

ORDINANCE 06-03-01

**AN ORDINANCE AMENDING SECTION 37.16 OF THE CODIFIED  
ORDINANCES OF THE VILLAGE OF MINSTER, TO REFLECT UPDATES TO  
THE INCOME TAX RULES AND REGULATIONS AS MANDATED BY  
RECENT CHANGES TO THE INCOME TAX CODE**

BE IT ORDAINED BY THE Council of the Village of Minster, Auglaize County, Ohio, to wit:

SECTION 1:

Ordinance No. 03-04-01, The Minster Code shall be amended relative to the rules and regulations of the Village's Income Tax Code by amending section 37.16 as follows:

**Rules and Regulations**

**RULES AND REGULATIONS TO COMPLEMENT  
MINSTER INCOME TAX ORDINANCE 68-2-3  
AS AMENDED BY ORDINANCE NO. 06-03-01**

**ARTICLE I**

Section 37.01 of the ordinance deals only with the purposes for which the tax collected will be used.

**ARTICLE II  
DEFINITIONS**

As used in these rules and regulations, the following words shall have the meaning ascribed to them in this article, except and if the context clearly indicates or requires a different meaning.

In all definitions and these regulations the singular shall include the plural, the masculine shall include the feminine and the neuter.

**ADJUSTED FEDERAL TAXABLE INCOME:** means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

- a. Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
- b. Add an amount equal to five percent (5%) of intangible income deducted..
- c. Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other

disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.

- d. Add taxes on, or measured by, net income allowed as a deduction in the computation of federal taxable income.
- e. In the case of real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.
- f. If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except:
  - o Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member of former member shall not be allowed as a deductible expense; and
  - o Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

**ASSOCIATION** means a partnership limited partnership, or any other form of enterprise owned by two or more persons.

**BOARD OF REVIEW** means the Board created by and constituted as provided in Section 37.09 of the Codified Ordinances.

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

**BUSINESS ALLOCATION APPORTIONMENT** means the portion of net profits to be allocated to the Village as having been made in therein.

**CORPORATION** means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.

**DOMICILE:** means a principal residence that the taxpayer intends to use and whenever he is absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence.

**EMPLOYEE** means one who works for wages, salary, commission, or other types of compensation in the service of an employer. Any person upon whom an employer is required to withhold for either federal income or social security, or on whose account

payments are made under the Ohio Workmen's Compensation law, shall prima facie be an employee.

**EMPLOYER** means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for a profit, who or that employs one or more persons on a salary, wage, commission, or other compensation basis.

**FISCAL YEAR** means an accounting period of twelve months ending on any day other than December 31<sup>st</sup>.

**FORM 2106:** means Internal Revenue service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

**GENERIC FORM:** means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a refund claim that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income.

**GROSS RECEIPTS** means income from any source whatsoever, excepting from intangible and capital gains from the sale of property used in the trade or business as defined in Section 1231-b of the Internal Revenue Code.

**INCOME FROM A PASS-THROUGH ENTITY:** means partnership income of partners, membership interest of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from other pass-through entities.

**INTANGIBLE INCOME:** means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange or other disposition of intangible property including, but not limited to, investments, deposits, money or credits as those terms are defined in Chapter 5701 of the Ohio Revised Cod, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investment in regulated investment companies, and appreciation on deferred compensation. "Intangible Income" does not include prizes, awards or other similar games of chance.

**INTERNAL REVEUE CODE:** means the Internal Revenue Code of 1986, 100 stat. 2085, 26 U.S.C.1, as amended.

**INTERNET:** means the international computer network of both Federal and non federal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.

**"LIMITED LIABILITY COMPNAY":** means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

**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, required to be reported on Schedule C, Schedule E or Schedule F.

**NON-QUALIFIED DEFERRED COMPENSATION PLAN:** means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.

**NON-RESIDENT** means a person, whether an individual, association, corporation or other entity, domiciled outside of Minster.

**NON-RESIDENT BUSINESS ENTITY:** means a business entity not having an office or place of business within Minster.

**OTHER ENTITY:** means a person or unincorporated body not previously named or defined and includes inter alia fiduciaries.

**OTHER PAYER:** means any person, other than an individual’s employer or the employer’s agent that pays an individual any amount included in the federal gross income of the individual.

**OWNER:** means a partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.

**PASS-THROUGH ENTITY:** means a partnership, limited liability company, S corporation or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.

**PERSON** means individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities and any other entity.

**PLACE OF BUSINESS** means any bona-fide office, other than a mere statutory office, factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance.

A taxpayer does not have a regular business outside of the Village solely by consigning goods to an independent factor or other contractor outside of the Village for sale.

**PRINCIPAL PLACE OF BUSINESS:** means in the case of an employer having headquarters’ activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated. In the case of any employer not having its headquarters’ activities at a place of business within a taxing municipality, the term means the largest place of business located in a taxing municipality.

**QUALIFIED PLAN:** means wages as defined in section 3121(a) of the Internal Revenue code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code.

**QUALIFYING WAGES:** means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code.

**RESIDENT** means a person, whether an individual, association, corporation, or other entity, domiciled in the Village.

**TAX COMMISSIONER** means the person appointed to administer the Village's Income Tax Ordinance and to direct the operation of the Tax Department or the person executing the duties of the Tax Commissioner.

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

**TAXABLE YEAR** means 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 Ordinance and in the case of a return for a fractional part of the year, the period for which such return is made. Unless approved by the Tax Commissioner, the taxable years of an individual shall be a calendar year.

**TAXPAYER** means an association, business, corporation, employer, person or other entity required by this Ordinance to file a return on earnings or net profits or to pay tax thereon.

**VILLAGE** means the Village of Minster

### ARTICLE III

#### IMPOSITION OF TAX

##### A. Basis

###### 1. Resident Employee:

- a. In the case of residents of the Village of Minster, an annual tax of one and one half percent (1 ½ %) is imposed on all salaries, qualifying wages, commissions, and other compensation earned during the effective period of the ordinance. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 37.02, of the ordinance, the source of

the earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings wherever earned or paid are taxable.

