

**ORDINANCE NO. 51-2008**

**REPEALING ORDINANCE NO. 10-2004 AND PROVIDING FUNDS FOR GENERAL MUNICIPAL OPERATIONS, MAINTENANCE, NEW EQUIPMENT, EXTENSION AND ENLARGEMENT OF MUNICIPAL SERVICES AND FACILITIES AND PERMANENT IMPROVEMENTS OF THE VILLAGE OF FAIRFAX, AND THE DISCHARGE OF PRINCIPAL, AND THE PAYMENT OF INTEREST THEREON, OF OBLIGATIONS FOR PERMANENT IMPROVEMENTS CREATED BOTH BEFORE AND AFTER THE DATE OF THIS ORDINANCE, BY LEVYING A TAX ON ALL SALARIES, WAGES, COMMISSIONS, AND OTHER COMPENSATION EARNED BY RESIDENTS; ON ALL SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY NON-RESIDENTS FOR WORK DONE OR SERVICES PERFORMED IN THE VILLAGE OF FAIRFAX; ON NET PROFITS OF ALL UNINCORPORATED BUSINESSES, PROFESSIONS, OR OTHER ENTITIES FROM SALES MADE, WORK DONE, AND SERVICES PERFORMED, OR BUSINESS OR OTHER ACTIVITIES CONDUCTED IN THE VILLAGE OF FAIRFAX, WHETHER OR NOT SUCH UNINCORPORATED BUSINESSES, PROFESSIONS OR OTHER ENTITIES, HAVE AN OFFICE OR PLACE OF BUSINESS IN THE VILLAGE OF FAIRFAX; ON A RESIDENT'S SHARE OF THE NET PROFITS OF AN UNINCORPORATED BUSINESS, PROFESSION OR ENTITY WHETHER LOCATED IN OR OUTSIDE THE VILLAGE OF FAIRFAX, NOT ATTRIBUTABLE TO FAIRFAX; AND ON THE NET PROFITS OF ALL CORPORATIONS FROM SALES MADE, WORK DONE AND SERVICES PERFORMED, OR BUSINESS OR OTHER ACTIVITIES CONDUCTED IN THE VILLAGE OF FAIRFAX, WHETHER OR NOT SUCH CORPORATIONS HAVE AN OFFICE OR PLACES OF BUSINESS IN THE VILLAGE OF FAIRFAX; REQUIRING THE FILING OF RETURNS AND THE FURNISHING OF INFORMATION BY EMPLOYERS AND ALL THOSE SUBJECT TO SAID TAX; IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING THE TAX AT THE SOURCE AND PAYING THE SAME TO THE VILLAGE OF FAIRFAX; REQUIRING ALL EMPLOYERS, CONTRACTORS, AND SUBCONTRACTORS TO REGISTER WITH THE VILLAGE; PROVIDING FOR THE ADMINISTRATION, COLLECTION AND ENFORCEMENT OF SAID TAX; DECLARING VIOLATIONS THEREOF TO BE MISDEMEANORS, IMPOSING PENALTIES THEREFOR, AND DECLARING AN EMERGENCY.**

WHEREAS, the Tax Commissioner and this Council have determined that it is necessary to impose certain reporting requirements to ensure that the Tax Department has an accurate list of the names and addresses of all persons who must file a tax return with the Village; and

WHEREAS, it is necessary to amend the previous tax ordinance, Ordinance No. 10-2004, to accomplish the foregoing purpose and, in addition, to clarify the inclusion of severance pay subject to tax;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Village of Fairfax, State of Ohio:

**SECTION I. PURPOSE.**

To provide funds for the purpose of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and permanent improvements of the Village of Fairfax and the discharge of principal, and the payment of interest thereon, of obligations for permanent improvements both before and after the date of this ordinance, there shall be, and is hereby, levied a tax on salaries, wages, commissions and other compensation, and on net profits as hereinafter provided.

**SECTION II. DEFINITIONS.**

As used in this Ordinance, the following words shall have the meaning ascribed to them in this section, except as the context so requires. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

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

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

7. If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except:
- a) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and
  - b) 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 of the taxpayer, and amounts paid or accrued to or for life insurance for an owner or owner-employee of the taxpayer shall not be allowed as a deduction.

Nothing in this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

ASSOCIATION- A partnership, limited partnership, or any other form of unincorporated enterprise, owned by two or more persons.

BOARD OF REVIEW- The Board created by and constituted as provided in Section XIII of this Ordinance.

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.

CAPITAL GAINS- The net profits from the sale of any real or personal property if (a) such property has been owned by the taxpayer for more than one year; and (b) the taxpayer is not regularly engaged in the business of selling such kind or character of property.

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 or dependency.

DOMICILE- Principal residence that the taxpayer uses for an indefinite time. A taxpayer has only one domicile even though he may have more than one residence.

