a day.
- G. Domicile: - The place where a taxpayer has his true, fixed, and permanent home, and to which, whenever the taxpayer is absent, he has the intention of returning. Factors to be considered when determining domicile are, but are not limited to: registration of vehicles, current driver's license, address on Federal and State income tax returns, address of voter's registration, attendance at schools by taxpayer's family, county of taxpayer's estate if deceased.
- H. "Employee" – One who works for wages, salary, commission or other type of compensation in the service of an employer and whose wages, salary or commissions are subject to withholding of Federal Income Tax, Social Security Tax, and/or Medicare Tax.
- I. "Employer" – An individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or which employs one or more persons on a salary, wage, commission or other compensation basis.
- J. "Fiduciary" – A guardian, trustee, executor, administrator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.
- K. "Fiscal year"- An accounting period of twelve months ending on any day other than December 31.
- L. "Gross receipts" – The total income of a taxpayer from any source whatsoever.
- M. "Net Profits" – The net gain from the operations of a business, profession, enterprise or other activity after provision for all ordinary and necessary expense incurred in the conduct thereof either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, providing such accounting method does not conflict with any provision of this chapter or Regulations which the Administrator has adopted or may adopt and without deduction of taxes imposed by this chapter, Federal, State or other taxes based on income, or in the case of an unincorporated entity, without deduction of salaries or withdrawals of partners or other owners and otherwise adjusted to the requirements of this ordinance.
- N. "Nonresident" – An individual domiciled outside the Village.
- O. "Nonresident unincorporated business entity" – An unincorporated business entity not having any office or place of business within the Village.
- P. "Pension" – Income earned or received as a result of retirement from employment from an IRS qualified retirement plan and which is generally, although not exclusively, reported to the taxpayer by the payer on a Form 1099-R or similar form.

- Q. "Person" – Every natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to a corporation, the officers thereof.
- R. "Place of business" – Any bona fide office, other than a mere statutory office, factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his employees or agents.
- S. "Resident" – An individual domiciled in the Village.
- T. "Resident unincorporated business entity" – An unincorporated business entity having an office or place of business within the Village.
- U. "Salaries, wages, and other compensations" – Salaries, wages commissions and other compensation: Means the total compensation paid to an individual in cash or in kind on an hourly, daily, weekly, monthly, annual, or other basis, including, but not limited to the following: severance or termination pay, wage continuation payments made as a result of sickness or temporary disability and whether paid by the recipient's employer or by a third party, vacation or holiday pay, tips or gratuities received; group term insurance premiums paid on an employee's behalf, employee contributions to tax sheltered annuities, non-qualified pension plans, or into employer or third party trusts or pension plans as permitted by IRS and which may be excludable from wages for federal tax purposes; employee contributions to "Cafeteria Plans" as permitted by IRS under IRS code Section 125, 127, or 129 or similar plans and which may be excludable from wages for federal purposes; ordinary income portion of stock options or employee stock purchase plans; supplemental unemployment benefits (SUB Pay); strike pay; jury duty pay; employer or employee contributions or amounts credited to non-qualified pension plans or deferred compensation plans at the time of deferral and to the extent subject to Medicare Tax; working conditions fringe benefits subject to tax by IRS; guardian, executor, conservator, trustee, or administrator fees; bonuses; ordinary income portion of lump sum distributions which become subject to federal tax because the recipient did not roll over the distribution within the time required by IRS.
- V. "Taxable year" – The calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made. Unless another accounting period is approved by the Administrator, the taxable year of an individual shall be a calendar year. Also, a month is considered to be a full month or any fractional part thereof.
- W. "Taxpayer" – A person, whether an individual, partnership, association or any corporation or other entity, subject to the tax imposed by this chapter or required hereunder to file a return or pay a tax.
- X. "Village" – The Village of New Concord, Muskingum County, Ohio.

