

VILLAGE OF OTTAWA HILLS, OHIO

ORDINANCE No. 2007-16

LEVYING A TAX TO PROVIDE FUNDS FOR THE PURPOSE OF CAPITAL IMPROVEMENTS AND GENERAL VILLAGE OPERATIONS, ON ALL QUALIFYING WAGES, COMMISSIONS AND OTHER COMPENSATIONS EARNED BY THE RESIDENTS OF THE VILLAGE OF OTTAWA HILLS; ON ALL QUALIFYING WAGES, COMMISSIONS AND OTHER COMPENSATIONS EARNED BY NONRESIDENTS OF THE VILLAGE OF OTTAWA HILLS FOR WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE VILLAGE OF OTTAWA HILLS; ON THE NET PROFITS EARNED ON ALL BUSINESSES, PROFESSIONS AND OTHER ACTIVITIES CONDUCTED BY RESIDENTS OF THE VILLAGE OF OTTAWA HILLS; ON THE NET PROFITS EARNED ON ALL BUSINESSES, PROFESSIONS, OR OTHER ACTIVITIES CONDUCTED IN THE VILLAGE OF OTTAWA HILLS BY NONRESIDENTS, AND ON THE NET PROFITS EARNED BY ALL CORPORATIONS DOING BUSINESS IN THE VILLAGE OF OTTAWA HILLS AS THE RESULT OF WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE VILLAGE OF OTTAWA HILLS; PROVIDING FOR THE ADMINISTRATION, COLLECTION, AND ENFORCEMENT OF SAID TAX; DECLARING THE VIOLATION THEREOF TO BE A MISDEMEANOR AND IMPOSING PENALTIES

WHEREAS, the Village of Ottawa Hills Council passed the original Income Tax Ordinance 66-32 in 1966 authorizing a 1% income tax as provided for under the Ohio Revised Code Chapter (Ohio R. C. Ch) 718, and has passed several subsequent amendments to the Ordinance; and,

WHEREAS, the electorate of the Village of Ottawa Hills approved an increase from 1% to 1½% on November 2, 1971, and the original Income Tax Ordinance was amended in Ordinance 71-20 to incorporate this change; and,

WHEREAS, the Council of the Village of Ottawa Hills wishes to make the Income Tax Ordinance simple, fair and consistent with similar ordinances in neighboring communities; and,

WHEREAS, the Village Council wishes to incorporate appropriate findings and conclusions of the Board of Review into the new Income Tax Ordinance; and,

WHEREAS, the proposed Income Tax Ordinance has been reviewed and is recommended by the Income Tax Commissioner, the Income Tax Administrator and the Finance Committee of the Village Council.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF OTTAWA HILLS THAT:

Section 1. EFFECTIVE PERIOD OF THIS LEGISLATION.

This Ordinance shall take effect on January 1, 2007 for tax periods beginning on or after January 1, 2007. This Ordinance shall continue effective insofar as the levy of taxes is concerned from and after January 1, 2007, and thereafter until such time as the same may be repealed by a vote of the electors of the Village of Ottawa Hills, Ohio. Insofar as the collection of taxes levied in the aforesaid period and actions and proceedings for collecting any tax so levied or enforcing any provisions of this Ordinance are concerned, it shall continue effective until all of said taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this Ordinance shall have been fully terminated, subject, however, to the provisions of Section 12 hereof with respect to the limitations of time within which an additional assessment shall be made. Provided, however, that should this Ordinance be repealed by the vote of the electorate of the Village of Ottawa Hills, Ohio, the annual returns for the year ending December 31st of the last year that this tax shall be imposed

shall be filed on or before April 15th of the next year succeeding the termination of the tax, and any tax shown due thereon for the last year of the imposition of said tax ending December 31st of that year, which is not paid and collected under the provisions of Section 7 and/or 8 hereof shall be paid on said date, except in those cases in which the time for filing returns and/or payments of the tax due has been extended in accordance with Section 6 hereof.

Section 2. EFFECTIVE PERIOD OF PRIOR LEGISLATION.

Ordinance 66-32 passed on November 30, 1966 and all amendments to that Ordinance listed below are not repealed and shall be in full force and effect after the effective date of this legislation for tax periods ending before January 1, 2001.

Ordinance 2000-14 passed on December 18, 2000 and all amendments to that Ordinance listed below are not repealed and shall be in full force and effect after the effective date of this legislation for tax periods ending before January 1, 2004.

Ordinance 2003-18 passed on December 1, 2003 and all amendments to that Ordinance listed below are not repealed and shall be in full force and effect after the effective date of this legislation for tax periods ending before January 1, 2007.