EMPLOYEE- One who works for wages, salary, commission or other types of compensation, in the services of an employer.

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

FISCAL YEAR- An accounting period of twelve (12) months ending on any day other than December 31st.

FORM 2106- The Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

GENERIC FORM- An electronic or paper form designed for reporting estimated municipal income taxes and annual 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 PROFITS- Total income of a taxpayer from whatever source derived.

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

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

INTERNAL REVENUE CODE- The Internal Revenue Code of 1986, 100 Stat.2085, 26 U.S.C. 1, as amended.

INTERNET-The international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the World Wide Web.

LANDLORD - The owner of Rental Property, as defined in this Ordinance, who has leased, rented, or otherwise demised such property to another Person.

LIMITED LIABILITY COMPANY- A limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state or country.

NET PROFITS- 1) For a taxpayer other than an individual, its adjusted federal taxable income. 2) For a taxpayer who is an individual, the individual's profits required to be reported on schedule C, schedule E or schedule F except for amounts described under Ohio Revised Code Sec. 718.01, F.

NONQUALIFIED DEFERRED COMPENSATION PLAN- A compensation plan described in section 3121(v) (2) (C) of the Internal Revenue Code.

NON-RESIDENT- An individual domiciled outside the Village of Fairfax.

NONRESIDENT INCORPORATED BUSINESS ENTITY- An incorporated business entity not having an office or place of business within the Village of Fairfax.

NONRESIDENT UNINCORPORATED BUSINESS ENTITY- An unincorporated business entity not having an office or place of business within the Village of Fairfax.

OTHER PAYER- Any person that pays an individual any item included in the federal gross income of that individual, other than the individual's employer or that employer's agent.

OWNER- Includes but is not limited to a partner of a partnership, a shareholder of an S corporation, a member of a limited liability company, or other person with ownership interest in a pass-through entity.

OWNER'S PROPORTIONATE SHARE- With respect to each owner of a pass through-entity, the ratio of (a) the owner's income from the pass through-entity that is subject to taxation by the Village of Fairfax to (b) the total income from that entity of all owners whose income from the entity is subject to taxation by the Village of Fairfax.

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

PERSON- Any natural person or any entity, including but not limited to individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, and governmental entities.

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

PRINCIPAL PLACE OF BUSINESS- In the case of an entity headquartered within the Village of Fairfax, the place of business at which the headquarters is situated. In the case of any entity not headquartered within the Village of Fairfax, that entity's largest place of business located in the Village of Fairfax.

QUALIFIED PLAN- A retirement plan satisfying the requirements under Section 401 of the Internal Revenue Code as amended.

QUALIFYING WAGES- 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.

RENTAL PROPERTY - Real property leased, rented, or otherwise demised to any Person other than the owner of such real property, whether for residential purposes, commercial purposes, or otherwise.

RESIDENT- Any person domiciled in the Village of Fairfax.

RESIDENT INCORPORATED BUSINESS ENTITY- An incorporated business entity having an office, place of business, or business sites within the Village of Fairfax.

RESIDENT UNINCORPORATED BUSINESS ENTITY- An unincorporated business entity having an office, place of business, or business sites within the Village of Fairfax.

RETURN PREPARER- Any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, or other document for or on behalf of the tax payer.

SCHEDULE C- The Internal Revenue Service Schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

SCHEDULE E- The Internal Revenue Service Schedule E filed by a taxpayer pursuant to the Internal Revenue Code.

SCHEDULE F- The Internal Revenue Service Schedule F filed by a taxpayer pursuant to the Internal Revenue Code.

S CORPORATION- A corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

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

TAXABLE YEAR- The corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code, and in case of a return for a fractional part of a year, the period for which such return is required to be made.

TAX COMMISSIONER- The Tax Commissioner of the Village of Fairfax or the person executing the duties of the aforesaid commissioner.

TAXING MUNICIPALITY- A municipality levying a tax on income earned by nonresidents working within such municipality or on income earned by its residents.

TAXPAYER- A person subject to a tax on income levied by a municipal corporation. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any person who owns the disregarded entity or qualifying subchapter S subsidiary.

TENANT - Any Person who leases, rents, or otherwise occupies Rental Property from another.

### **SECTION III. IMPOSITION OF TAX.**

A. Subject to the provisions of Section XVI of this ordinance, an annual tax, for the purposes specified in Section I hereof, shall be and is hereby levied at the rate of one and three fourths (1.75%) percent per annum upon the following:

1. On all salaries, wages, commissions, lottery winnings and other compensation, including severance pay, sick pay, and vacation pay, earned during the effective period of this ordinance, by residents.
2. On all salaries, wages, commissions, and other compensation, including severance pay, sick pay, and vacation pay, earned during the effective period of this ordinance by non-residents for work done or service performed in the Village of Fairfax.