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

SECTION 3. IMPOSITION OF TAX

Subject to the provisions of Section 17 of this ordinance, an annual tax for the purposes specified in Section 1 hereof, is hereby imposed at the rate of one percent (1%) per year upon the following:

- A. On all salaries, wages, commissions and other compensation as defined at Section 2U earned or received during the effective period of this ordinance by residents of the Village.
- B. On all salaries, wages, commissions and other compensation as defined at Section 2U earned or received during the effective period of this ordinance by nonresidents for work done or services performed or rendered in the Village.
- * C. On the portion attributable to the Village of the net profits earned during the effective period of this ordinance, of all resident unincorporated businesses, professions and other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in the Village.
- D. On the portion of the distributive share of the net profits earned during the effective period of this ordinance of a residents partner or owner of a resident unincorporated business entity not attributable to the Village and not levies against such unincorporated business entity.
- E. On the portion attributable to the Village of the net profits earned during the effective period of this ordinance of all nonresident unincorporated businesses, professions, or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in the Village whether or not such person, unincorporated business entity, profession or other entity has an office or place of business in the Village.
- F. On the portion attributed to the Village of the net profits earned during the effective period of this chapter of all corporations derived from sales made, work done or services performed or rendered and business or other activities conducted in the Village whether or not such corporations have an office or place of business in the Village.
- G. On gross income derived anywhere from gaming, wagering, lotteries, or schemes of chance by residents of the Village, or by nonresidents of the Village when the income derived from gaming, wagering, lotteries, or schemes of chance is won or received from the Village sources, including sales of lottery tickets.
- H. On covenants not to compete and on cancellation of indebtedness to the extent includible on the taxpayer's federal tax return.

- I. Tax on Business Doing Business Both Within and Without the Village. The portion of the net profits attributable to the Village of a taxpayer conducting a business, profession other activity both within and without the boundaries of the Village shall be determined as provided in Ohio R. C. 718.02 which is reprinted at the end of the chapter and in accordance with the rules and regulations adopted or which may be adopted by the Administrator pursuant to this chapter.
- J. Operating loss carry forward:
 1. The portion of a net operating loss sustained in any taxable year subsequent to 1982, allocable to the Village of New Concord may be applied against the portion of the profit of succeeding year(s) allocable to the Village of New Concord, until exhausted but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.
 2. The portion of a net operating loss sustained shall be allocated to the Village of New Concord in the same manner as provided herein for allocating net profits to the Village of New Concord.
 3. The Administrator shall provide by Rules and Regulations the manner in which such net operating loss carry-forward shall be determined.
- K. A husband and wife may, for any tax year, elect to file separate or joint returns. However, a loss from the business activity of one spouse may not be used to reduce the taxable income of the other spouse. Also, a loss from the operation of a business, including rental losses, may not be used to offset the income on a taxpayer's W-2 Form.
- L. Consolidated returns:
 1. Filing of consolidated returns may be permitted or required in accordance with Rules and Regulations prescribed by the Administrator.
 2. In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch factory, office, laboratory or activity within the Village of New Concord constituting a portion only of its total business, the Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the Village of New Concord. If the Administrator finds net profits are not properly allocated to the Village of New Concord by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such divisions, branch, factory, office, laboratory or activity or by some other method, he shall make such allocations as he deems appropriated to produce a fair and proper allocation of net profits to the Village of New Concord.

3. No return shall be considered to have been submitted unless it clearly sets forth the income and expenses attributable to this municipality alone.

SECTION 4. EXEMPTIONS – SOURCE OF INCOME NOT TAXED.

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

- A. Pay or allowance of active members of the armed forces of the United States because of active duty service or 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 and only to the extent that the said income is exempt from federal income tax.
- B. Poor relief, Social Security benefits, unemployment insurance benefits except for supplemental unemployment benefits, IRS qualified retirement plan or similar payments, disability benefits received from local, state or Federal governments or charitable religious or educational organizations. The disability benefits excludable must be a permanent nature as determined by a physician or government entity.
- C. Proceeds of insurance paid by reason of death of the insured, pensions, including industrial pensions, disability benefits paid for total and permanent disability, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
- D. Receipts from seasonal or casual entertainment, amusement, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations and only to the extent that the said income is exempt from Federal Income Tax.
- E. Alimony received.
- F. Compensation for personal injuries or for damages to property by way of insurance or otherwise but this exclusion does not apply to compensation paid for lost salaries or wages.
- G. Interest, dividends and other revenue from intangible property as set forth in O.R.C. 718.01.
- H. Salaries, wages, and other compensation earned or received by employees under the age of 18 year.
- I. Payments made to Election Workers.
- J. Salaries, wages commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce.
- K. Salaries, wages, commissions and other compensations and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of a municipality to impose net income taxes.