- b. The following are items which are subject to the tax imposed by Section 37.02, paragraph A-1 of the ordinance
  1. On all qualifying wages as defined in IRC Section 3121 (a).
  2. On the gross wages of those employees exempt from the Medicare tax withholding, less any qualifying deductions.
  3. Payments made to employees by an employer as vacation wages are taxable.
  4. Payments made to an employee by an employer, or a third party provider on behalf of the employer, under a wage continuation plan during periods of disability or sickness, are taxable.
  5. Where compensation is paid or received in property, its fair market value, at the time of receipt, shall be subject to the tax and to withholding. Board, lodging, and similar items received by an employee in lieu of additional cash compensation shall be included in earnings at their fair market value.
    1. In the case of domestics and other employees whose duties require them to live at their place of employment or assignment, board and lodging shall not be considered as wages or compensation earned.
  6. For the total amount of Lottery winnings, when those winnings are in excess of five million dollars (\$5,000,000.00) and are received as winnings from the Ohio Lottery and or any other lottery of any other state or country as reported on IRS Form W-2G, Form 5754 and or any other Form required by the Internal Revenue Service that reports winnings from lottery winnings. The Village of Minster Income Tax shall begin taxation on the 1<sup>st</sup> dollar but will only be imposed when the winnings exceed \$ 5 million dollars. This applies to winnings income received by residents and winnings income received by non-residents derived from Lottery purchases made within the Village of Minster.
2. Non-resident Employee:
  - (a) In the case of individuals who are not residents of the Village of Minster, there is, imposed under Section 37.02, paragraph A-2 of the Ordinance, a tax of one and one-half percent (1 ½ %) on all salaries, qualifying wages, and commissions, and other compensation earned during the effective period of the ordinance for work done or services performed or rendered within the Village of Minster, whether such compensation or remuneration is received or earned directly or through an agent, and whether paid in

cash or in property. The location of the place from which payment is made is immaterial. A non-resident employee who performs services inside the Village on thirteen or more days or occasions, whichever represents the shorter time period, is taxable under the Ordinance.

- (b) The items subject to tax under Section 37.02, paragraph A-2 of the Ordinance are the same as those listed and defined in Article 111-A. For the methods of computing the extent of such work or services performed within the Village of Minster, in cases involving compensation for personal services partly within and partly without the Village of Minster, see Article V1-A.6.
3. (a) Imposition of Tax on Net Profits of Resident Businesses:
- .1 In the case of resident businesses, professions, enterprises, undertakings, or other entities conducted, operated, engaged in, prosecuted or carried on, irrespective of whether such taxpayer has an office or place of business in the Village of Minster, there is imposed an annual tax of one and one-half percent (1 ½ %) on the adjusted federal taxable income earned, accrued, or received during the effective period of the ordinance attributable to the Village of Minster, under the formula or separate accounting method provided for in Section 37.02 of the ordinance, derived from sales made, work done, or services performed or rendered, and business or other activities conducted in the Village of Minster.
  - .2 An unincorporated association, partnership, limited partnership or limited liability company, (also known as a pass-through entity), which is domiciled in the Village may make an election as to whether the income of the entity shall be taxed at the entity level (i.e. in the hands of the entity) or in the hands of the owner or owners of the entity. For entities in existence on January 1, 2003 the manner in which their past returns have been filed shall constitute the making of the election for the purposes of this rule. The tax imposed on an unincorporated resident entity owned by one is upon individual owner (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III-A.3b).
  - .3 The tax imposed by Section 37.02, paragraph A-3a of the ordinance is imposed on all resident entities having adjusted federal taxable income attributable to the Village of Minster under the method of allocation provided for in the ordinance, regardless of where the owner or owners of such resident business entity reside.

- .4 Resident unincorporated entities owned by two or more persons, all of whom are residents of the Village of Minster, shall disregard the method of allocation provided for in the ordinance and pay the tax on their entire federal adjusted taxable income thereof. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits; however, an additional return shall be required from any such owner or member having taxable income other than the distributive share of the net profits from the entity.
- (b) Imposition of Tax on Resident's Distributive Share of Profits of a Resident Business Entity, not attributable to the Village of Minster.
- .1 A resident individual who is sole owner of a resident entity shall disregard the business allocation formula and pay the tax on the entire net profits of his resident business entity.
  - .2 In the case of a resident individual partner or part owner of a resident entity, there is imposed an annual tax of one and one-half percent (1 ½ %) on such individual's distributive share of net profits earned, accrued, or received during the effective period of the ordinance not attributable to the Village of Minster, under the method of allocation provided for in Section 37.02 of the ordinance, and not taxed against the entity. (See Article XV).
4. (a) Imposition of Tax on Net Profits of Non-Resident Businesses:
- .1 In the case of non-resident businesses, professions, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted, or carried on, there is imposed an annual tax of one and one-half percent (1 ½ %) on the net profits earned, accrued, or received during the effective period of the ordinance attributable to the Village of Minster, under the formula or separate accounting method provided for in the ordinance.
  - .2 The tax imposed on non-resident entities owned by two or more persons is upon the entities rather than the individual members or owners thereof. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III-A.4b).
  - .3 Non-resident entities owned by two or more persons, all of whom are residents of the Village of Minster, may elect to disregard the method of allocation provided for in the ordinance and pay the tax on the entire net profits. In such case, the tax paid by the entity

shall constitute all tax due from the owners or members of the entity for their distributive share of the net profits; however, a return shall be required from such owner or member having taxable income other than the distributive share of the net profit from the entity.

- .4 Distributions of proportionate shares received by an owner domiciled in the Village from any pass-through entity from a non-resident pass-through entity such as a partnership, limited partnership, limited liability company or a Sub-Chapter S corporation, shall be considered as income from an association as defined in Section 37.16 of the Ordinance. This rule codifies the interpretation of the Ordinance as of January 1, 2003. Ref. R.C. 718.14(B).

See Article XV for Credits.

- (b) Imposition of Tax on Resident's Share of Profits of a Non-Resident Business Entity Not Attributable to the Village of Minster.  
See Article XV for Credits.

- .1 A resident individual who is sole owner of a non-resident business entity shall disregard the business allocation formula and pay the tax on the entire net profits of his entity.
- .2 In the case of a resident individual partner or part owner of a non-resident entity, there is imposed an annual tax of one and one-half percent (1 ½ %) on such individual's distributive share of net profits earned, accrued, or received during the effective period of the ordinance not attributable to the village under the method of allocation provided for in Section 37.02 of the ordinance and not taxed against the entity.

5. Imposition of Tax on the Adjusted Federal Taxable Income of Corporations

- (a) In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the Village of Minster, there is imposed an annual tax of one and one-half percent (1 ½ %) on the net profits earned, received, or accrued during the effective period of the ordinance attributable to the Village of Minster under the formula provided for in the ordinance.