3. (a) On the portion attributable to the Village of Fairfax of the net profits, earned during the effective period of this ordinance, of all resident associations, unincorporated businesses, pass-through entities, professions, or other entities, derived from sales made, work done, or services performed or rendered, or business or other activities conducted in the Village of Fairfax.
- (b) On the portion of the distributive share of the net profits earned by a resident owner of a resident unincorporated entity or pass-through entity not attributable to the Village of Fairfax and not levied against such association or other unincorporated entity.
4. (a) On the portion attributable to the Village of Fairfax of the net profits, earned during the effective period of this ordinance, of all non-resident associations, unincorporated businesses, pass-through entities, professions or other entities, derived from sales made, work done, or services performed or rendered, or business or other activities conducted in the Village of Fairfax, whether or not such association or other unincorporated entity has an office or place of business in the Village of Fairfax.
- (b) On the portion of the distributive share of the net profits earned by a resident owner of a non resident unincorporated entity or pass-through entity not attributable to the Village of Fairfax and not levied against such association or other unincorporated entity.
5. On the net profits, earned during the effective period of this ordinance, of all corporations derived from sales made, work done, or service performed or rendered, or business or other activities conducted in the Village of Fairfax, whether or not such corporations have an office or place of business in the Village of Fairfax.
6. On the portion attributable to the Village of Fairfax of the income of or from a pass-through entity in the hands of the entity that results from treating the return filed by the pass-through entity for Federal Income tax purposes in the same manner as income from a corporation for Village of Fairfax earnings tax purposes provided that the pass-through entity is subject to taxation as provided for in Section III. A. 1,2,3,4 and 5.

**B. ALLOCATION OF NET PROFITS.** Net profit from a business or profession conducted both within and without the boundaries of the Village of Fairfax shall be considered as having situs in the Village for purposes of taxation under this Ordinance in the same proportion as the average ratio of the following:

- 1) Multiply the entire net profits of the business by a business apportionment percentage to be determined by:
  - (a) The ratio of the average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession situate within the Village of Fairfax during the taxable period to the average original cost of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated; and

- (b) The ratio of wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the Village of Fairfax to all wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation not taxable by the Village of Fairfax under section 718.011 of the Ohio Revised Code; and
  - (c) The ratio of gross receipts of the business or profession from sales made and services performed during the taxable period in the Village of Fairfax to gross receipts of the business or profession during the same period from all sales and services, wherever made or performed.
  - (d) Adding together the percentages determined in accordance with sub-paragraphs (a), (b) and (c) above or such of the aforesaid percentages as are applicable to the particular taxpayer and dividing the total so obtained by the number of percentages used in deriving said total.
  - (e) A factor is applicable even though it may be apportioned entirely in or outside of the Village of Fairfax.
2. As used herein, 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. "Sales made" in the Village of Fairfax has the same meaning as "sales made" as used in O.R.C. Section 718.02 (B).
  3. If the foregoing apportionment formula does not produce an equitable result to both the taxpayer and the Village, another basis may be substituted by the Tax Commissioner under uniform regulations, so as to produce an equitable result.

**C.** Except as otherwise provided in division (D) of this section, net profit from rental activity not constituting a business or profession shall be subject to taxation by the Village of Fairfax only if the property which generated the net profit is located in the Village of Fairfax.

**D.** This section does not apply to individuals who are residents of the Village of Fairfax and, except as otherwise provided in section 718.01 of the Ohio Revised Code, the Village of Fairfax may impose a tax on all income earned by residents of the Village of Fairfax to the extent allowed by the United States Constitution.

**E. OPERATING LOSS CARRY FORWARD.**

1. The portion of a net operating loss sustained in any taxable year, apportioned to the Village of Fairfax, may be applied against the portion of the profit of succeeding tax years, apportioned to the Village of Fairfax, until exhausted, but in no event for more than the four (4) taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

2. The portion of a net operating loss sustained shall be apportioned to the Village of Fairfax in the same manner as provided herein for apportioning net profits to the Village of Fairfax.

3. The Tax Commissioner shall provide by Rules and Regulations the manner in which such net operating loss carry forward shall be determined.

4. The net operating loss of a taxpayer that loses its identity, by any means such as merger or consolidation, shall not be allowed as a carryforward loss deduction to the surviving or new taxpayer.

#### **F. CONSOLIDATED RETURNS.**

1. Filing of consolidated returns shall be permitted by any affiliated group of corporations if that affiliated group filed for the same tax reporting period a consolidated return for Federal Income Tax purposes pursuant to section 1501 of the Internal Revenue Code and the form electing to file a consolidated return for Federal Income Tax Purposes is attached.

2. Once an affiliated group of corporations subject to the tax imposed by this ordinance files a consolidated return, the affiliated group shall continue to file a consolidated return until exception is made by the Tax Commissioner or election is changed in accordance with section 1501 of the Internal Revenue Code.