Ordinance	Date Passed
66-32	November 30, 1966
69-38	October 27, 1969
71-20	July 19, 1971
72-23	September 18, 1972
75-19	September 22, 1975
78-15A	September 11, 1978
88-30	October 3, 1988
94-21	December 5, 1994
94-22	December 5, 1994
95-4	February 6, 1995
2000-14	December 18, 2000
2002-3	February 4, 2002
2002-23	December 2, 2002
2003-18	December 1, 2003

Section 3. DECLARATION OF PURPOSE.

To provide funds for the purposes of capital improvements, maintenance, and general operations of the Village of Ottawa Hills there shall be and is hereby levied a tax on qualifying wages, commissions and other compensations, and on net profits as hereinafter provided.

Section 4. 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. **Adjusted Federal Taxable Income** - A “C” corporation’s federal taxable income as described in the Ohio R. C. Ch 718.01(A).
- B. **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, which is not a pass-through entity.
- C. **Commissioner of Taxation** - The person appointed to administer the Village of Ottawa Hills’ Income Tax Ordinance and to direct the operation of the Village Income Tax Department or the person executing the duties of the Tax Commissioner.
- D. **Corporation** - A corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country. Subchapter S Corporations will be treated as corporations.
- E. **Domicile** - Means the place where a taxpayer has his or her 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 include, 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; location of the probate of the taxpayer’s estate if deceased.
- F. **Employee** - One who works for wages, salary, commissions or other type of

- compensations in the service of an employer and whose wages, salaries, or commissions are subject to withholding of Federal Income Tax, Social Security Tax, or Medicare Tax.
- G. **Employer** - An individual, co-partnership, association, corporation, governmental body or 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, commissions, or other compensation basis.
- H. **Fiduciary** - A guardian, trustee, executor, administrator, or any other person acting in any fiduciary capacity for any individual, trust, estate or business.
- I. **Net Profits** - For a taxpayer other than an individual means adjusted federal taxable income and **net profit** for a taxpayer who is an individual means the individual's profit, other than amount described in section 5, A1 or 2 of this Ordinance, required to be reported on federal schedules C, E (pages 1 and 2), F, and K-1.
- J. **Nonresident Individual** - An individual domiciled outside the Village of Ottawa Hills.
- K. **Nonresident Business Entity** - A business entity or corporation not having an office or place of business within the Village of Ottawa Hills.
- L. **Pass-Through Entities** - A partnership, limited partnership, limited liability partnership, limited liability company, or any other class of entity the income or profits from which are given pass-through income tax treatment under the Internal Revenue Code
- M. **Person** - Individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, limited liability partnerships, associations, corporations, governmental entities, and any other entity.
- N. **Primary Source** - The single income source of an individual taxpayer comprising the greatest amount of net income on which the Village tax is assessed, based on information required with the return, as determined annually. For purposes of determining the primary source, all W-2s are treated as a single source, and all Federal Schedule E page 1 Rentals (per the net income/loss line before passive activity rule adjustments) are also treated as a single source. Each of these aforementioned aggregated sources is compared to each individual Federal Schedule C, F, partnership and trust Federal Schedule K-1, and other individual forms or schedules of income or loss, to determine the greatest amount of net income taxable to the Village.
- O. **Qualifying Wages, Commissions and Other Compensations** - 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 early retirement or employment termination; 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 to the extent subject to tax by IRS; employer or employee contributions or amounts credited to tax sheltered annuities, non-qualified pension plans, deferred compensation plans, or into employer or third party trusts or pension plans as permitted by IRS, all at the time of deferral and to the extent subject to Medicare Tax, ordinary income portion of stock options or employee stock purchase plans; supplemental unemployment benefits (SUB Pay); strike pay; jury duty pay; guardian, executor, conservator, trustee, or administrator fees; bonuses.
- P. **Resident Individual** - An individual domiciled in the Village of Ottawa Hills. See definition of Domicile.
- Q. **Resident Business Entity** - A business entity or corporation having an office or place of business within the Village of Ottawa Hills.
- R. **Taxpayer** - A person, whether an individual, co-partnership, association, or any corporation or other entity, required thereunder to file a return or to pay a tax imposed by this Ordinance.
- S. **Village** - The Village of Ottawa Hills.
- T. The singular shall include the plural, and the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.

Section 5. IMPOSITION OF TAX.

- A. An annual tax for the purposes specified in Section 3 hereof shall be, and hereby is, imposed on and after January 1, 2007, at the rate of one and one-half (1 1/2%) per cent per annum upon the following:
1. On all qualifying wages, commissions and other compensations earned or

received during the effective period of this Ordinance, by resident individuals of the Village of Ottawa Hills.