6. Amplification:

In amplification of the definition contained in Article 11-A of these regulations, but not in limitation thereof, the following additional information respecting net business profits is furnished.

(a) ADJUSTED FEDERAL TAXABLE INCOME.

- .1 Net Profits as used in the ordinance and these regulations means the adjusted federal taxable income derived from any business, profession, or other activity or undertaking carried on for profit or normally carried on for profit.
- .2 Net Profits, as disclosed on any return filed pursuant to the provisions of the ordinance, shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service (providing such method does not conflict with any provisions of the ordinance). Net profits, shown on returns filed pursuant to the ordinance, must be reconciled with the income reported to the Federal Internal Revenue Service.

Rental from Real Property

- (a) Rentals received by the taxpayer are to be included only if and to the extent that the rental, ownership, management, or operation of the real estate from which such rentals are derived (whether so rented, managed, or operated by the taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer, in whole or in part.
- (b) In determining the amount of gross monthly rental of any real property, periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.
- (c) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- (d) Real property, as the term is used in this regulation, shall include commercial property, residential property, farm property, and any and all other types of real estate.
- (e) In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent, and amount as are allowed by the Internal Revenue Service for federal income tax purposes.

- (f) Residents of the Village of Minster are subject to taxation upon the net income from rental (to the extent above specified), regardless of the location of the real property owned.
- (g) Non-residents of the Village of Minster are subject to such taxation only if the real property is situated within the Village of Minster.
- (h) Corporations owning or managing real estate are taxable only on that portion of income derived from property located in the Village of Minster.
- (i) Losses from rental located and/or operating outside of the Village and owned by a resident will be allowed to offset other taxable income in the following manner:
  - 1. The loss will be adjusted to reflect an identical negative effect as if the rental had netted a gain to include all applicable credits for taxes paid to other cities.
  - 2. Losses that occur in another taxing jurisdiction with a rate of 1.5% or more are not allowed to offset W2 income taxable to Minster. The loss can not be carried forward to offset any income other than the venture which produced the loss.

B. Allocation of Business Profits.

A request to change the method of allocation must be made in writing before the end of the taxable year.

1. Business Allocation Percentage Method

- (a) STEP 1: Ascertain the percentage which the actual cost of real and tangible personal property, including lease-hold improvements, owned or used in the business and situated within the Village of Minster, is of the average net book value of all real and tangible personal property, including lease-hold improvements, owned or used in the business wherever situated, during the period covered by the return.

.1 The percentage of taxpayer's real and tangible personal property within the Village of Minster is determined by dividing the average net book value of such property within the Village of Minster (without deduction of any encumbrances) by the average net book value of all such property within and without the Village of Minster. In determining such percentage, property rented to the

taxpayer, as well as real and tangible personal property owned by taxpayer, must be considered.

.01 The actual cost of real and tangible personal property rented by taxpayer shall be determined by multiplying gross annual rents payable by eight (8).

.02 Gross rents means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or possession of property and includes:

.001 Any amount payable for the use or possession of real and tangible personal property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales profits or otherwise;

.002 Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs, or other amounts required to be paid by the terms of a lease or other arrangements.

(b) STEP 2: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made and service rendered in the Village of Minster is of the total gross receipts, wherever derived, during the period covered by the return.

.1 The following sales shall be considered the Village of Minster sales:

.01 All sales made through retail stores located within the Village of Minster to purchasers within or without the Village of Minster, except such of said sales to purchasers outside the Village of Minster that are directly attributable to regular solicitations made outside the Village of Minster personally by taxpayer's employees.

.02 All sales of tangible personal property delivered to purchasers within the Village of Minster if shipped or delivered from an office, store, warehouse, factory, or place of

storage located within the Village of Minster.

- .03 All sales of tangible personal property delivered to purchasers within the Village of Minster even though transported from a point outside the Village of Minster if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village of Minster and the sale is directly or indirectly the result of such solicitation.
- .04 All sales of tangible personal property shipped from an office, store, warehouse, factory, or place of storage within the Village of Minster to purchasers outside the Village of Minster if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place of delivery.
- .05 Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.

.2 In the application of the foregoing subparagraphs, a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale; and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside the Village of Minster by mail or phone from an office, or place of business within the Village of Minster shall not be considered a solicitation of sales outside the Village of Minster.

- (c) STEP 3: Ascertain the percentage which the total wages, salaries, commissions, and other compensation of employees within the Village of Minster is of the total wages, salaries, commissions, and other compensation of all the taxpayer's employees within and without the Village of Minster during the period covered by the return.

.1 Salaries and reasonable compensation paid owners, or credited to the account of owners or partners during the period covered by the return, are considered wages for the purpose of this computation.

.2 Wages, salaries, and other compensation shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.

.3 In the case of an employee who performs services both within and without the Village of Minster, the amount treated as compensation for services performed within the City shall be deemed to be:

.01 In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the Village of Minster.

.02 In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services within the Village of Minster bears to the values of all his services; and

.03 In the case of an employee compensated on a time basis, the proportion of the total amount received by him which his working time within the Village of Minster is of his total working time.

(d) STEP 4: Add the percentages determined in accordance with Steps 1, 2, and 3, or such of the aforesaid percentages as may be applicable to the particular taxpayer's business, and divide the total so obtained by the number of percentages used in ascertaining said total. The result so obtained is the business allocation percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because said factor is found to be allocable entirely outside the Village of

Minster. A factor is excluded only when it does not exist anywhere.

- (e) STEP 5: The business allocation percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits allocable to the Village of Minster.

### 3. Substitute Method:

- (a) In the event a just and equitable result cannot be obtained under the formula, the Board, upon application of the taxpayer or the Commissioner, may substitute other factors in the formula or prescribe other methods of allocating net income calculated to effect a fair and proper allocation.
- (b) Application to the Board to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing before the end of the taxable year and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. A copy thereof shall be served at the time of filing upon the taxpayer or Commissioner as the case may be. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the Board of Review.

### C. Operating Loss Carry Forward

1. The portion of a net operating loss, based on income taxable under the ordinance sustained in any taxable year subsequent to April 1, 1978, allocable to the Village of Minster, may be applied against the portion of the profits of succeeding years allocable to the Village of Minster until exhausted, but in no event of 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. In the event net profits are allocated both within and without the Village of Minster, the portion of a net operating loss sustained shall be allocated to the Village of Minster in the same manner as provided herein for allocating net profits to the Village of Minster. The portion of a net operating loss to be carried forward shall be determined in the year the net operating loss is sustained, on the basis of the allocation factors applicable to that year. The same

method of accounting and allocation must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained.