3. In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, the Tax Commissioner shall require such information, in addition to the return hereinafter provided for, as he may deem necessary to ascertain whether net profits are properly allocated to the Village of Fairfax. If the Tax Commissioner finds net profits are not properly allocated to the Village of Fairfax by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, he may require the filing of a consolidated return or adjust such transactions so as to produce a fair and proper apportionment of the net profits to the Village of Fairfax.

**G. CAPITAL GAINS.** Capital Gains from the sale of depreciable property shall be taxable to the extent of the aggregate amount of the depreciation taken on such property for Village of Fairfax income tax purposes.

**H. EXCEPTIONS.** No tax shall be levied upon any category of income or profit excepted from municipal taxation by Ohio law.

#### **SECTION IV. REPORTING REQUIREMENTS FOR RENTAL PROPERTY.**

A. Within thirty days after a Tenant first occupies Rental Property in the Village, the Landlord shall provide the Tax Commissioner, in writing, with the name, address, date of first occupancy, and, if available, telephone number of the Tenant.

B. Within thirty days after a Tenant vacates Rental Property in the Village, the Landlord shall provide the Tax Commissioner, in writing, with the name, address, date of vacation, and, if available, telephone number and forwarding address of the Tenant.

C. Notwithstanding the time limits set forth in subsections IV.A and IV.B, the Tax Commissioner may at any time request a Landlord to provide the Tenant information specified in subsections IV.A and IV.B. In that event, the Landlord shall provide the requested information to

the Tax Commissioner, in writing, within fifteen days of the date on which the Tax Commissioner sent the request.

D. The Tax Commissioner is authorized to impose administrative penalties for the violation of this Section IV, including but not limited a fine for each separate offense not to exceed one hundred dollars. The failure by any Landlord to comply with such administrative penalties shall be punishable as set forth in Section XII.

## **SECTION V. RETURN AND PAYMENT OF TAX.**

A. Each person who engaged in business, or whose salary, qualifying wages, commissions, other compensation and other taxable income is subject to the tax imposed by this Ordinance shall, whether or not a tax be due thereon, make and file, on or before April 15th in each year, a return with the Tax Commissioner, except as set forth in division 1 of this section. A taxpayer on a fiscal year accounting basis for federal income tax purposes, beginning with his first fiscal year, any part of which falls within the effective period of this ordinance, shall file his return on the 15th day of the 4th month following the end of such fiscal year or period, except that returns for tax year 2003 shall be due on April 30th, or in the case of a taxpayer on a fiscal year accounting basis for federal income tax purposes, within four months from the end of such fiscal year. The Tax Commissioner is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by said employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by him or them to the Tax Commissioner shall be accepted as the return required of any employee whose sole income, subject to the tax under this ordinance, is such salary, wages, commissions or other compensation.

1. The Tax Commissioner shall not collect tax on the compensation of an individual if all of the following apply:

- a. the individual does not reside in the Village of Fairfax;
- b. the compensation is paid for personal services performed by the individual in the Village of Fairfax on twelve or fewer days during the calendar year;
- c. in the case of an individual who is an employee, the principal place of business of the individual's employer is located outside the Village of Fairfax and the individual pays tax on compensation described in division (b) of this section to the city, if any, in which the employer's principal place of business is located, and no portion of that tax is refunded to the individual.

B. The return shall be filed with the Tax Commissioner on a form or forms furnished by or obtainable upon request from the Tax Commissioner, or a generic form as provided in Section V. C., setting forth:

1. The aggregate amounts of salaries, qualifying wages, commissions, lottery winnings, and other compensation earned, and gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income, earned during the preceding year and subject to said tax;

2. The amount of the tax imposed by this ordinance on such earnings and profits; and

3. Such other pertinent statements, information returns, or other information as the Tax Commissioner may require, including, a statement that the figures used in the return are the figures used in the return for federal income tax, adjusted to set forth only such income as is taxable under the provisions of this ordinance.

C. The Tax Commissioner shall accept a generic form of any return, report, or document required to be filed if the generic form once completed and filed, contains all of the information required to be submitted with the Village of Fairfax's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules and provisions of this ordinance governing the filing of returns, reports, or documents.

D. Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of the Village of Fairfax Income Tax Return by filing a copy of the taxpayer's federal extension request with the Village of Fairfax Tax Department. Any taxpayer not required to file a federal income tax return may request an extension for filing the Village of Fairfax Income Tax Return in writing. The request for extension must be filed on or before the original due date for the annual return. If the request is granted, the extended due date of the Village of Fairfax income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended.

1. The request for extension shall be filed not later than the last day for filing the annual tax return as prescribed by Section V of this ordinance.