2. On all qualifying wages, commissions and other compensations earned or received during the effective period of this Ordinance, by nonresident individuals of the Village of Ottawa Hills for work done or services performed or rendered in the Village of Ottawa Hills.
3. On the net profits attributable to the Village of Ottawa Hills under the formula or separate accounting method provided for herein, earned during the effective period of this Ordinance, of all resident businesses, professions, or other activities, derived from work done or services performed or rendered and business or other activities conducted in the Village of Ottawa Hills.
4. On the net profits attributable to Ottawa Hills of all non-resident businesses, professions or other activities derived from work done or services performed or rendered and business or other activities conducted in Ottawa Hills, whether or not such business have an office or place of business in Ottawa Hills.
5. On the portion of the distributive share of the net profit earned by a resident individual from a pass-through entity, or similar business entity which is located outside of Ottawa Hills.
6. On the portion attributed to Ottawa Hills 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 Ottawa Hills, whether or not such corporations have an office or place of business in Ottawa Hills.
7. On all gross income derived anywhere from gaming, wagering, lotteries, or schemes of chance by a resident of Ottawa Hills or by nonresidents of Ottawa Hills when the income derived from gaming, wagering, lotteries, or schemes of chance is won or received from Ottawa Hills sources.
8. On income reported to IRS including but not limited to a covenant not to compete and cancellation of indebtedness.

B. Primary and Secondary Sources of Income.

The primary source of income will be determined annually based on the tax return. All other sources of income are considered secondary and are aggregated. If the result of such aggregation is a net profit, tax will be imposed and paid on the net profit. If the result of the aggregation is a net loss, the net loss will be carried forward as prescribed under D2 of this section.

C. Apportioned Net Profits.

1. In the taxation of income that is subject to the tax, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the Village 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 Village, then only such portion shall be considered as having a taxable situs in the Village for purposes of the tax. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of the Village shall be considered as having a taxable situs in the Village for purposes of the tax in the same proportion as the average ratio of:

- (a) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the Village during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

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

- (b) Wages, salaries, and other compensations paid during the taxable period to persons employed in the business or profession for services performed in the Village, to wages, salaries, and other compensations paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation described

- in Section 5, E9 hereof.
- (c) Gross receipts of the business or profession from sales made and services performed during the taxable period in the Village to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.
2. In the event that the foregoing apportioned formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result.
 3. As used in Section 5, C1 hereof, sales made in the Village mean:
 - (a) All sales of tangible personal property delivered within the Village regardless of where title passes if shipped or delivered from a stock of goods within the Village.
 - (b) All sales of tangible personal property delivered within the Village regardless of where title passes even though transported from a point outside the Village if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village and the sales result from such solicitation or promotion.
 - (c) All sales of tangible personal property shipped from a place within the Village to purchasers outside the Village 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.
- D. Operating Loss Carry Forward.
1. The portion of a net operating loss sustained in any taxable year subsequent to the effective date of the Ordinance apportionable to Ottawa Hills may be applied against the portion of the profit of succeeding years apportioned to Ottawa Hills, 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 net losses sustained by a taxpayer from business activities subject to Ottawa Hills Tax, other than from the taxpayer's primary source of income, shall be aggregated for each of the taxpayer's tax years. The aggregated net loss may be carried forward to any of the succeeding five (5) years and may be used against an aggregate secondary net profit for any of these five (5) succeeding tax years.
 3. If a resident of Ottawa Hills operates a business or businesses (including rental) in another taxing municipality in Ohio and the business or businesses incur a loss, the amount of the loss is deemed primarily subject to the taxing jurisdiction of the other taxing municipality and may be used to reduce the taxpayer's similar type of income included in the Ottawa Hills tax base in an amount equal to the percentage used in computing the taxpayer's reduced tax credit.
 4. The Commissioner may provide by Rules and Regulations the manner in which such net operating loss carry-forward shall be determined.
 5. Any taxpayer filing a tax return for the current year or an amended tax return for a previous year which involves an operating loss for a tax year beyond the Statute of Limitations as set forth at Section 12 hereof is not permitted to use the operating loss in computing taxable income for the Village unless the operating loss has been included on a tax return previously filed with the Village in a timely manner.
- E. Exemptions - Source of Income Not Taxed.
- The tax provided for herein shall not be levied on the following:
1. 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 (Ohio R. C. Ch. 718.01);
 2. Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio R. C. Ch. 718.01 to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.
 3. Proceeds from welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.
 4. Proceeds of insurance, annuities, workers' compensation insurance, permanent disability benefits, compensation for damages for personal injury and like