3. In the case of fiscal years beginning prior to the effective date of the ordinance, the net operating loss deduction will be that portion of the operating loss that the number of months of the fiscal year after the effective date of the ordinance bears to the total number of months in such fiscal year.
4. A short fiscal year (a fiscal year of less than twelve (12) months) in cases where there has been a change in accounting period, where a new taxpayer selects a short fiscal year, or where a new taxpayer operates in the Village of Minster for less than his full accounting period, shall be considered as a full taxable fiscal year.
5. In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:
  - (a) Year in which net operating loss was sustained.
  - (b) Method of accounting and allocation, used to determine portion of net operating loss allocable to the Village of Minster.
  - (c) Amount of net operating loss used as a deduction in prior years.
  - (d) Amount of net operating loss claimed as a deduction in current year.
6. The net operating loss of a business which loses its identity through merger, consolidation, etc., shall not be allowed as a carry-forward loss deduction to the surviving business entity.
7. Losses occurring in a taxing jurisdiction outside of Minster which imposes a tax of 1.5% or more can not be carried forward to offset income other than the venture that provided the loss by a resident of the Village of Minster.

#### D. Consolidated Returns

Consolidated returns may be filed by any affiliated group of corporations if that affiliated group filed for the same tax reporting period of consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code.

E. Exceptions:

The following shall not be considered taxable.

1. Poor relief, unemployment insurance benefits, supplemental unemployment benefits, old age pensions, or similar payments received from local, state, or federal governments or charitable or religious organizations.
2. Proceeds of insurance, annuities, workman's compensation insurance, social security benefits, pensions, compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits.
3. Compensation for damage to property by way of insurance or otherwise.
4. Interest and dividends from intangible property.
5. Military pay and allowances received as a member of the armed forces of the United States; to include non-active duty pay, reserve pay, and National Guard pay.
6. Any charitable, educational, fraternal, or other type of non-profit association or organization enumerated in Section 718.01 of the Revised Code of Ohio which is exempt from payment of real estate taxes is exempt from payment of the tax imposed by this ordinance.
7. Any association or organization falling in the category listed in the preceding paragraph not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the taxes levied under this ordinance on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.
8. Where such non-profit association or organization conducts income-producing business both within and without the corporate limits, it shall calculate its profits allocable to the Village of Minster under the method or methods provided above.
9. Ministers' housing allowance.
10. Pay received for work performed at an election precinct for amounts less than one thousand dollars (\$1000.00) during a calendar year.

11. Nonresident employees who perform services inside the Village for twelve or fewer days, or any part of any day, during any calendar year.

#### ARTICLE IV

##### EFFECTIVE PERIOD OF TAX

- A. The tax imposed by Section 37.02, paragraphs A-1 and A-2 of the ordinance shall be levied, collected and paid with respect to salaries, qualifying wages, bonuses, incentive payments, commissions, fees, and other compensation earned during the effective period of the ordinance.
- B. The tax imposed by Section 37.02, paragraphs A-3, A-4, and A-5 of the ordinance, with respect to net profits of trades, businesses, professions, enterprises, undertakings, and other activities is on the net profits earned during the effective period of the ordinance.

#### ARTICLE V

##### RETURN AND PAYMENT OF THE TAX

- A. Date and Requirement for Filing
  1. On or before April 15th of the year following the effective date of the ordinance and each year thereafter, every person subject to the provisions of Section 37.02, paragraphs A-1 to A-5, inclusive, of the ordinance shall, except as hereinafter provided, make and file with the Commissioner, a return on a form prescribed by and obtainable upon request from the Commissioner, or a generic form which must contain all of the information requested on the tax form as provided by the Tax Commissioner, whether or not a tax be due.
  2. If the return is made for a fiscal year or any period less than a year, said return shall be made within three and one half ( 3 ½) months from the end of each fiscal year or other period.
  3. Every person subject to the provisions of Section 37.02 of the ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, qualifying wages, commissions, and other personal service compensation, net profits from business or other activities, including the rental from use of real and personal property, and other income, taxable under the ordinance, received for the period covered by the return and such

other pertinent facts and information in detail as the Commissioner may require.

4. Where an employee's entire earnings for the tax period as paid by a resident employer or resident employers, and the one and one-half percent (1 ½ %) tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire earnings of such employee-taxpayer, and where the resident employer of such employee has filed a report or return in which such employee's entire and only earnings are reported to the Commissioner, and where such employee has no taxable income other than such earnings and the tax so withheld has been paid to the Commissioner, such employee need not file a return.
5. An employee who is permitted to deduct business expenses from gross wages, salaries, or commissions must file a return in order to claim such deductions even though all or part of such qualifying wages, salaries, or commissions are subject to withholding.
6. Any taxpayer who received taxable income not subject to withholding under the ordinance must file a return.
7. Any taxpayer having income, wages, or other compensation for which a return must be filed, and also having net profits from a business covering the same or a different period, is required to file only one return.
8. Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof.
9. A husband and wife may, in any tax year, elect to file separate or joint returns.
10. Operating losses from business or professional activities, the profits of which would be taxable under the ordinance, may be offset against salaries, qualifying wages, commissions, and other personal service compensation, or against net profits from other business or professional activities. To the extent that such losses are offset, they shall not be allowable as an operating loss carry forward under Section 37.02c of the ordinance or Article III-C of the regulations.

B. Information Required and Reconciliation With Federal Returns:

1. In returns filed hereunder, there shall be set forth the aggregate amount of salaries, qualifying wages, bonuses, incentive payments, commissions, fees, and other compensation subject to the tax earned from each employer, taxable net profits, and other pertinent information as the Commissioner may require.
2. Where figures of total income, total deductions, and net profits are included as shown by a federal return, any items of income as are not subject to the Village of Minster tax and unallowable expenses shall be eliminated in determining net income subject to the Village of Minster. In the absence of records showing the actual unallowable expenses, such expenses shall be determined in accordance with the adjusted federal taxable income as defined in Article I of these regulations. The fact that any taxpayer is not required to file a federal tax return does not relieve him from filing a Village of Minster tax return. (Am. Sept. 1961)
3. If a change in federal income tax liability, made by the Federal Internal Revenue service, or by a judicial decision, results in an additional amount of tax payable to the Village of Minster, a report of such change shall be filed by the taxpayer within three (3) months after receipt of the final notice from the Federal Internal Revenue Service or final Court decision.
4. If a change in federal income tax liability results in a reduction of taxes due and paid to the Village of Minster a claim for refund shall be filed with the Commissioner as prescribed in Section 37.04 of the ordinance and Article XI-B of these regulations.

