

ORDINANCE NO. 2010-18

AN ORDINANCE TO AMEND ORDINANCE 2002-24  
IN ITS ENTIRETY

INDEX

- SECTION 1. PURPOSE: To provide funds for village operations, maintenance, new equipment, extension and enlargement of services and facilities, and capital improvements of the Village.
- SECTION 2. DEFINITIONS
- SECTION 3. IMPOSITION OF TAX
- SECTION 4. EFFECTIVE PERIOD: on and after January 1, 2011
- SECTION 5. RETURN AND PAYMENT
- SECTION 6. COLLECTION AT SOURCE (withholding by employers)
- SECTION 7. DECLARATIONS (Estimated Taxes)
- SECTION 8. DUTIES OF INCOME TAX ADMINISTRATOR
- SECTION 9. INVESTIGATIVE POWERS; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION
- SECTION 10. INTEREST AND PENALTIES
- SECTION 11. COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENT
- SECTION 12. VIOLATIONS ; PENALTIES
- SECTION 13. REQUIREMENT OF OWNERS OF RENTAL OR LEASED PROPERTIES TO PROVIDE THE TAX ADMINISTRATOR WITH INFORMATION REGARDING TENANTS
- SECTION 14. BOARD OF REVIEW (To hear appeals by taxpayers)
- SECTION 15. ALLOCATION OF FUNDS (Funds are paid into the General Fund and applied as council shall direct)
- SECTION 16. CREDIT FOR TAX PAID TO ANOTHER COMMUNITY
- SECTION 17. SAVING CLAUSE
- SECTION 18. COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE
- SECTION 19. REVOCATION OF INCONSISTENT ORDINANCES
- SECTION 20. EFFECTIVE DATE OF ORDINANCE

Levying a 1% tax to provide funds for the purposes of general municipal operation, maintenance of equipment, extension, enlargement and improvement of municipal services and facilities and capital improvements, on all salaries, wages, commissions and other compensations earned by residents of this municipality; on all salaries, wages, commissions and other compensation earned by nonresidents of the municipality; for work done or services performed or rendered in this municipality; on the net profits earned on all businesses, professions or other activities conducted by residents of this municipality; on the net profits earned on all businesses, professions or other activities conducted in this municipality by nonresidents, and on the net profits earned by all corporations doing business in this municipality as the result of work done or services performed or rendered in this municipality; requiring the filing of returns and 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 this municipality, providing for the administration, collection and enforcement of said tax; declaring violation thereof to be a misdemeanor and imposing penalties therefor. Said Ordinance is being declared an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MALVERN THAT:

SECTION 1. PURPOSE.

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities, and capital improvements of the Village there shall be, and is hereby levied a tax on salaries, qualifying wages (box 5 on W-2), commissions, and other compensation, and on the net profits as hereinafter provided.

SECTION 2. DEFINITIONS.

(a) As uses in this ordinance, the following words have the meaning ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

- (1) "Association" means a partnership, limited partnership, or any other unincorporated enterprise, owned by two or more persons.
- (2) "Board of Review" means the Board created by and constituted as provided in Section 14.
- (3) "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.
- (4) "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.
- (5) "Employee" means one who works for wages, salaries, commission or other type of compensation in the service of and under the control of an employer.

- (6) "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other compensation basis.
- (7) "Fiscal Year" means an accounting period of twelve months or less ending on any day other than December 31.
- (8) "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 the municipal corporation's tax on income. The generic form, once completed and filed, must contain all of the information required to be submitted with the municipality's prescribed return, reports, or documents.
- (9) "Gross receipts" means the total income from any source whatsoever.
- (10) "Income Tax Administrator" means the individual designated by ordinance, whether appointed or elected to administrate and enforce the provisions of this ordinance.
- (11) "Net Profits" means a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, without deduction of taxes imposed by this ordinance, Federal, State and other taxes based on income; and in the case of an association, without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of this ordinance.
- (12) "Nonresident" means an individual domiciled outside the Village.
- (13) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Village.
- (14) "Person" means every natural person, partnership, fiduciary, association, or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to any corporation, the officers thereof.
- (15) "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 in attendance.
- (16) "Resident" means an individual domiciled in he Village.