- reimbursements, not including damages for loss of profits and wages.
5. Spousal support received is not taxable by the recipient nor deductible by the payor.
 6. Interest, dividends and other revenue from intangible property as set forth in Ohio R. C. Ch. 718 (all businesses and pass-through entities deducting interest and/or dividend income are required to add back 5% of such income pursuant to Ohio R. C. Ch.718).
 7. Payments made to election workers.
 8. Gain or loss from sale of assets as reported on IRS form 4797.
 9. Non-resident employees or non-resident self-employed individuals who perform work or services in the Village for twelve (12) or fewer days during the calendar year as set forth in Ohio R. C. Ch. 718.011, as amended from time to time, effective January 1, 2001. This exemption does not apply to professional entertainers, professional athletes, or promoters of professional entertainment or sports events and their employees. For purposes of this paragraph, a day is defined as a full day or any fractional part of a day.
 10. The income of a public utility, when that public utility is subject to the tax levied under the Ohio R. C. Ch. 5727.24 or 5727.30, except a municipal corporation may tax the following, subject to the Ohio R. C. Ch. 5745:
 - (a) The income of an electric company or combined company;
 - (b) The income of a telephone company.
 As used in division E10 of this section, "combined company," "electric company," and "telephone company" have the same meanings as in the Ohio R. C. Ch. 5727.01.
 11. Generally the above noted items in this section are the only forms of income not subject to the tax. Any other income, benefits, or other forms of compensation shall be taxable.
- F. Deductions including, but not limited to the following, are deductible for Ottawa Hills Tax purposes.
1. Moving expenses are deductible to the extent properly deductible on the taxpayer's Form 1040. Taxpayer must furnish a copy of form 3903.
 2. The amount of unreimbursed employee business expenses (2106 expenses), which the employee properly deducted as an itemized deduction on his or her federal tax return. Taxpayer must furnish a copy of the form 2106 and Schedule "A."

Section 6. RETURN, PAYMENT OF TAX.

- A. Each resident of Ottawa Hills is required to register with the Department of Taxation on forms to be provided by the Department of Taxation regardless of whether or not the resident has income subject to the tax. Failure to complete the registration form within 30 days of its receipt is a violation of this Ordinance.
- B. Each taxpayer having income subject to the tax, shall, whether or not a tax be due thereon, prepare and file a return on or before April 15th of each year with the Commissioner of Taxation or such other official as may be designated by the Council of the Village of Ottawa Hills, on a form furnished by or obtainable from the Commissioner of Taxation, or on an acceptable generic form, setting forth the aggregate amount of qualifying wages, commissions and other compensations earned by him, and/or gross income from such business less ordinary, reasonable and necessary expenses, incurred in the acquisition of such gross income, earned during the preceding year and subject to the said tax, together with such other pertinent information as the Commissioner of Taxation may require. Provided, however, that when the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the end of such fiscal year and other period.
- C. The return shall also show the amount of the tax imposed by this Ordinance on such earnings and profits. The taxpayer making the return shall, at the time of the filing thereof, pay to the Commissioner of Taxation the amount of taxes shown as due thereon. Provided further, however, that where any portion of the tax so due shall have been deducted at the source and shall have been paid to the Commissioner of Taxation by the person making such deduction pursuant to the provisions of Section 7 hereof or where any portion of said tax shall have been paid by such taxpayer pursuant to the provisions

of Section 8 hereof, credit for the amount so paid shall be deducted from the amount shown to be due and only the balance, if any shall be due and payable at the time of filing said return.

Should it then appear that the taxpayer has overpaid the amount of tax to which the Village of Ottawa Hills is entitled under the provisions of this Ordinance, such overpayment shall be applied against any subsequent liability hereunder, or, at the election of the taxpayer and so indicated on the return, such overpayment (or part thereof) shall be refunded. Provided, however, that an overpayment of taxes of less than five dollars (\$5.00) shall not be refunded or carried forward.

D. Extension of time for filing returns.

1. If a taxpayer wishes to extend the time for filing the Ottawa Hills Income Tax Return, a written request or a copy of the federal extension must be submitted to the Commissioner prior to the due date. Any taxpayer not required to file a federal income tax return must file a written request for an Ottawa Hills extension with the Tax Commissioner prior to the due date of the return.
2. Pursuant to Ohio R. C. Ch. 718.05 (D), and as amended from time to time, for taxable years beginning after 2003, the extended due date for the Ottawa Hills return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended.
3. If a taxpayer wishes to extend the time for filing the Ottawa Hills 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 Commissioner prior to the original due date of the return. The extension may be granted by the Commissioner upon terms and conditions set forth by him or her.
4. The Tax Commissioner may deny a taxpayer's request for extension if the taxpayer;
 - (a) Fails to timely file the request; or
 - (b) Fails to file a copy of the federal extension request, (if applicable); or
 - (c) Owes the Village of Ottawa Hills any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of income tax; or
 - (d) Has failed to file any required income tax return, report, or other related document for a prior tax period.
5. Statutory penalty and interest will be charged from the original due date of the return until date of actual payment, provided payment in full is received on or before the extended filing date.
6. The granting of an extension for filing an Ottawa Hills Income Tax Return does not extend the due date as provided in this section for payment of the tax; penalty and interest will be assessed on any unpaid tax during the period of extension at the rate set out by Section 11.