- L. The amount of unreimbursed employee business expenses (2106 Expenses), which the employee deducted as an itemized deduction before reduction by 2% of the employee's AGI on his federal tax return. Taxpayer must furnish a copy of the form 2106 and Schedule "A" of form 1040 as filed with IRS. This deduction must be allocated first to the municipality where the employment occurred.
- M. Compensation paid to a nonresident individual for personal services performed within the Village if the personal services are performed during twelve (12) or fewer days during the calendar year. A day is a full day or any fractional part of a day.
- Compensation paid to a nonresident employee by a nonresident employer for work or services performed in the Village if the services or work is performed during twelve (12) or fewer days during the calendar year and further provided that the individual's employer is located outside of the Village and the individual pays tax on the compensation to the municipal corporation in which the employer's principal place of business is located and no portion of the tax paid is refunded to the individual.
- The foregoing two paragraphs do not apply to professional entertainers, professional athletes, promoters of professional entertainment or sporting events and their employees.
- For purposes of applying this section, a day is a full day or any fractional part of a day.
- N. Moving Expenses Deducted by the Taxpayer on the Federal Tax Return. A copy of page 1 of the taxpayer's form 1040 must be submitted along with the IRS form 3903.
- O. Expenses Not Deductible:
1. No deduction for health insurance premiums paid by self-employed taxpayers as permitted by IRS are permitted for the Village.
 2. No deduction for self-employment tax paid by self-employed taxpayers as permitted by IRS is permitted for the Village.
 3. No deduction for contributions to IRA or Keogh plans made by taxpayers as permitted by IRS is permitted for the Village.

SECTION 5. EFFECTIVE DATE

The tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of persons, businesses, professions, or other activities, as defined in this chapter, earned or received on and after January 1, 1982.

SECTION 6. ANNUAL TAX RETURN AND PAYMENT OF TAX DUE

- A. Except as otherwise herein provided, each person 18 year of age or older, who engages in business as hereinbefore defined, or whose wages, salaries, commissions or other compensation maybe subject to the tax imposed by this chapter, shall, whether or not a tax is due thereon upon being notified by the administrator, make and file a return on or before April 30th of each year with the Administrator. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or other period. Any person otherwise subject to the tax who is registered with the Village as being retired with no earned income, shall be exempt from filing an annual tax return at the discretion of the Administrator.
- B. A husband and wife may, for any tax year, elect to file separate or joint returns. However, a loss from the business activity of one spouse may not be used to reduce the taxable income of the other spouse. Also, a loss from the operation of a business, including rental losses, may not be used to offset the income on a taxpayer's W-2 Form.
- C. The Administrator is hereby authorized to provide by regulation, subject to the approval of the Board of Review, that the W-2 form furnished by an employer or employers, for a nonresident employee showing the full amount of tax deducted by such employer or employers from the salaries, wages or commissions or other compensations, as required by Section 7 and paid to the Village, or other municipality or state, imposing a tax equal to or greater than the New Concord income tax, on the same taxable income, shall be accepted as the return required of a nonresident employee under this chapter, whose sole income subject to the tax or taxes under this chapter is such salary, wages, commissions or other compensation.
- D. Such return shall be filed with the Administrator on a form or forms furnished by or obtainable from the Administrator or on a suitable generic form, setting forth.
 1. The aggregate amounts of salaries, wages, commissions and other compensation earned or received.
 2. Gross income from such business less allowable expenses incurred in the acquisition of such gross income to arrive at a net profit.
 3. The amount of the tax imposed by this ordinance thereon;
 4. Any credits to which the taxpayer may be entitled under the provisions of Sections 7 Tax Withheld By Employer, 8 Estimated Tax Payments and 16 Tax Paid to Another Municipality; and
 5. Such other pertinent statements, information returns or other information as the Administrator may require.
- E. The taxpayer making a return required hereunder shall, at the time of the filing thereof, pay to the Administrator the balance of the tax due, if it exceeds \$4.99.