- (17) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Village.
- (18) "Taxable income" means wages, salaries, and other compensation paid by an employer or employers before any deduction and/or the net profits from the operation of a business, profession or other enterprise, or activity adjusted in accordance with the provisions of this ordinance. Taxable income includes sums contributed by a taxpayer, directly or indirectly, to an Individual Retirement Account (IRA) or self employed pension plan (Keogh) as defined by the United State Internal Revenue Code.
- (19) "Taxable Year" means the calendar year, or the fiscal 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 a year, the period for which such return is required to be made.
- (20) "Taxpayer" means a person, whether an individual, partnership, association, or any corporation or other entity, required hereunder to file a return or pay a tax.

### SECTION 3. IMPOSITION OF TAX.

(a) Subject to the provisions of Section 16, an annual tax for the purposes specified in Section 1 shall be imposed on and after January 1, 2004, at the rate of one percent (1%) per annum upon the following:

- (1) On all gross salaries and gross wages, gross commissions, and the gross of other compensation earned during the effective period of this ordinance by residents of the Village.
- (2) On all gross salaries, gross wages, commissions, tips, gratuities, and other compensation earned during the effective period of this ordinance by nonresidents who are employees of a resident unincorporated business entity or resident incorporated business entity.
- (3)
  - A. On the portion attributable to the Village of the net profits earned during the effective period of this ordinance of all resident unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business and other activities conducted in the Village.
  - B. On the portion of the distributive share of the net profits earned during the effective period of this ordinance of a resident partner or owner of a resident unincorporated business entity not attributable to the Village and not levied against such unincorporated business activity.
  - C. On earnings, payments, bonuses, commissions and/or fees received by professionals, brokers and others who are independent contractors and

not employees.

- (4) A. On the portion attributed to the Village of the net profits earned during the effective period of this ordinance of all nonresident unincorporated businesses, professions or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in the Village, whether or not such unincorporated business entity has an office or place of business in the Village.
- B. On the portion of the distributive share of the net profits earned during the effective period of this ordinance of a resident partner or owner of a nonresident unincorporated business entity not attributable to the Village and not levied against such unincorporated business entity.
- (5) A. On the portion attributable to the Village of the net profits earned during the effective period of this ordinance of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the Village, whether or not such corporations have an office or place of business in the Village.
- B. The portion of the net profits attributable to the Village of Malvern of a taxpayer conducting a business, profession, or other activity both within and without the boundaries of Malvern shall be determined as provided in Section 718.02 of the Ohio Revised Code and in accordance with the rules and regulations adopted by the Council of the Village of Malvern pursuant to this Ordinance. No net loss of a taxpayer conducting a business, profession, or other activity, both within and without the boundaries of Malvern, shall be used to offset any taxable salaries, qualifying wages, commissions and other compensation earned by residents of Malvern or by nonresidents for work done or services performed or rendered in Malvern.
- C. Operating Loss Carry Forward.
  - 1. The portion of a net operating loss sustained in any taxable year subsequent to January 1, 2003, allocable to the Village of Malvern may be applied against the portion of the profit of succeeding year(s) allocable to the Village of Malvern until exhausted, but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.
  - 2. The Tax Administrator shall provide, by rules and regulations, the manner in which such net operating loss carry-forward shall be determined.

- (6) Other taxable income:
- (a) Contributions to an IRA, SEP IRA, H.R. 10 Plan or any other deferred compensation programs are taxable.
  - (b) Income from a Subchapter S Corporation is taxable to a resident shareholder to the extent not subject to Malvern Village Corporate Income Tax. If you are a shareholder in a Subchapter S Corporation, you must include in your income your share of the corporation's taxable income whether or not the amount was actually distributed to you.
  - (c) The premium value of group term life insurance coverage in excess of \$50,000.00 which is purchased with employer contributions is taxable. This income is referred to as "imputed income".
  - (d) The ordinary income portion of a stock option or employee stock purchase plan is subject to the tax.
  - (e) Supplemental Unemployment Benefit payments (SUB Payments) are subject to the tax.
  - (f) Winnings over \$600.00 earned or derived from gaming, wagering, lotteries (including but not limited to the Ohio State Lottery) or games of chance.
  - (g) Early retirement incentives and wage continuation plans are taxable.
  - (h) Executor, administrator and trustee fees are taxable.
  - (i) Royalties are taxable.
  - (j) Income from wage continuation plans (including retirement incentive plans and severance pay) of Village residents and non-residents who were employed within the Village corporation limits during their terms of employment.
  - (k) Vacation pay of Village residents and non-residents who are employed within the Village corporation limits.
- (7) The tax provided for herein shall not be levied on:
- (a) Military pay or allowances of members of the Armed Forces of the United States and members of their reserve components, including the Ohio National Guard, on active duty.
  - (b) The gross income and gross receipts of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible

property, or tax exempt activities.