E. The Commissioner of Taxation is hereby authorized to provide by regulation, subject to the approval of the Mayor and Council, that the return of an employer or employers, showing the amount of tax deducted by said employer or employers from the qualifying wages, commissions or other compensations of an employee, and paid by him or them to the Village of Ottawa Hills, shall be accepted as the return required of any employee whose sole income, subject to the tax or taxes under this Ordinance, is such qualifying wages, commissions or other compensations.

F. Amended Returns

1. Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 12, B hereof. Such amended returns shall be on a form obtainable on request from the Commissioner. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.
2. Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's Ottawa Hills' tax liability, such taxpayer shall make and file an amended Ottawa Hills' return showing income subject to the Ottawa Hills tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make claim for refund of an overpayment.

- G. A tax return is considered filed if mailed, on the date postmarked by the United States Post Office or if delivered on the date delivered to the Ottawa Hills Tax Office provided all schedules and details have accompanied said return.
- H. Any taxpayer, who or which in the opinion of the Tax Administrator, is subject to Ottawa Hills tax on a De minimis basis, i.e., contact with the Village of Ottawa Hills is only occasional or on an itinerant basis, may file a return and pay an amount of tax to be determined by the tax administrator but said tax shall not be less than Fifty Dollars (\$50.00). Such return and payment of tax shall be in lieu of the annual return and the withholding tax return, which may otherwise be required under this chapter.

Section 7. COLLECTION AT SOURCE, TAXES WITHHELD BY EMPLOYER.

- A. Each employer within or doing business within the Village of Ottawa Hills who employs one or more persons on a salary, wage, commissions or other compensations basis shall deduct, when such salary, wage, commission or other compensation is paid, allocated, apportioned or set aside, the tax at the then applicable rate provided in Section 5 of this Ordinance, from qualifying wages, commissions, or other compensations earned or received by Ottawa Hills residents regardless of where such compensation was earned and shall deduct the tax at such applicable rate from the qualifying wages, commissions or other compensations earned within Ottawa Hills by non-residents.
- B. Notwithstanding the provisions of Paragraph A of this Section, where an employer within or doing business within Ottawa Hills who employs an Ottawa Hills 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 of Ottawa Hills only the difference, if any, between the tax imposed by such other taxing municipality and the tax imposed by this Ordinance or shall withhold Ottawa Hills tax on 100% of the income subject to Ottawa Hills Tax if the Ottawa Hills resident/employee is employed at a location where a municipal tax is not imposed.
- C. Each employer shall on or before the last day of the month following each calendar quarter, make a return and remit to the Village of Ottawa Hills the tax hereby required to be withheld. Such return shall be on a form or forms prescribed by or acceptable to the Commissioner and shall be subject to the rules and regulations prescribed therefore by the Commissioner. 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. At the request of the Commissioner, an employer may be required to remit taxes withheld more frequently than quarterly.
- D. Such employer in collecting said tax shall be deemed to hold the same, until payment is made by such employer to Ottawa Hills as a Trustee for the benefit of Ottawa Hills and any such tax collected by such employer from his employees shall, until the same is paid to Ottawa Hills, be deemed a trust fund in the hands of such employer.
- E. An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by the Village of Ottawa Hills or by the employer's exemption from the requirement to withhold the tax.

The failure of an employer to remit to the Village of Ottawa Hills the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.

- F. On or before February 28 following any calendar year, such employer shall file with the Commissioner an annual reconciliation return along with an information return for such employee from whom Ottawa Hills' 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 include all of the information required to be reported by the employer to IRS on a W-2 form. At the time of filing the annual reconciliation return the employer 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 Commissioner.
- G. All individuals, businesses, employers, brokers or others who are required under the Internal Revenue Code to furnish forms 1099 to IRS for individuals or businesses to whom or which they have non-employee compensation, shall furnish copies of the said

form 1099's to the Commissioner or in lieu thereof, a list containing the same information as required by IRS for 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 tax return to be disallowed.