1. Should the return or the records of the Administrator indicate an overpayment of the tax to which the Village is entitled under the provisions of this ordinance, such overpayment shall be first applied against any existing tax liability, penalties, or interest, and the balance, if any, at the election of the taxpayer communicated to the Administrator, shall be refunded or applied against any subsequent liability hereunder; provided that an overpayment of less than five dollars (\$5.00) shall not be refunded but may be carried forward to a subsequent tax year.
 2. Where necessary, an amended return shall be filed in order to report additional income and pay any additional tax due, or claim a return or tax overpaid, subject to the requirements and/or limitations contained in Sections 12 and 16. Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the annual return.
 3. Within three months from the final determination of any Federal tax liability affecting the taxpayer's New Concord tax liability, such taxpayer shall make and file an amended New Concord return showing income subject to the New Concord tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make claim for return of any overpayment.
- F. The officer or employee of such employer having control or supervision or charged with the responsibility of filing the return and making the payment, shall be personally liable for failure to file the return or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer or employee's liability for a prior failure of such business to file a return or pay taxes, penalties, or interest due.
- G. The Tax Return is considered received if mailed, on the date postmarked by the United States Postal Service or on the date delivered without mailing to the Village Tax Office.
- H. Extension of time for filing returns. Taxpayers granted extensions of time for filing their federal income tax returns may have an extension for filing their New Concord tax return provided that a copy of the federal extension is filed with the Administrator on or before the original due date of the New Concord tax return.

The extended date for filing the New Concord return will be the same as the extended date for the federal return regardless of the original due date of the tax return. Statutory interest of one-half percent (1/2%) per month or fraction thereof will be charged from the original due date of the return until date of actual payment. The extension is for extending the due date of the tax return and does not extend the time for paying any tax due.

If a taxpayer wishes to extend the time for filing the New Concord tax return to a date other than that provided by the automatic federal extension, the taxpayer must file such a request in writing to the Administrator prior to the due date of the automatic extension. The Administrator upon terms may grant the extension and conditions set forth by him or her. A taxpayer's extension request may be denied if the taxpayer is delinquent in the filing of any tax returns or payments of any taxes, penalties, or interest due.

The granting of an extension does not extend the time for paying the tax; it only extends the time for filing the tax return.

- I. The failure of any taxpayer to receive or procure a return, declaration or other required form shall not excuse the taxpayer from filing such forms or from paying the tax due.
- J. Payments received for taxes due shall be allocated first to penalties due, then to interest due, and then to taxes due.
- K. The Administrator is authorized but is not required to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until the taxpayer files proper returns for all amounts owed by him under the ordinance.
- L. Within thirty (30) days after a new tenant occupies rental property of any kind within the Village of New Concord the owner of such rental property shall file with the Tax Administrator a report showing the name, address, and telephone number, if available, of each such tenant.

Within thirty (30) days after a tenant vacates rental property located within the Village of New Concord the owner of such vacated rental property shall file with the Tax Administrator a report showing the days of vacation from the rental property and identifying each such vacating tenant along with a forwarding address.

As used herein, the term "rental property" shall include houses, apartments, rooms, stores, and any other real property rented, leased or demised to a tenant or lessee. Violation of this ordinance shall be an offense punishable by a fine of up to \$100.00.

SECTION 7. COLLECTION AT SOURCE – WITHHOLDING BY EMPLOYER.

- A. Each employer within or doing business with the Village who employs one or more persons on a salary, wage, commission or other compensation basis as defined at Section 2U shall, at the time of the payment thereof, deduct the tax of one percent (1%) from the salaries, wages, commissions or other compensation as defined at Section 2U earned or received within the Village by nonresidents thereof.
- B. Notwithstanding the provisions of paragraph A. hereof, if such employer within or doing business within the Village who or which employs a Village resident in another taxing municipality requiring such employer to deduct its tax from all employees engaged therein, such employer shall withhold for and remit to the Village only the difference, if any, between the tax on such Village resident required to be withheld by such other taxing municipality and the tax imposed by this ordinance; or shall withhold Village tax on 100% of the income subject to Village tax if the village resident/employee is employed at a location where a municipal tax is not imposed.
- C. Each such employer shall, on or before the last day of the month following the close of each calendar quarter, make a return and remit the tax hereby required to be withheld to the Administrator. However, any employer who, in a prior year, deducted tax in the amount of \$2,400 or deducted \$200 per month in the current calendar year, is required to make a return and remit the tax withheld on or before the 30th day of the month following the close of the preceding month to the Administrator. Such return shall be on a form or forms prescribed by or acceptable to the Administrator and shall be subject to the rules and regulations prescribed therefore by the Administrator. Such employer shall be liable for the payment of taxes hereby required to be deducted and withheld, whether or not such taxes have in fact been so deducted and withheld.
- D. Effective January 1, 2002, New Concord shall not require any nonresident employer, agent of such nonresident employer, or other payer that is not situated in New Concord to deduct and withhold New Concord tax from the salaries, wages, and other compensation earned or received by an individual unless the total amount of New Concord tax required to be withheld and deducted for all the nonresident employer's employees or other payer's payees exceeds One Hundred Fifty Dollars (\$150.00) for that calendar year. (O.R.C. 718.03 A)