C. Extensions

1. Upon the receipt of a copy of the taxpayer's federal extension, postmarked on or before the date for filing the return, the Commissioner will extend the time for filing such return for 45 days beyond the date granted by the Federal Internal Revenue Service. Whenever he deems such necessary, the Commissioner may require a tentative return accompanied by payment of the estimated tax. No penalty will be assessed in those cases in which the return is filed and the final tax paid within the period as extended provided an estimated tax, equal to or greater than 90% of the taxpayer's previous year's liability, is paid on or before the original filing date of the return. Interest will be assessed on any remaining balance found to be due upon receipt of the extended tax return and that all other filing and payment requirements of the ordinance have been met.

2. Information returns, schedules, and statements needed to support tax returns are to be filed within the time limits set forth for filing the tax returns.

D. Payment With Return:

1. The Taxpayer making a return shall, at the time of the filing thereof, pay to the Commissioner the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 37.05 of the ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 37.06 of the ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid, in accordance with Section 37.12 hereof, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.
2. A taxpayer who has overpaid the amount of tax to which the Village of Minster is entitled under the provisions of the ordinance may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

E. 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 37.14 and Section 37.15. Such amended return 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 Minster tax liability, such taxpayer shall make and file an amended Minster return showing income subject to the Village of Minster tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.

## COLLECTION OF TAX AT THE SOURCE

### A. Duty of Withholding

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within the Village of Minster, who employs one or more persons, whether as an employee, officer, director, or otherwise, to deduct each time any compensation is paid the tax of one and one-half percent (1 ½ %) from:
  - (a) Qualifying wages to include, bonuses, incentive payments, fees, commissions, or other forms of compensation paid to residents of the Village of Minster, regardless of the place where the services are rendered; and
  - (b) All compensation paid non-residents for services rendered, work performed, or other activities engaged in within the Village of Minster.
2. All employers within or doing business within the Village of Minster are required to make the collections and deductions specified in this article, regardless of the fact that the services on account of which any particular deduction is required, as to residents of Minster, were performed outside the Village of Minster.
3. Employers who do not maintain permanent office or place of business in the Village of Minster, but who are subject to tax on net profits attributable to Minster, under the method of allocation provided for in the ordinance, are considered to be employers within Minster and subject to the requirement of withholding.
4. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation paid. If the employer has withheld the tax and failed to pay the tax withheld to the Commissioner, the employee is not liable for the tax so withheld.
5. Commissions and fees paid to professional men, brokers, and others who are independent contractors, and not employees of the payor, are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and return and pay the tax pursuant to the provisions of the ordinance and Articles V and VII of the regulations.

6. Where a non-resident receives compensation for personal services rendered or performed partly within and partly without Minster, the withholding employer shall deduct, withhold, and remit the tax on that portion of the compensation which is earned within Minster in accordance with the following rules of apportionment:
  - (a) If the non-resident is a salesman, agent, or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within Minster bears to the total volume of business transacted by him within and outside Minster.
  - (b) The deducting and withholding of personal service compensation of other non-resident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee which the total number of his working hours within Minster is of the total number of working hours.
  - (c) The fact that non-resident employees are subject to call at any time does not permit the allocation of pay for time worked in Minster on a seven-day per week basis. The percentage of time worked in Minster will be computed on the basis of a forty-hour week unless the employer notifies the Commissioner that a greater or lesser number of hours per week is worked.
  - (d) The occasional entry into Minster of a non-resident employee who performs the duties for which he is employed primarily outside the City, shall not be deemed to take such employee out of the class of those rendering their services entirely outside Minster.
7. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions.
8. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided such expenses are incurred in earning compensation, including

commissions, and are not deducted as a business expense by the employee under Article III of these regulations.

9. An employer whose records show that an employee is a non-resident of Minster, and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside Minster by such employee, provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Commissioner notifies said employer in writing that such employee is a resident of Minster. All employees are required to notify the employer of any change of residence and the date thereof.
10. A Minster employer required to withhold the tax from a Minster resident for work done or services performed in another municipality, and who does so withhold and remit to such other municipality, shall be relieved from the requirement of withholding the Minster tax from such Minster resident, except where the rate of tax for such other municipality is less than the rate of tax imposed by this ordinance, in such case the employer shall withhold and remit the difference to the Village of Minster.
11. No person shall be required to withhold the tax on the qualifying wages or other compensation paid domestic servants employed exclusively in or about such person's residence, but such employee shall be subject to all the requirements of the ordinance.
12. On and after January 1, 2001, compensation paid to an individual for personal services performed within the Village of Minster, if the individual does not reside in the Village of Minster, performs such personal services in the Village of Minster on twelve or fewer days in the calendar year and, if the individual is an employee, the principal place of business of the employer is located outside the Village of Minster, the employer is exempt from withholding the tax from such employee.

B. Return and Payment of Tax Withheld and Status of Employers

1. The deductions from salaries, qualifying wages, and other compensation required to be made by employers are to begin with the compensation earned on and after the effective date of the ordinance.

The employer (in addition to any return required to be filed with respect to his own earnings or net profits) shall, on or before the

last day of the month next following each quarterly period, make a return and pay to the Commissioner the full amount of the tax so deducted or withheld with respect to compensation paid all of his employees subject to the tax under the ordinance. Provided, however, that where he deems such precaution necessary, the Commissioner may require an employer to remit withholding taxes at more frequent intervals. The return required to be filed under this article shall be made on a form furnished by or obtainable on request from the Commissioner.

2. If more than the amount of tax required to be deducted by the ordinance is withheld from an employee's pay, such excess may be refunded by the employer or the Commissioner, depending upon the circumstances and the time when the over-withholding is determined as follows

(a) Current employees:

- .1 If the over-withholding is discovered in the same quarterly period, the employer shall make the necessary adjustment directly with the employee, and the amount to be reported on the quarterly form as withheld shall be the corrected amount:
- .2 If the over-withholding is discovered in a subsequent quarter of the same calendar year, the employer may make proper adjustment with the employee. In such case the form for the quarter in which the adjustment is made shall indicate the total amount actually withheld, the amount of the adjustment deducted therefrom, and the corrected amount reported on the report.
- .3 If the over-withholding is discovered in the following year, the employer should notify the Commissioner of such over-withholding and the circumstances thereof. Upon proper verification, the Commissioner shall refund to the employee the amount of such excess withholding; upon request of the taxpayer.