- H. All returns and forms required to be filed by an employer are considered filed on the date postmarked by the United States Post Office or on the date delivered without mailing by the taxpayer to the Ottawa Hills Tax office.
- I. The officer or employee 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 due as required herein. The dissolution, bankruptcy, or reorganization of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to file a return or pay taxes and penalty and interest due.
- J. The Commissioner may require at his or her discretion that an employer must report the tax required in Section 7 hereof using an electronic media format.
- K. Any business entity, which performs services or conducts any business activity in Ottawa Hills on a temporary basis, may at the discretion of the Commissioner be required to withhold Ottawa Hills tax from the wages or commissions of employees and remit that tax immediately at the close of the temporary activity.
- L. Employers residing in the Village shall not be required to withhold the tax on income of casual or part time employees whose income does not exceed Fifty Dollars (\$50.00) per week.

Section 8. DECLARATION - ESTIMATED TAX PAYMENTS.

Every taxpayer who anticipates any income which is not subject to the provisions of Section 7 hereof (withholding by employer), or who engages in any business activity, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any.

- A. Such declaration shall be filed on or before April 15 and a similar declaration shall be filed on or before April 15th of each year during the life of this Ordinance by all such taxpayers, such declaration shall be filed upon a form furnished by, or obtainable from, the Commissioner of Taxation, which form may simply state that the figures used in making such declaration are the figures used in making the declaration of the estimate for the federal income tax, provided that it is understood that such figures may be adjusted according to the provisions of this Ordinance so that the declaration required by this section shall set forth only such income as is taxable under the provisions of this Ordinance.
- B. Such declaration of estimated tax to be paid to the Village of Ottawa Hills shall be accompanied by a payment of at least one-fourth (1/4) of 90% of the estimated annual tax and at least a similar amount for such year shall be paid on or before July 31, October 31, and January 31 of such year. Provided, however, that such estimate may be amended at the time of the making of any quarterly payment, and further provided that on or before April 15th of the year following that for which such declaration was filed an annual return shall be filed and any balance which may be due the Village of Ottawa Hills shall be paid therewith. Should it then appear that such taxpayer has paid more than the amount of tax to which the Village of Ottawa Hills would be entitled under the provisions of this Ordinance, such overpayment shall be applied against any subsequent liability hereunder, or at the election of the taxpayer and so indicated on the return, such overpayment (or part thereof) shall be refunded, but in no event shall an overpayment of less than Five Dollars (\$5.00) be refunded or carried forward.
- C. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration on or before four months after the start of each fiscal year or period, accompanied by a payment of at least one-fourth (1/4) of 90% of the estimated annual tax shown due thereon, and shall make at least quarterly payments on or before the last day of the seventh, tenth, and thirteenth month after the beginning of the fiscal year.

Section 9. DUTIES OF THE COMMISSIONER OF TAXATION.

- A. It shall be the duty of the Commissioner of Taxation to collect and receive the tax imposed by this Ordinance in the manner prescribed by the Ordinance.

- B. It shall be his or her duty to keep an accurate record showing the amount received by him or her from each taxpayer required to file a declaration and/or make a return and the date of said receipt. The recommendations of the State Auditor relative to the processing of tax returns and payments received from taxpayers may be considered when applying this section to the operation of the tax office.
- C. The Commissioner is hereby charged with the enforcement of the provisions of this Ordinance, and is hereby empowered, subject to the approval of the Mayor and Council, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this Ordinance, including provisions for the re-examination and correction of returns and payments.
- D. If the Commissioner issues a decision or opinion to a taxpayer regarding a tax obligation that is subject to appeal, the Commissioner shall send written notification to the taxpayer of the taxpayer's right to appeal the decision and of the manner in which the appeal can be made.
- E. In any case where a taxpayer has failed to file a return or has filed a return which does not appear to show the proper amount of income and/or tax due, the Commissioner may determine an amount of tax due from information in the taxpayer's file or from other sources. In such cases, the Commissioner shall send an assessment of the tax due to the last known address of the taxpayer along with any penalties and/or interest due. The said assessment shall constitute the taxpayer's liability for the tax year in question if the taxpayer fails to respond to the Commissioner's assessment within thirty (30) days of the Commissioner's assessment and shall be collectible as other taxes due and owing the Village.
- F. Taxpayers assessed additional tax, penalty, and/or interest must respond in writing within sixty (60) days from notice of the additional balance due. Such appeal will be forwarded to the Tax Commissioner for rendering a decision. Lack of taxpayer's response within the sixty (60) days will waive the appeal process and will result in collection of unpaid balance due.

Section 10. EXAMINATION OF BOOKS, RETURNS AND RECORDS.