2. The Tax Commissioner shall grant a taxpayer's request for extension unless the taxpayer:

- a. fails to timely file the request;
- b. fails to file a copy of the federal extension request;
- c. owes any delinquent income tax or any penalty, interest, assessment or other charge for the late payment of income tax under the provisions of this ordinance;
- d. has failed to file any required income tax return, report, or other related document for a prior tax period.

3. The Tax Commissioner may waive any of the foregoing bases for denial of an extension for good cause shown.

4. The granting of an extension for filing the annual tax return does not extend the last date for paying the tax without penalty.

5. The Tax Commissioner may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

E. The taxpayer making a return shall at the time of filing thereof, pay to the Tax Commissioner the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source, pursuant to the provisions of

Section VI of this ordinance; or where any portion of said tax shall have been paid by the taxpayer, pursuant to the provisions of Section VII of this ordinance; or where an income tax, creditable against the Village of Fairfax tax pursuant to Section XV hereof, has been paid to another municipality, 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.

A taxpayer who has overpaid the amount of tax to which the Village of Fairfax is entitled under the provisions of this 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.

#### **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 limitations contained in Sections XI and XV. Such amended returns shall be on a form obtainable on request from the Tax Commissioner or a generic form as provided in Section V. C of this ordinance.

2. Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's Village of Fairfax tax liability, such taxpayer shall make and file on an amended Village of Fairfax return showing income subject to the Village of Fairfax 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.

**G.** Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be a violation of this Ordinance. Provided however, that the taxpayer shall have fifteen (15) days after notification by the Tax Commissioner or his authorized representative, to file the items required by this paragraph.

#### **SECTION VI. COLLECTION AT SOURCE:**

A. Each employer within, or doing business within, the Village of Fairfax who employs one or more persons on a salary, wage, commission, or other compensation basis shall deduct at the time of the payment of such salaries, wages, commission, or other compensation, the tax of one and three fourths percent (1.75%) of the gross salaries, qualifying wages, commissions, or other compensation due by said employer to each said employee and shall, on or before the last day of April, July, October and January of each year, make a return and pay to the Tax Commissioner the amount of taxes so deducted during the preceding calendar quarter. Said return shall be on a form or forms prescribed by or acceptable to the Tax Commissioner, or on a generic form as provided for in Section V. C., and shall be subject to the rules and regulations prescribed therefor by the Tax Commissioner. Nothing in this section prohibits an employer from withholding tax on a basis greater than qualifying wages.

B. Each employer in collecting said tax shall be deemed to hold the same, until payment is made by such employer to the Village of Fairfax, as a Trustee for the benefit of the Village of Fairfax and any such tax collected by such employer from his employees shall, until the same is

paid to the Village of Fairfax, be deemed a trust fund in the hands of such employer. Each employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax, in fact, has been withheld.

C. It shall be the responsibility, jointly and severally, of the president and treasurer of each corporation required to withhold the tax from wages of its employees under this section to see that all such taxes so withheld are paid to the Village of Fairfax in accordance with provisions of this section. In the event taxes withheld by a corporation from the salaries, qualifying wages, or other compensation of its employees are not paid to the Village of Fairfax in accordance with the provisions of this section, the president and treasurer of said corporation shall each be subject to prosecution under the provisions of Section XII hereof. The dissolution, termination, or bankruptcy of any entity, including but not limited to a corporation, limited liability company, or business trust, does not discharge an officer's, member's, manager's, employee's, or trustee's liability for a failure of the entity to file returns or pay said taxes.

D. An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued. However, the employer shall submit a copy of the W-2 or other federal form used for reporting the individual's disqualifying disposition to the Village of Fairfax as an attachment to the annual reconciliation of employee withholding.

E.1. 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 Fairfax or by the employer's exemption from the requirement to withhold the tax.

2. The failure of an employer to remit to the Village of Fairfax the tax that was 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. Compensation deferred before January 1, 2004 is not subject to tax or any withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

#### G. REGISTRATION

1. All employers, contractors, and subcontractors who perform work or provide services within the Village of Fairfax shall register with the Tax Commissioner within (30) days of applying for a permit to perform work or provide services in the Village of Fairfax, or within ten (10) days after they become taxable under the provisions of this Ordinance, whichever date is earliest.
2. All employers, contractors, and subcontractors who perform work or provide services in the Village of Fairfax shall provide the Tax Commissioner a complete list of all subcontractors or other entities who perform work or provide services for them within the Village of Fairfax within (30) days of the first such work performed or services provided by each such subcontractor or other entity.

H. On or before February 28 of each year, each employer shall file a withholding return, on a form or forms prescribed by and obtainable from the Tax Commissioner or on a generic form as permitted herein, setting forth the names, addresses, zip code and social security number of all employees from whose compensation the tax was withheld during the preceding calendar year, the total amount of compensation paid during the year and the amount of tax withheld for the Village of Fairfax from the listed employees and such other information as may be required by the rules and regulations adopted by the Tax Commissioner.