(b) Former employees:

- .1 In case too much has been withheld from an employee who is no longer employed by the employer, the employer shall notify the Commissioner of the amount and the circumstances

of such overwithholding and the Commissioner shall then refund to the employee the amount of such excess withholding, upon request of the taxpayer; or

- .2 If the error is discovered by the employee, such employee shall file a claim with the Commissioner and, upon verification thereof by the employer, the Commissioner shall refund to the employee the amount of such excess withholding upon request of the taxpayer.

(c) Non-Residents Employed Outside the City:

- .1 Where an employer has withheld the tax from all wages of a non-resident of Minster, and such non-resident has been employed outside of Minster for all or a part of the time, such employee shall file a claim with the Commissioner covering such erroneous withholding and the Commissioner shall, upon verification thereof by the employer, refund to the employee the amount of such excess withholding upon request of the taxpayer.

(d) Insufficient Withholding:

- .1 If less than the amount of tax required to be deducted is withheld from an employee, such deficiency shall be withheld from subsequent qualifying wages. However, if the employee-employer relationship has terminated, the employer shall notify the Commissioner of such deficiency and the reason therefor.
3. Every employer is deemed to be a trustee for the Village of Minster in collecting and holding the tax required under the ordinance to be withheld, and the funds so collected by such withholding are deemed to be trust funds.
  4. Every such employer required to deduct and withhold the tax at the source is liable directly to Minster for payment of such tax, whether actually collected from such employee or not.
  5. On or before the last day of February, following any calendar year in which such deductions have been made by an employer, such employer shall file with the Commissioner, in the form prescribed

by the Commissioner, an information return for each employee from whom Minster income tax has 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 Minster income tax withheld from such employee.

6. For the convenience of employers, the information return may be made in one of three ways at the election of each employer, as follows:
  - (a) Those employers using Form W-2 furnished commercially, may submit a copy of such commercial Form W-2, providing the copy furnished the Village of Minster clearly shows the information required in paragraph 5 immediately preceding.
  - (b) Those employers not using Form W-2 furnished commercially may obtain forms upon request from the Commissioner at a nominal fee.
  - (c) Where the furnishing of this information as above indicated will create a distinct hardship, the employer, upon written request to the Commissioner, may be permitted to furnish a list of all employees subject to the tax, which list shall show the employee's full name, last known address, social security number, gross amount of compensation paid during the year, and the amount of Minster income tax withheld. Such list may be compiled on any mechanical equipment presently used by the employer, but provision must be made for spacing equal to at least three lines between each name. The employer's name must be indicated on each sheet, each sheet must be numbered, and the total number of sheets comprising the complete report indicated on the first page.
  - (d) The gross compensation to be reported for each employee shall be for the full twelve (12) calendar months of the year or such portion thereof as the employee reported on was employed.
7. In addition to such information returns, and at the time the same are filed, such employer shall file with the commissioner a form to enable the Commissioner to reconcile the sum total of compensation paid and taxes withheld as disclosed by information return W-2, or list of employees, and prior returns and remittances made pursuant to the ordinance.

8. Every employer, individual, or business conducting business inside the Village of Minster and pays for services, labor, bonuses, awards or other types of compensation and reports such payment on a Federal Form 1099 is required to file a copy of the Federal Form 1099 with the Department of Taxation on or before February 28 of each year.
- C. Fractional Parts of Cent: In deducting and withholding the tax at the source, and in payment of any tax due under the ordinance, a fractional part of a cent shall be disregarded unless it amounts to one-half cent ( $\frac{1}{2}$  c) or more, in which case it shall be increased to one cent (1c).

## ARTICLE VII

### DECLARATIONS

- A. Requirement of Filing:
1. A declaration of estimated tax shall be filed by every taxpayer who may reasonably be expected to have taxable income, the tax on which is not or will not be withheld by an employer or employers. Where required, such declaration shall be filed within four (4) months after the beginning of the taxable year.
  2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith.
- B. Date of Filing:
1. A person or other entity conducting a business not previously subject to the tax, or whose employer does not withhold the tax, shall file a declaration within four (4) months after the date he becomes subject to the tax.
  2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration within four (4) months after the start of each fiscal year or period.
- C. Form for Filing:
1. Such declaration shall be filed upon a form or forms furnished by, or obtainable from, the Commissioner. Provided, however, credit

shall be taken for Minster tax to be withheld from any portion of such income. In accordance with the provisions of Section 37.12 of the ordinance, credit may be taken for tax to be withheld and remitted to another taxing municipality.

2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any quarterly payment date as set forth in article VII-D.1. Such amendment may be made on the regular declaration form or on the back of any quarterly notice.

D. Dates of Payments:

1. The estimated tax may be paid in full with the declaration or in equal installments on or before the last day of the fourth, seventh, tenth, and thirteenth month after the beginning of the taxable year. Corporations, partnerships, or other like business entities must remit the estimated tax on the fifteenth day of the fourth month of the taxpayer's taxable year and the fifteenth day of the sixth month, the fifteenth day of the ninth month, and the fifteenth day of the twelfth month of the taxpayer's taxable year. A grace period of fifteen (15) days will be granted for the filing of the declaration and payment of the estimated tax as imposed on all taxpayers whose estimated tax liability is due on the fifteenth day of any calendar month.
2. The declaration must be accompanied by at least 22.5% of the estimated tax shown due thereon.
3. In the event an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

E. Final Returns Required:

1. The filing of a declaration does not relieve the taxpayer of the necessity of filing a final return even though there is no change in the declared tax liability. A final return must be filed to obtain a refund of any overpayment of over one dollar (\$1.00).

## ARTICLE VIII

### DUTIES OF THE TAX COMMISSIONER

A. Collection of Tax and Retention of Records:

1. It shall be the duty of the Tax Commissioner to receive the tax imposed by the ordinance in the manner prescribed herein from the taxpayers; to keep an accurate record thereof, and to report all monies so received.
2. It shall be the duty of the Commissioner to enforce payment of all taxes owing Minster, to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and-or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

B. Enforcement Provisions:

1. The Commissioner is charged with the administration and enforcement of the provisions of the ordinance and is, subject to the approval of the Board of Review, empowered to adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the ordinance. The Commissioner has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the ordinance.
2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the ordinance or these rules and regulations, should submit to the commissioner in writing all the facts involved and the ruling sought.
3. These regulations, together with all amendments and supplements hereto and all changes herein, will be on file at the office of the Commissioner, and will be open to public inspection.
4. The Commissioner is authorized to arrange for the payment of unpaid taxes, interest, and penalties on a schedule of installment payments, when the taxpayer has proved to the Commissioner that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the ordinance.
5. Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Section 37.14 and Section 37.15 of the ordinance shall apply.