- A. The Commissioner of Taxation, or any authorized person, is hereby authorized to examine the books, papers, records and persons subject to the tax returns of any employer or of any taxpayer or 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 to the Commissioner of Taxation, or his or her duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.
- B. The Commissioner of Taxation is hereby authorized to examine any person under oath, concerning any income which was or should have been returned for taxation, and for this purpose may compel the production of books, papers, records and federal income tax return, and the attendance of all persons before him, whether as parties or witnesses, whenever he or she believes such persons have knowledge of such income. The refusal of such examination by any employer or person subject or presumed to be subject to the tax shall be deemed a violation of the Ordinance.
- C. Every taxpayer shall retain all records necessary to compute his tax liability for a period of six (6) years from the date his return is filed or the taxes required to be withheld are paid.
- D. Any information gained as the result of any returns, investigations, 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 and except in accordance with proper judicial order. Any person divulging such information shall, upon conviction therefore, be deemed guilty of a 3rd degree misdemeanor.

Section 11. INTEREST AND CIVIL PENALTIES.

- A. All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this Ordinance and remaining unpaid after they become due shall bear interest at the rate of one percent (1%) per month.
- B. In addition to interest as provided in Paragraph A hereof, penalties based on the unpaid

tax are hereby imposed as follows.

1. For failure to pay taxes due - other than taxes withheld; one percent (1%) per month or fraction thereof until paid; or
2. For failure to remit taxes withheld from employees; three percent (3%) per month or fraction thereof until paid.

Provided, however, that penalty shall not be assessed on an additional tax assessment made by the Commissioner when a return has been filed in good faith and the tax paid thereon within the time prescribed herein; and provided further that neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability in accordance with Section 6, F2 hereof.

Provided further, that the Commissioner of Taxation at his or her discretion may abate penalties in full or in part, for good cause shown.

Section 12. COLLECTION OF UNPAID TAXES; CIVIL LITIGATION; CRIMINAL PROSECUTION; STATUTE OF LIMITATIONS; REFUNDS OF OVERPAYMENTS.

- A. All taxes imposed by this Ordinance, and any prior ordinances, 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 within three years after the tax was due or the return was filed, whichever is later as set forth in Ohio R. C. Ch. 718.12(A) and as amended from time to time.
- B. Claims for refund of tax shall be brought within the time limitation provided in Par. A of this Section as set forth in Ohio R. C. Ch. 718.12(A) and as amended from time to time.
- C. Interest shall be allowed and paid on any overpayment by a taxpayer of any Village of Ottawa Hills income tax obligation from the date of the overpayment, with the following exception: No interest shall be allowed on any overpayment that is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the complete return is filed, whichever is later. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by Ohio R. C. Ch. 5703.47.
- D. 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 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 as set forth in Ohio R. C. Ch. 718.12(B) and as amended from time to time.
- E. In those cases in which the Director of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitation, the period within which an additional assessment may be made by the Commissioner of Taxation shall be three years from the time of the final determination of the federal tax liability.

Section 13. VIOLATIONS - PENALTIES.

- A. Any persons who, upon conviction thereof of the following offenses, shall be guilty of a misdemeanor of the third degree.
 1. Fail, neglect or refuse to make any return or declaration required by this Ordinance; or
 2. Make any incomplete, false, or fraudulent return; or
 3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this Ordinance; or
 4. Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Commissioner; or
 5. Refuse to permit the Commissioner 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
 6. Fail to appear before the Commissioner and to produce his books, records, papers or Federal income tax returns relating to the income or net profits of a taxpayer

- 7. upon order or subpoena of the Commissioner; or
 - 7. Refuse to disclose to the Commissioner any information with respect to the income or net profits of a taxpayer; or
 - 8. Fail to comply with the provisions of this Ordinance or any order or subpoena of the Commissioner 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 any employer of any change in residence address and date thereof; or
 - 10. Fail to use ordinary diligence in maintaining proper records of employee's residence addresses, total wages paid and Ottawa Hills tax withheld, or to knowingly give the Commissioner false information; or
 - 11. Fail to cause the tax withheld from the qualifying wages of the employees pursuant to this Chapter to be paid as required by section 7; or
 - 12. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Chapter.
- B. The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return, return declaration, or from filing such form, or from paying the tax.

Section 14. BOARD OF REVIEW.