I. In addition to the wage reporting requirements of this section, any person who reports on Form 1099-Misc. payments to individuals not treated as employees for services performed shall also report such payments to the Village of Fairfax when the services were performed in the Village of Fairfax. Federal form(s) 1099-Misc. shall be submitted annually as an attachment to the annual reconciliation of employee withholding on or before February 28 of each year.

J. 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.

## **SECTION VII. DECLARATIONS.**

A. Every person who anticipates any taxable income which is not subject to Section VI hereof, or who engages in any business, profession, enterprise, or activity, shall file a declaration setting forth such estimated income or estimated profit or loss from such business activity together with the estimated tax due thereon, if any.

B. Such declaration shall be filed on or before April 15th of each year, or, as applicable, on or before the fifteenth day of the fourth month following the date the taxpayer becomes subject to the provisions of this section. Those taxpayers reporting on a fiscal year basis shall file a declaration on the fifteenth day of the 4th month following the start of each fiscal year or period.

C. Such declaration shall be filed upon a form furnished by or obtainable from the Tax Commissioner or a generic form as provided in Section V. C.. Credit shall be taken in said declaration for the Village of Fairfax tax to be withheld from any portion of such income and for income taxes to be paid to another taxing municipality for which credit is allowed against the Village of Fairfax tax under Section XV hereof.

D. For individual taxpayers who are required to remit estimated tax, the declaration of estimated tax to be paid the Village of Fairfax shall be accompanied by a payment of at least one-fourth (1/4) of ninety percent (90%) of the estimated tax, less credit for taxes withheld or paid to another municipality, and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the tax year.

E. For taxpayers who are not individuals required to remit estimated tax, the declaration of estimated tax to be paid the Village of Fairfax shall be accompanied by a payment of at least one-fourth (1/4) of ninety percent (90%) of the estimated tax, less credit for taxes withheld or paid to another municipality, and at least a similar amount shall be paid on or before the 15th day of the seventh, tenth and thirteenth months after the beginning of the tax year or fiscal year.

F. A declaration may be amended at any time, provided, however, that in case an amended declaration is filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

G. An amended declaration must be filed on or before January 31, of any year, or in the case of a taxpayer on a fiscal year accounting basis, on or before the date fixed by regulation of the Tax Commissioner, if it appears that the original declaration made for such year underestimated the taxpayer's income by ten percent (10%) or more. At such time a payment which, together with prior payments, is sufficient to pay taxpayer's entire estimated liability, shall be made. If, upon the filing of the required return by Section V hereof it appears that the taxpayer did not pay ninety percent (90%) of his tax liability, as shown on said return, on or before January 31, or the date fixed by regulation, whichever is applicable, the difference between ninety percent (90%) of said taxpayer's tax liability and the amount of estimated tax he actually paid on or before January 31, or the date fixed by regulation, whichever is applicable, he shall be subject to the interest and penalty provisions of Section X hereof.

H. On or before the fifteenth day of the fourth month of the calendar or fiscal year following that for which the declaration was filed, an annual return shall be filed and any balance which may be due to the Village of Fairfax shall be paid therewith in accordance with the provisions of Section V hereof.

I. Notwithstanding Section G above, no penalty or interest shall be charged on the payment of estimated tax if:

1. The Taxpayer is an individual who resides in the Village of Fairfax but was not domiciled there on the first day of January of the current calendar year; or
2. The Taxpayer has remitted pursuant to the provisions of this section an amount equal to one hundred percent of the taxpayer's tax liability for the preceding year as shown on the return filed for the preceding year provided that the return for the proceeding year reflected a twelve-month period and the Taxpayer filed a return for the proceeding year.

#### **SECTION VIII. DUTIES OF THE TAX COMMISSIONER.**

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

B. Said Tax Commissioner is hereby charged with the enforcement of the provisions of this ordinance, and is hereby empowered, subject to the approval of the Board of Review, to adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the collection and payment of taxes and the administration and enforcement of the provisions of this ordinance, including provisions for the re-examination and correction of returns. The Tax Commissioner shall have full powers to administer, audit, and enforce the provisions of this ordinance to the extent permitted by law and as not inconsistent with any order of the Board of Review.

C. In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Commissioner may determine the amount of tax

appearing to be due the Village of Fairfax from the taxpayer and may send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

D. Subject to the consent of the Board of Review or pursuant to regulation approved by the Board of Review, the Tax Commissioner shall have the power to compromise any liability imposed by this ordinance.