C. Estimation of Tax by Commissioner:

1. Whenever the Commissioner has been unable to secure information from the taxpayer as to his taxable income for any year, he may determine the amount of tax appearing to be due and assess the taxpayer upon the basis of such determination, together with the interest and penalties as prescribed in Section 37.10 of the ordinance.
  2. Such determination of tax may be adjusted upon submission by the taxpayer of actual records from which his tax may be computed.
- D. Subject to the consent of the Board of Review, or pursuant to regulation approved by said Board, the Commissioner shall have the power to compromise any interest or penalty, or both, imposed by Section 37.10 of the ordinance.

## ARTICLE IX

### EXAMINATION OF BOOKS AND RECORDS, INFORMATION SO OBTAINED CONFIDENTIAL: PENALTY

- A. Investigations by Tax Commissioner:
1. The Commissioner, or his duly authorized agent, is authorized to examine the books, papers, records, and federal income tax returns of any employer, taxpayer, or person subject to the ordinance, or whom the Commissioner believes is subject to the provisions of the ordinance, for the purpose of verifying the accuracy of any return made; or, if no return was made, to ascertain the tax due under the ordinance.
  2. An employer or taxpayer shall furnish, within ten (10) days following a written request by the Commissioner, or his duly authorized agent, the means, facilities, and opportunity for making examinations and investigations authorized by the ordinance.
- B. Subpoena of Records and Persons:
1. The Commissioner, or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The Commissioner may compel the production of books, papers, and records and the attendance of all persons before him whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.

2. The Commissioner's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Commissioner.
3. The Commissioner may order the appearance before him, or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Commissioner is specifically authorized to order the appearance of the local manager or representative of any taxpayer.
4. Persons required to attend any hearings shall be notified no less than ten (10) days prior to the time of the hearing. The notice shall show the time and place of the hearing and what books, papers, or records the witness is to make available at such hearing.
5. The notice shall be served by the Commissioner, or his duly authorized agent, by delivering it to the person named personally, or by leaving the notice at his usual place of business or residence, or by mailing it to the person by registered mail, return receipt requested, addressed to his usual place of business or residence.

C. Penalty for Non-Compliance:

Refusal by any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Commissioner or his duly authorized agent, to submit to such examination and to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 37.15 of the ordinance.

D. Confidential Nature of Examinations

Any information gained as a result of any returns, investigations, verifications, or hearings before the Commissioner or the Board, required by the ordinance or authorized by these rules and regulations, shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than six (6) months, or both.

In addition to the above penalty, any employee of the Village of Minster who violated the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

E. Retention of Records:

All employers and taxpayers are required to keep such records as will enable the filing of true and accurate returns, whether of taxes withheld at the source, or of taxes payable upon earnings or net profits, or both. Such records shall be preserved for a period of not less than five (5) years from the date the final return is filed and paid or the withholding taxes are paid.

## ARTICLE X

### INTEREST AND PENALTIES

A.1 All taxes imposed and moneys withheld or required to be withheld by employers under the provisions of this Ordinance and remaining unpaid after they become due shall bear interest, in addition to the amount of unpaid tax or withholdings, at the rate of twelve percent (12%) per annum.

.2 In addition to interest as provided in subsection (a) hereof, penalties based on the unpaid tax are hereby imposed as follows:

The taxpayer upon whom such taxes are imposed and any employer required by this chapter to deduct, withhold, and pay taxes imposed by this chapter shall be liable in addition hereto to a penalty of five percent (5%) of the amount of the unpaid tax for each month after the tax becomes due up to a maximum of twenty-five percent (25%).

B.1 Penalty and interest shall not be assessed on additional tax assessment made by the Commissioner when a return has been filed in good faith and the tax paid thereon within thirty (30) days and provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability.

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

C Exceptions:

1. No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within the prescribed time.
2. In the absence of fraud, neither penalty nor interest shall be assessed on any additional taxes resulting from a federal audit for federal income tax purposes, provided an amended return is filed and the additional tax paid within three (3) months after final determination of the federal tax liability.

D Appeal from Assessment:

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

## ARTICLE XI

### COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS

A. Unpaid Sums- A Civil Debt

1. All taxes imposed by the ordinance and not paid when due become, together with interest and penalties thereon, a debt due the village from the taxpayer and are recoverable as are other debts by civil suit. Employers who are required, under Section 37.05 of the ordinance, to withhold and remit the taxes required to be withheld at the source, and who fail to withhold and-or remit, become liable to the village in a civil action to enforce the payment of the debt created by such failure.
2. No additional assessment shall be made by the Commissioner after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be no period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or filing a false or fraudulent return to evade payment of the tax or failure to file a return. Failure to report 25% or more of gross income shall be considered a substantial omission.
3. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of

limitations, the period within which an assessment may be made by the Commissioner is extended to three (3) years from the time of final determination of federal tax liability.

B. Refunds and Overpayments:

1. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made, or the return was due, or three (3) months after the determination of the federal income tax liability, whichever is later.
2. No refund shall be made to any taxpayer until he has complied with all provisions of the ordinance and has furnished all information required by the Commissioner, and has paid all taxes, penalties and interest from any given year shown to be due.
3. Overpayments will be either refunded or credited to the taxpayer's current year's liability at his option. Where no election has been made by the taxpayer, overpayments of any year's taxes shall be applied as follows:

To taxes owed for any previous years in the order in which such taxes become due.

To his current estimated tax liability.

C. Limitation:

1. Where the total amount due or refund claimed for a tax year is less than one dollar (\$1.00) such amount shall not be collected or refunded.
2. Overpayments due to rounding will not be credited or refunded.
3. An adjustment to a tax return by the department of taxation, after the return has been filed in good faith by the taxpayer, will not be made by the department if the result of the adjustment is equal to or less than five dollars (\$5.00) as an underpayment or an overpayment of tax.

## ARTICLE XII

### VIOLATIONS, PENALTIES

A. Any person who shall:

1. Fail, neglect, or refuse to make any return or declaration required by this ordinance; or
2. Make any incomplete, false, or fraudulent return; or
3. Fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this ordinance; or
4. Fail, neglect, or refuse to withhold the tax from his employees or remit such withholding to the 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 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 an employer of any change in residence address and date thereof; or
10. Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid, and Minster tax withheld, or to knowingly give the Commissioner false information; or
11. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties, or interest imposed by this ordinance.