- A. A Board of Review, consisting of the Director of Law, the Mayor and the Clerk-Treasurer is hereby created and shall be maintained to hear appeals. All rules and regulations and amendments or changes thereto, which are adopted by the Commissioner of Taxation under the authority conferred by this Ordinance, must be approved by the Board of Review before the same become effective. After such approval such rules, regulations, amendments and changes shall be filed with the Clerk of Council and shall be open to public inspection.
- B. Any person dissatisfied with any ruling or decision of the Commissioner of Taxation, which was made under the authority conferred by this Ordinance, 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 Commissioner. The appeal must be in writing and must state the alleged errors in the Commissioner's ruling or decision. The Board must schedule a hearing within forty-five (45) calendar days after receiving the appeal, unless the taxpayer expressly waives the hearing and chooses instead to permit the Board to render its decision on the writings submitted by the taxpayer and the Commissioner. If the taxpayer does not waive the hearing, the taxpayer is entitled to appear before the Board and bring representation of his choosing. The Board of Review must issue its written decision within ninety (90) calendar days after the final hearing and send a notice of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) calendar days after issuing the decision. The taxpayer or the tax administrator may appeal the board's decision as provided in Ohio R. C. Ch. 5717.011.
- C. The Mayor shall be Chairman of the Board of Review, and the Clerk-Treasurer shall serve as secretary thereof. A majority of the members of the Board of Review shall constitute a quorum. The Board of Review shall adopt its own procedural rules and shall keep records of its transactions. Such records are not public records available for inspection as set forth in Ohio R. C. Section 149.43, and the provisions of Section 10 of this Ordinance apply. Hearings requested by a taxpayer before the Board of Review are not meetings of a public body, as set forth in Ohio R. C. Section 121.22, as amended from time to time.
- D. The imposition of penalty and interest as prescribed in the codified ordinance of the Village of Ottawa Hills is not a sole basis for an appeal.

Section 15. ALLOCATION OF FUNDS.

The funds collected under the provisions of this Ordinance shall be applied for the following purposes and in the following order:

- A. Administration. Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this Ordinance and the cost of administering and enforcing the provisions hereof shall be allocated to the Income Tax Administration Fund.
- B. Capital Improvements, Equipment and General Operating Expenses. Such funds

remaining after payment of costs set forth in Par. A of this Section shall be used for capital improvements, equipment and general operating expenses in such proportions as Council shall determine.

For the purpose of the Ordinance "Capital Improvements" shall be defined as the original construction and/or purchase of real or personal property, including the alteration or improvement of existing structures at the time of purchase or any substantial improvement or addition to real property with an estimated useful life of five (5) years or more.

Section 16. RELIEF PROVISIONS.

- A. Reduced tax credit to resident taxpayer.
 - 1. When the taxable income of a resident of this municipality is subject to a municipal income tax in another municipality on the same income taxable under this ordinance such resident shall be allowed a credit of the amount of income tax paid on such taxable income to such other municipality, equal to fifty per cent (50%) of the amount obtained by multiplying the lower of the tax rate of such other municipality or of this municipality by the taxable income earned in or attributable to the municipality of employment or business activity. For the purposes of this section taxable income shall include the distributive share of net profits of a resident partner or owner of a business entity.
 - 2. Method of applying for credit:
 - (a) No credit will be given unless the taxpayer claims such on his final return or other form prescribed by the Commissioner of Taxation, and presents such evidence of the payment of a similar tax to another municipality, as the Commissioner of Taxation may require.
 - (b) A statement satisfactory to the Commissioner of Taxation from the taxing authority of the municipality to which the taxes are paid that a Village of Ottawa Hills resident or his employer is paying the tax shall be considered as fulfilling the requirement of this section.
- B. Any claim for credit of income taxes paid another municipality on the same income taxable hereunder, and any assignment of the reciprocal credit provided for herein, must be made not later than the time within which a claim for refund may be made. Reciprocal credits duly assigned to the municipality of residence may be presented by such municipality to the Commissioner of Taxation of the Village of Ottawa Hills at any time within three (3) years after receipt thereof. Failure to make such claim for credit, or to assign the reciprocal credit provided for herein within the time prescribed herein shall render such claim or assignment null and void.
- C. No credit shall be given for any state or school district income tax.
- D. Claims for refund of municipal income taxes must be brought within three years after the tax was due or the return was filed, whichever is later, as set forth in Ohio R. C. Ch. 718.12, as amended from time to time.

Section 17. CONSTITUTIONALITY.

The Ordinance shall not apply to any person, firm, corporation or to any property, as to whom 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 part of this Ordinance. It is hereby declared to be the intention of the Council of the Village of Ottawa Hills that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein. This Ordinance is superseded to the laws of the State of Ohio, as amended from time to time.

Section 18. This Ordinance shall take effect and be in force from and after January 1, 2007.

Passage:

Yeas _____ Nays _____

Date of passage

President of Council

Clerk of Council