**SECTION IX. INVESTIGATIVE POWERS OF THE TAX COMMISSIONER –  
PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.**

A. The Tax Commissioner, or any of his authorized agents, is hereby authorized to examine the books, papers, records, and federal income tax returns of any employer, taxpayer or any person subject to, or whom the Tax Commissioner believes is subject to, the provisions of this ordinance, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax or withholdings due under this ordinance. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request of the Tax Commissioner, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

B. The Tax Commissioner is hereby authorized to order any person, presumed to have knowledge of any relevant facts to appear at the office of the Tax Commissioner and to examine such person, under oath, concerning any income which was or should have been returned for taxation, or withheld, or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

C. The refusal to produce books, papers, records and federal income tax returns, or the refusal to submit to such examination by an employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Tax Commissioner authorized hereby shall be deemed a violation of this ordinance, punishable as provided in Section XII thereof.

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

E. Any information gained as a result of any returns, investigations, hearings or verifications required or authorized by this ordinance shall be confidential and no disclosure thereof shall be made except to municipal, county, state or federal taxing agencies, except for official purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this section shall be fined not more than five hundred (\$500) dollars or imprisoned for not more than sixty (60) days, or both. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the Village of Fairfax who violates the provisions of this section relative to the disclosure of confidential information shall be subject to discipline, including, but not limited to, dismissal.

**SECTION X. INTEREST AND PENALTIES.**

A. All taxes imposed and monies withheld or required to be withheld by employers remaining unpaid after they become due shall bear interest at the same rate which section 718.01 of the Ohio Revised Code requires be paid by municipalities on their income tax refunds, which is the federal short-term rate as defined in section 5703.47 of the Ohio Revised Code, plus three percent (3%) per year.

B. In addition to interest as provided in Paragraph A hereof, penalties for failure to pay taxes and to withhold and remit taxes pursuant to the provisions of this ordinance are hereby imposed as follows.

1. In the case of taxpayers failing to pay the full amount of tax due, a penalty of one percent (1%) per month or fraction thereof of the amount of the unpaid tax if the tax is paid during the first year after said tax becomes due; a penalty of one and one half percent (1 1/2%) per month or fraction thereof of the amount of the unpaid tax if said tax is paid during the second year after said tax becomes due; and a penalty of two percent (2%) per month or fraction thereof of the amount of the unpaid tax if said tax is paid later than two (2) years after it becomes due.

2. In the case of employers who fail to withhold and remit to the Tax Commissioner the taxes to be withheld from employees, a penalty of one percent (1%) per month or fraction thereof of the unpaid withholding if paid during the second to sixth month, inclusive, after it was due; a penalty of two percent (2%) per month or fraction thereof of the unpaid withholding if paid during the seventh to twelfth month, inclusive, after it was due; and a penalty of four percent (4%) per month or fraction thereof of the unpaid withholding, if paid later than one year after it was due.

C. In addition to the interest and penalties as provided in Paragraphs A and B herein, the penalty for failure to file any tax return when due is as follows:

1. For a first offense, no additional penalty.
2. For a second offense, a penalty of ten dollars (\$10.00).
3. For a third and subsequent offense, a penalty of twenty-five dollars (\$25.00).

D. **EXCEPTIONS.** A penalty shall not be assessed on an additional tax assessment made by the Tax Commissioner when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Commissioner; and provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after the final determination of the federal tax liability.

E. Upon an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and/or interest, the Board of Review may abate such penalty or interest, or both.

**SECTION XI. COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.**

A. All taxes imposed by this ordinance shall be collectible, together with any interest and penalties thereon, by suit as other debts of like amount are recoverable. No additional assessment

shall be made after three years from the time of payment of any tax due hereunder; provided, however, in the case of a return that omits gross income in excess of twenty-five percent (25%) of that required to be reported, or in the case of filing a false or fraudulent return with intent to evade the tax, or in the case of failure to file a return, no additional assessment shall be made after six years of payment of any tax due hereunder. In those cases in which the Director of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations, the period within which an additional assessment may be made by the Tax Commissioner shall be extended one year from the time of the final determination of the federal tax liability.

B. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made or the return was due, or within three months after final determination of the federal tax liability, whichever is later.

## **SECTION 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 an 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 and remit such withholding tax to the Tax Commissioner; or
5. Refuse to permit the Tax Commissioner or any duly authorized agent or employee to examine his or her, or his or her employer's books, records, papers, and federal income tax returns; or
6. Fail to appear before the Tax Commissioner and to produce his or her, or his or her employer's books, records, papers, or federal income tax returns upon order or subpoena of the Tax Commissioner; or
7. Refuse to disclose to the Tax Commissioner any information with respect to such person's or such person's employer's income or net profits; or
8. Fail to comply with the provisions of this ordinance or any order or subpoena of the Tax Commissioner; or
9. Fail, neglect or refuse to make any payment on the estimated tax for any year as required by Section VII; or
10. Fail, as president or treasurer of a corporation, to cause the tax withheld from the wages of the employees of such corporation pursuant to this ordinance to be paid to the Village of Fairfax in accordance with the provisions of Section VI hereof; 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; or

12. Fail to comply with any administrative penalty imposed by the Tax Commissioner;

shall be guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both, for each offense.