- E. Effective January 1, 2002, if the New Concord tax required to be deducted and withheld from the salaries, wages, and other compensation of all of the nonresident employer's employees or other payers' payees exceeds One Hundred Fifty Dollars (\$150.00) for any calendar year beginning with the calendar year commencing on January 1, 2002, and thereafter, then the said nonresident employer, agent of such employer, or other payer, is required to deduct and withhold New Concord tax in each ensuing year, even if the amount of the tax required to be withheld and deducted in each of those ensuing years is One Hundred Fifty Dollars (\$150.00) or less, except as provided in paragraph F following. (O.R.C. 718.03A)
- F. If a nonresident employer, agent of such employer, or other payer that is not situated in New Concord is required to deduct and withhold New Concord tax for an ensuing year as set forth at paragraph E immediately preceding, and the total amount of tax required to be deducted and withheld in accordance with said paragraph E in each of the three (3) consecutive ensuing years is One Hundred Fifty Dollars (\$150.00) or less, then New Concord tax shall not be required to be deducted and withheld by the employer, employer's agent, or other payer in any subsequent year to the last of those three (3) consecutive ensuing years unless the amount required to be deducted and withheld and deducted in any such subsequent year exceeds One Hundred Fifty Dollars (\$150.00) (O.R.C. 718.03.)
- G. An "Other Payer" as used in the preceding three paragraphs means any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent. (O.R.C. 718.03.)
- H. Such employer in collecting such tax shall be deemed to hold the same, until payment is made by such employer to the Village, as a trustee for the benefit of the Village, and any such tax collected by such employer from its employees shall, until the same is paid to the Village, be deemed a trust fund in the hands of such employer.
- I. The officer or the employee having control of or charged with the responsibility of filing the return and making payment, shall be personally liable for failure to file the return or pay the tax due as required by this section. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer or employee's liability for a prior failure of the corporation to file returns or pay taxes, penalties, or interest due.

- J. On or before January 31 following any calendar year, such employer shall file with the Administrator an annual reconciliation return along with an information return for such employee from whom New Concord income tax has been or should have been withheld, showing the name, address and Social Security number of the employee, the total amount of compensation paid during the year and the amount of municipal income tax withheld from the employee with the municipality for which said tax was withheld identified. The information return shall also include all of the information required to be reported shall pay over any amounts deducted or which should have been deducted during the preceding year but which was not remitted. The annual reconciliation form shall be obtained from the Administrator.
- K. All individuals, businesses, employers, brokers, or others who are required under the Internal Revenue Code to furnish forms 1099 to IRS from individuals or businesses to whom or which they have non-employee compensation shall furnish copies of the said form 1099's to the Administrator or in lieu thereof, a list containing the same information as required by IRS on the 1099's on or before the due date for such forms 1099's as established by IRS. Failure to provide the foregoing information may result in any deduction for payment by the taxpayer taken on the taxpayer's return to be disallowed.
- L. Every employer shall retain all records necessary to compute withholding taxes due New Concord for a period of five years from the date the Reconciliation Form, W-2 Forms, and 1099 forms are filed.
- M. The Return is considered received when
All returns and forms are required to be filed by an employer are considered received on the date postmarked by the United States Postal Service or on the date delivered without mailing by the taxpayer to the Village.
- N. The failure of any employer to receive or procure a return, or other required form shall not excuse the employer from preparing any information return, withholding tax returns or from filing such forms or from paying the tax due.
- O. Payments received for withholding taxes due shall be applied first to penalties due, then to interest due, and then to taxes due.

SECTION 8. DECLARATIONS, ESTIMATED TAX PAYMENTS.