Shall be guilty of a misdemeanor and shall be fined not more than Five Hundred dollars (\$500.00) or imprisoned not more than six (6) months, or both, for each offense.

B. Prosecutions:

Prosecutions under the ordinance must be commenced within five (5) years from the time of the offense, except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution must be commenced shall be ten (10) years from the date the return was due or the date the false or fraudulent return was filed.

C. Failure to receive Forms- Not a Defense:

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

### ARTICLE XIII

#### BOARD OF REVIEW OR APPELLATE AUTHORITY

A. Composition:

Board of Review, consisting of a chairman and two other individuals to be appointed by the Mayor of the Village of Minster, is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 37.08 hereof with reference to the confidential character of information required to be disclosed by the ordinance shall apply to such matters as may be heard before the Board on appeal. (Am. Dec. 1960)

B. Duties:

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

C. Appeals:

1. An appeal from a ruling of the Commissioner by a taxpayer or employer is effected by filing a notice of appeal with the Board

within thirty (30) days after the announcement of the Commissioner's ruling or decision from which the appeal is taken. A Copy of such notice of appeal must be filed with the Commissioner, and shall state why the decision should be deemed incorrect or unlawful.

The Board shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by any person of his/her choosing.

2. The Board, by a majority vote, may affirm, modify, or reverse, in whole or in part, any such ruling or decision of the Commissioner. The Board shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send notice of its decision by ordinary mail to the petitioner within fifteen (15) days after issuing the decision.
3. Hearing before the Board shall be private unless the taxpayer requests a public hearing.

#### ARTICLE XIV

#### USE OF FUNDS (See Ordinance)

#### ARTICLE XV

#### CREDIT ALLOWED FOR TAX PAID IN ANOTHER MUNICIPALITY

A. Limitation:

Where a resident of Minster is subject to a municipal tax, on or measured by income, in another municipality either located within or without the State of Ohio, he shall not pay a total municipal tax on the same income greater than the tax imposed at the higher rate. ( Am. Sept. 1961 )

B. Credits to Residents:

Resident individuals of Minster who are required to pay and do pay tax to another municipality on salaries, qualifying wages, commissions, or other compensation for work done or services performed in such other

municipality or on net profits from businesses, professions, or other activities conducted in such other municipality, may claim a credit of the amount of tax paid by them or on their behalf to such other municipality but only to the extent of one and one-half percent (1 ½ %) tax imposed by the ordinance on such compensation or net profits.

C. Credits for taxes paid at the entity level by Sub Chapter S Corporations and Partnerships

Credit shall be given to resident individuals of Minster who receive pass-through income from a nonresident business when that business is obligated to pay the tax on the net profits of the business to another Ohio municipality.

1. A resident will receive automatic credit when it is shown that the business entity is entirely situated in another taxing jurisdiction and that 100% of the income is taxable to that municipality. The credit will be limited to (a) the rate of tax imposed by the other taxing jurisdiction, (b) the rate of tax in effect in the other city and (c) the credit shall not exceed the rate in effect for Minster.
2. A resident will receive credit for taxes paid to other Ohio municipalities when evidence is presented that the business allocated income and paid the tax to other Ohio cities. The credit will be limited (a) the percentage of ownership and (b) shall not exceed the rate of tax in effect for Minster in that year.
3. A credit will be given to a resident who received a distributive share when the entity conducted a portion of its business inside of Minster and paid the tax on the allocated net profits to the Village. The credit will be calculated using the same percentage as the stock ownership or the partner's share of profit and loss, of the resident for that year.
4. Under no circumstances shall the Minster tax be imposed on the same income more than once in any given year. A resident who pays the tax on his or her distributive share of income from a nonresident business entity that conducted 100% of the business activity outside of Minster, shall not pay the tax on the net profits of the business to the Village of Minster. A resident who pays the tax on his or her distributive share of income from a nonresident business entity that allocates a portion of the net profits to the Village of Minster and paid the tax thereon, shall receive a credit for the tax paid to Minster by the business limited by the percentage of ownership or the partner's share of profit and loss in that year.

D. Method of Applying for Credit:

1. No credit will be given unless the taxpayer claims such on his final return or other form prescribed by the Commissioner, and presents such evidence of the payment of a similar tax to another municipality, as the Commissioner may require.
2. A statement satisfactory to the Commissioner from the taxing authority of the municipality to which the taxes are paid that a Minster resident or his employer is paying the tax shall be considered as fulfilling the requirement of the article.
3. No credit shall be given to a nonresident employee who lives in a municipality that does not allow credit for taxes paid to other cities. In such cases, the nonresident employee will be paying tax on the same income to more than one municipality.

ARTICLE XVI

SAVING CLAUSE  
(See Ordinance)

ARTICLE XVII

COLLECTION OF TAX AFTER TERMINATION  
OF ORDINANCE

A. Authority to Collect after Termination of Ordinance:

Although the tax imposition of the ordinance will expire when the ordinance is repealed, the ordinance remains in full force and effect for purpose of collection and payment of taxes due and payable beyond that date subject, however, to the provisions of Section 37.14 of the ordinance with respect to the limitations of time within which an additional assessment may be made.

B. Payment of Taxes:

1. Taxes due and unpaid on account of compensation paid or received and on account of profits earned in the last effective year of the ordinance or any part thereof which remain unpaid, are payable in full on or before the dates specified in Sections 37.04 and 37.05 of the ordinance and Articles 5 and 6 of these regulations, and all final returns and withholding reports must be filed on or before that date, unless extended by the Commissioner.

2. For purposes of collection of delinquent or unpaid taxes, actions or proceedings for such collection, and-or the collection of interest and penalties thereon, or enforcing any provisions of the ordinance (including prosecutions under the criminal sections of the ordinance and including appeals before the Board of Review), the ordinance remains in full force and effect until such time as all taxes accruing during the term of the ordinance shall have been fully paid, and all actions, suits, prosecutions, appeals, and other judicial or administrative proceedings relative to the collection or payment of such taxes, have been finally terminated.

## ARTICLE XIX

### AMENDMENTS & SUPPLEMENTS

- A. From time to time amendments and supplements to these regulations may be issued by the Commissioner.

#### SECTION TWO:

This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Adopted: April 4, 2006

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Dennis Kitzmiller, Mayor

Attest:

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John Stechschulte, Clerk