B. All prosecutions under this section must be commenced within three years from the time of the offense complained of except in the case of failure to file a return, in the case of filing a false or fraudulent return, or in the case of a return that omits gross income in excess of twenty-five percent (25%) of that required to be reported, in which event the limitation of time within which prosecution must be commenced shall be six years from the date the return was due or the date the false or fraudulent return or the return containing the relevant omission was filed.

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

D. The term "person" as used in this section, shall, in addition to the meaning prescribed in Section II of this ordinance, include in the case of an association or corporation not having any partner, member, or officer within the Village of Fairfax, any employee or agent of such association or corporation who can be found within the corporation limits of the Village of Fairfax.

### **SECTION XIII. BOARD OF REVIEW.**

A. A Board of Review consisting of the Mayor and two members of Council, elected by that body, is hereby created.

B. Whenever the Tax Commissioner issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or on an ordinance or regulation of this municipality, the Tax Commissioner shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the decision to the Board of Review and of the manner in which the taxpayer may appeal the decision.

C. Any person who is aggrieved by a decision by the Tax Commissioner and who has filed with the Village of Fairfax the required returns or documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Review by filing a request with the Board.

D. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed with-in thirty (30) days after the Tax Commissioner has issued the decision of which the taxpayer complains.

E. The Board of Review shall schedule a hearing within forty-five (45) days after receiving the request unless the taxpayer waives a hearing. The Board may affirm, reverse, or modify the Tax Commissioner's decision or any part of the decision. The Board shall issue a decision within ninety (90) days after hearing and send notice of its decision to the taxpayer within fifteen (15) days of its decision.

F. The imposition of penalty and interest as prescribed in this ordinance is not a sufficient basis for an appeal.

**SECTION XIV. APPOINTMENT AND COMPENSATION.**

The Tax Commissioner shall be the Clerk-Treasurer, or in the event the Village of Fairfax has a separate Treasurer, the Treasurer, who shall receive such compensation as Council may from time to time provide. The Tax Commissioner may, with the approval of and at the compensation determined by the Council, employ such administrative assistants as are necessary in the administration of this ordinance.

**SECTION XV. CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.**

A. Where a resident of the Village of Fairfax is subject to a municipal income tax in another municipality, he shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.

B. Every individual taxpayer who resides in the Village of Fairfax and who receives salaries, wages, commissions, or other compensation or net profits from sales made, work done, or services performed or rendered outside the Village of Fairfax, if it be made to appear that he has paid a municipal income tax on such income taxable under this ordinance to another municipality, shall be allowed a credit against the tax imposed by this ordinance in the amount of the tax so paid by him or on his behalf to such other municipality. The credit shall not exceed the tax assessed by this ordinance on such income earned in such other municipality or municipalities where such tax is paid.

C. Notwithstanding the provisions contained in Section XI hereof, or any other provisions inconsistent therewith, a claim for refund or credit under this section shall be made in such manner as the Tax Commissioner may by regulation provide. No such claim for refund or credit shall be allowed unless made on or before the date of filing the taxpayer's final return unless such taxpayer's employer filed with the Tax Commissioner a list showing the tax withheld from said taxpayer's wages, salaries, or commissions for other municipalities.

D. The Tax Commissioner is hereby authorized to provide by regulation that a resident, working in another municipality imposing a tax on earned income shall not be required to file a declaration under Section V of this ordinance or return under Section VII of this ordinance, if such other municipality certifies to the Tax Commissioner that a tax of one and three fourths percent (1.75%) is being deducted from wages of such resident and is being paid to such other municipality and if the wages or other compensation subject to such withholding are said resident's only income taxable under this ordinance.

**SECTION XVI. SAVING CLAUSE.**

This Ordinance shall not apply to any person, firm or corporation or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided. If any sentence, clause, section, or part of this Ordinance, or any tax against or exception granted any individual or any of the several groups of persons, or forms of income specified herein is found to be unconstitutional or otherwise illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this Ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this

ordinance. It is hereby declared to be the intention of Council of the Village of Fairfax that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence or part thereof not been included therein.

**SECTION XVII. REPEAL.**

Ordinance No. 10-2004 is hereby repealed.

**SECTION XVIII. EMERGENCY CLAUSE.**

This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall be effective immediately. The reason for said declaration of emergency is the immediate need to allow the Tax Commissioner sufficient time to properly account for all Persons responsible for filing tax returns with the Village in time for the new taxable year and to give Landlords adequate notice of the new reporting requirements for which certain penalties apply for noncompliance.

Passed this 20th day of October, 2008.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

**CERTIFICATE**

I hereby certify this to be a true and correct copy of Ordinance No.51-2008 passed at a regular meeting of the Council of the Village of Fairfax, this 20th day of October, 2008.

\_\_\_\_\_  
Clerk-Treasurer