- A. Every person who anticipates any taxable income which is not subject to Section 7 or who engages in any business, profession enterprise and activity subject to the tax imposed by Section 3, 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.
1. Such declaration shall be filed on or before April 30th of each year during the life of this ordinance, or before the 30th day of the fourth month from the date that the taxpayer becomes subject to tax for the first time.
 2. Those taxpayers reporting on a fiscal year basis shall file a declaration before the 30th day of the fourth month after the beginning of each fiscal year or period.
 3. Such declaration shall be filed upon a form furnished by, or obtainable from, the Administrator. Credit may be taken for New Concord income tax to be withheld, in any, from any portion of such income. In addition, credit may be taken for tax paid to other municipalities in accordance with the provisions of Section 16.
 4. The original declaration, or any subsequent amendment thereof, may be increased or decreased on or before any subsequent payment date provided for herein.
 5. If the net estimated tax due after the deduction for allowable credits is \$100.00 or more, such declaration shall be accompanied by a payment of at least one-fourth of the net estimated annual tax due.
 6. At least a similar amount shall be paid on or before the 30th day of the seventh, tenth and thirteenth month after the beginning of the taxpayer's taxable year, provided that in case an amended declaration has been duly filed, or the taxpayer is taxable for a portion of the year only, the unpaid balance shall be paid in equal installments on or before the remaining payment dates.
- B. On or before the 30th day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due New Concord shall be paid therewith in accordance with the provisions of Section 6.
- C. If a taxpayer's total tax payments made in accordance with this section including any credits available to the taxpayer per Sections 7 and 16 do not equal at least 90% (ninety percent) of the taxpayers current years annual tax liability or 100% (one hundred percent) of the taxpayers annual tax liability for the immediately preceding tax year, then interest shall be assessed on the underpayment of tax due as follows.

1. The taxpayers annual tax liability as established on the taxpayers annual return shall be divided by four (4) to determine the amount of tax that should have been paid quarterly on an estimated basis. The difference between that amount of tax which should have been paid quarterly on an estimated basis and the amount of tax actually paid on an estimated basis shall be subject to interest of one percent (1%) per month on portion thereof from the due date of the quarterly installment to the date that the annual return is due on the tax paid thereon, whichever is earlier.
2. In the event that the taxpayer provides satisfactory evidence to the Tax Administrator that the taxpayer's income fluctuated in such a manner that the interest assessable should not be charged, the Tax Administrator may waive any portion of the interest upon request of the taxpayer and submission of evidence of the fluctuation.

SECTION 9. DUTIES OF THE ADMINISTRATOR.

It shall be the duty of the Administrator to:

- A. Collect and receive the tax imposed by this ordinance in the manner prescribed herein, to keep accurate records thereof and to record daily all moneys so received.
- B. Enforce payment of all taxes due the Village hereunder, to keep accurate records for a period of not less than five years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld and to show the dates and amounts of payments thereof.
- C. The Administrator is hereby charged with the enforcement of the provisions of this ordinance, and is hereby empowered, subject to the approval of the Board of Review, to adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including provision for the reexamination and correction of returns.
- D. In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the village from the taxpayer and shall send to such taxpayer by certified mail a written statement showing the amount of tax, if any, so determined together with interest and penalties thereon. Such determination may be modified or amended based upon information or data subsequently secured by or made available to the Administrator. If the taxpayer fails to respond to the assessment within 30 days, the tax, penalties, and interest assessed shall become due and payable and collectible, as are other unpaid taxes.
- E. Subject to the consent of the Board of Review or pursuant to regulation approved by the said Board, the Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 11 of this ordinance.

- F. If the Administrator issues a decision or opinion to a taxpayer regarding a tax obligation that is subject to appeal, the Administrator shall notify the taxpayer of the taxpayer's right to appeal the decision and of the manner in which the appeal can be made.

SECTION 10. INVESTIGATIVE POWERS OF ADMINISTRATOR; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

- A. The Administrator, or any employee of the Village designated by the Administrator, is hereby authorized to examine the books, papers, records, and Federal or State income tax returns of any employer or of any taxpayer or person subject to the tax 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 Administrator, or his duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations as are hereby authorized.
- B. The Administrator is hereby authorized to order any person deemed by the Administrator to have knowledge or information pertinent to the tax liability of any taxpayer to appear before him or her and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and Federal or State income tax returns and the attendance of all persons before him or her 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 or State income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this ordinance, punishable as provided in Section 13.
- D. Any information gained from, or as the result of, any declaration, returns, investigations, reports, hearings or verifications required or authorized by this ordinance shall be confidential, except for official purposes, which includes the exchange of information with other tax authorities or in accordance with proper judicial order. Any such person divulging such information in violation of this ordinance shall be subject to prosecution as provided in Section 13. Each disclosure shall constitute a separate offense. In addition, information may be released by the Administrator in accordance with and upon the execution by a taxpayer of a waiver and consent form or authorization form or forms shall be furnished by the Administrator. In addition to the penalty provided in Section 13 any employee of the Village who violates the provisions hereof relative to the disclosure of confidential information shall be subject to immediate dismissal.

- E. Every taxpayer shall maintain, and retain for a period of five years after the date a declaration or return is due or withholding taxes paid, all records necessary to exhibit and compute his liability for taxes due or to be withheld under the provisions of this ordinance.

SECTION 11. INTEREST AND PENALTIES.

- A. All taxes imposed and moneys withheld or required to be withheld by employers under the provisions of this ordinance and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of one percent (1%) per month, or fraction thereof.
- B. In addition to interest as provided in subsection A hereof, penalties based on the unpaid tax are hereby imposed as follows:
 - 1. For failure to pay taxes due, other than taxes withheld; one percent (1%) per month or fraction thereof.
 - 2. For failure to remit taxes withheld from employees; three percent (3%) per month or fraction thereof.
 - 3. For failure to file a tax return by the date due, including due dates extended as set forth at Section 6G there shall be due a penalty of twenty-five dollars (\$25.00) in addition to all other penalties and interest, even if no tax is due.
- C. The penalty provided in this section shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator nor, in the absence of fraud, shall either penalty or interest 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 the final determination of the Federal tax liability, whichever is later.
- D. Upon recommendation of the Administrator, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Administrator to recommend abatement of penalty or interest, the Board of Review may nevertheless abate penalty or interest, or both.

SECTION 12. COLLECTION OF UNPAID TAXES BY CIVIL LITIGATION, REFUNDS OR OVERPAYMENTS.

- A. All taxes imposed by this ordinance shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Such suit shall be brought with three (3) years after the tax was due or the return was filed, whichever is later in accordance with O.R.C. 718.12A.
- B. Taxes erroneously paid shall not be refunded unless a claim for refund is made within the time limitation specified in O.R.C. 718.12C. Amount less than five dollars (\$5.00) shall not be refundable.

- C. A loss from the operation of a business or profession may be offset against net profits from other business or professional activities in the amount of the loss commensurate with the portion of profits, if profits existed, with respect to which credit could not be claimed for tax paid to another municipality. Accordingly, if the profits of an activity are subject to tax by another municipality, the portion of a loss that may not be used to offset profits is determined by multiplying the loss by a fraction, the numerator being either the tax rate of the other taxing municipality or the percentage rate to which credit for tax paid to another municipality is limited, whichever is the lesser, and the denominator being the existing New Concord tax rate. Any unused loss, or portion thereof, allowable for offset as determined in this manner, may be carried forward as set forth in article III-C-1 of these rules and regulations.

SECTION 13. VIOLATIONS – CRIMINAL PROSECUTIONS.

Any person or taxpayer who or which:

- A. Fails, neglects or refuses to make any return, information return or declaration required by this chapter, or
- B. Makes any false or fraudulent return, or knowingly makes any incomplete return; or
- C. Fails, neglects or refuses to pay the tax, penalties or interest imposed by this ordinance; or
- D. Fails, neglects or refuses to withhold the tax from his employees or to remit such withholding to the Administrator; or
- E. Refuses to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers, and Federal income tax returns relating to the income or net profits of a taxpayer; or
- F. Fails to appear before the Administrator and to produce his books, records, papers, or Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or
- G. Refuses to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or
- H. Fails to comply with the provisions of this ordinance or any order or subpoena of the Administrator authorized hereby; or
- I. Gives to an employer false information as to his true name, correct Social Security number, residence address, or fails to promptly notify an employer of any change in his residence address and the date thereof; or
- J. Fails to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and Village tax withheld or knowingly gives false or misleading information to the administrator; or
- K. Attempts to do anything whatever to avoid payment of the whole or any part of the tax, penalties or interest imposed by this ordinance; or

- L. Fails, neglects or refuses to complete and return to the Administrator any tax form whose purpose is to determine if a resident must file a Village tax return;

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

- M. Prosecutions for an offense made punishable under 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 the compensation or net profits required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense in accordance with O.R.C. 718.012B.
- N. The failure of any employer, taxpayer or person to receive or procure a return, declaration or other required form shall not excuse him from making any return, information return or declaration, from filing such form and from paying the tax.

SECTION 14. BOARD OF REVIEW.

- A. A Board of Review, consisting of a chairman and two other individuals, each to be appointed by the Mayor and approved by Council, is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Sections 10 with reference to the confidential character of information required to be disclosed by this ordinance shall apply to such matters as may be heard before the Board.
- B. All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this ordinance, must be approved by the Board of Review before the same becomes effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator, and at the request of the taxpayer or Administrator, is empowered to substitute alternate methods of allocation.

- C. Any taxpayer dissatisfied with any ruling or decision of the Administrator which was made under the authority conferred by Section 9C and/or Section 9E and who has filed the required returns or other documents pertaining to the contested issue may appeal therefrom to the Board of Review within thirty (30) calendar days from the issuance of such ruling or decision by the Administrator. The appeal must state the alleged errors in the Administrator's ruling or decision. The board must schedule a hearing with forty-five (45) calendar days of receiving the appeal unless the taxpayer expressly waives the hearing and chooses instead to let the Board render its decision on the writings submitted by the Administrator and the taxpayer. If the taxpayer does not waive the hearing, the taxpayer is entitled to appear before the Board and bring with him or her representation of his or her choosing. The board must issue a written decision within ninety (90) days after the final hearing and send a notice of its decision by ordinary mail to the taxpayer with 15 days after issuing the decision. If the Board fails to comply with the provisions of this section, the taxpayer's appeal will default in favor of the taxpayer. Hearing held in accordance with this Section is not a meeting of a public body subject to O.R.C. 121.22.
- D. Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction as provided by law within thirty (30) calendar days from the date of the Board's ruling.

SECTION 15. USE OF FUNDS.

Funds shall be allocated to the General Fund, Debt Funds, and the Capital Improvement Funds as may be determined by Council.

SECTION 16. CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

- A. Credits and limitations thereof. Every individual taxpayer who resides in the Village of New Concord who received net profits, salaries, wages, commissions, or other personal service compensation for work done or services performed or rendered outside of the Village of New Concord, if it be made to appear that he has paid a municipal income tax on the same income taxable under this ordinance to another municipality, shall be allowed a credit against the tax imposed by this ordinance of the amount so paid by him or in his behalf to such other municipality.
- B. The credits provided for shall not be allowed unless the same are claimed in a timely return or form acceptable to, and filed with the Administrator. In the event a taxpayer fails, neglects or refuses to file such timely return or form, he shall not be entitled to such credit and shall be liable for the full amount of tax assessed by this ordinance, together with such interest and penalties, both civil and criminal, as are prescribed in this chapter.
- C. No credit shall be given for any tax paid to a school district or a county.

SECTION 17. SAVINGS CLAUSE.

If any sentence, clause, section or part of this ordinance, or any tax against any individual of 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 parts of this ordinance. It is hereby declared to be the intention of Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 18. COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE.

- A. This Ordinance shall continue effective insofar as the levy of taxes is concerned for an indefinite period, provided however, that annual returns for the year ending December 31, 2001, shall be filed on or before April 30, 2002. This ordinance and all prior ordinances shall continue to be effective until all taxes, penalties and interest due under the said ordinances are fully paid and all tax returns due are filed, and any and all civil litigation and criminal prosecutions for the collection of said taxes have been fully consummated.
- B. Annual returns due for all or any part of the last effective year of this ordinance shall be due on the date provided in Section 6 and Section 7 of this ordinance as though the same were continuing.

ORC 718.02 DETERMINATION OF INCOME SUBJECT TO TAX

- A. In the taxation of income that is subject to municipal income taxes, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of a municipal corporation disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the municipal corporation, then only such portion shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of
 1. The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession is such municipal corporation during the taxable period to the average net book value of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

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

2. Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in such municipal corporation to wages, salaries, and to other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed excluding compensation described in Division (f)(8) of Section 718.01 of the Revised Code.
 3. Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross receipts of the business or profession during the same period from sales and services, whoever made or performed. If the foregoing allocation formula does not produce an equitable result, another basis may be substituted, under uniform regulations so as to produce an equitable result.
- B. As used in division (A) of this section, "sales made in a municipal corporation" mean:
1. All sales of tangible personal property delivered within such municipal corporation regardless of where title passes is shipped or delivered from a stock of goods within such municipal corporation.
 2. 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;
 3. 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.

PASSED: FEBRUARY 11, 2002

Steve Kokovich, President of Council

APPROVED: FEBRUARY 11, 2002

R. Gregory Adams, Mayor

ATTEST: _____
Sue Wilson, Clerk/Treasurer