- (c) Unemployment insurance benefits, welfare benefits and pensions paid as a result of retirement.
- (d) Proceeds of insurance paid by reason of death of the insured, retirement disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
- (e) Parsonage allowance to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation.
- (f) Receipts from seasonal or casual entertainment, amusements, fund raising, sports events and health and welfare activities when conducted by bona fide charitable, religious or educational organizations and associations.
- (g) The income of individuals under eighteen years of age or full time students as deemed by the internal revenue code.
- (h) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income already taxed by the State from which the Village is specifically prohibited from taxing and income of a decedent's estate during the period of administration (except such income from the operation of a business).
- (i) Expenses deductible in accordance with federal guidelines on Federal Form 2106, subject to audit and approval by the tax administrator.
- (j) Compensation paid under Ohio R.C. 3501.28 or 3501.36 to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars (\$1,000.00) annually.
- (k) Salaries, income, wages, commissions, other compensation, other income and net profits, the taxation of which is prohibited by the United States constitution or any act of congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from the interstate commerce.
- (l) Salaries, wages, commissions, other compensation, other income and net profits, including interest and dividends as provided in Ohio R.C. 718.01 the taxation of which is prohibited by the constitution of the state or any act of the Ohio General Assembly limiting the power of the Village to impose net income taxes.

(b) The portion of the net profits attributed to the Village of a taxpayer conducting a business, profession or other activity both within the boundaries of the Village shall be determined as provided in Ohio R.C. 718.02 in accordance with the rules and regulations adopted by Council.

(c) For no reason may a business or rental loss be offset against salaries, wages, commissions or other personal service compensation.

(d) Consolidated Returns.

(1) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by Council.

(2) In the case of a corporation that carried on transactions with its stockholders or with other corporations by stock ownership, interlocking directorates, or some other method, or in case any person operates a division, branch, factory, office, laboratory, or activity within the Village constituting a portion only of its total business the Income Tax Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the Village. If the Income Tax Administrator finds net profits are not properly allocated to the Village by reason of transactions with stockholders, or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the Village.

(e) Rentals

(1) Rental income received by taxpayers shall be included in the computation of net profits from business activities under this section, only if and to the extent that the rental, ownership, management, or operations of the real estate, from which such rentals are derived, whether so rented, managed or operated by a taxpayer individually or through agents or other representatives, constitutes a business activity of the taxpayer in whole or in part.

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

hundred dollars (\$200.00) per month; and provided further that the person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds two hundred dollars (\$200.00).

(f) Exception. The tax provided for herein shall not be levied upon the military pay or allowance of members of the armed forces of the United States, or any person under the age of eighteen years, or upon the net profits of any civic, charitable, religious, fraternal, or other organization, specified in Ohio R.C. 718.01 to the extent that such net profits are exempted from municipal taxes under such section.

The tax provided for herein shall be levied on sums contributed by a taxpayer, whether directly or indirectly, to an Individual Retirement Account (IRA) or self-employed pension plan (Keogh) even though such sums may be excluded from gross income pursuant to the provisions of the United States Internal Revenue Code and Ohio R.C. Chapter 5747.

#### SECTION 4. EFFECTIVE PERIOD

Such tax shall be levied, collected and paid with respect to the salaries, wages, commissions, and other compensations and with respect to net profits of businesses, professions or other activities earned on and after January 1, 2011.

#### SECTION 5. RETURN AND PAYMENT

(a) Each taxpayer, together with all residents of the Village of Malvern, OVER THE AGE OF 18 OR ANY RESIDENT OF THE VILLAGE OF MALVERN WHO HAS EARNED INCOME, except as herein provided, shall whether or not a tax be due thereon, make and file a return on or before April 15 of the year following the effective date of this ordinance, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within 105 days from the end of such fiscal year or period. The Income Tax Administrator is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by such employer or employers from the salaries, wages, commission or other compensation of an employee, and paid by him or them to the Income Tax Administrator shall be accepted as the return required of any employee whose sole income, subject to tax under this ordinance, is such salary, wages, commission, or other compensation. Any business, profession, association or corporation reporting a net loss is subject to the filing requirement of this ordinance.

(b) The return shall be filed with the Income Tax Administrator on a form or forms furnished by or obtainable upon request from such Income Tax Administrator setting forth:

- (1) The aggregate amounts of salaries, wages, commissions and other compensation earned and gross income from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to such 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 Income Tax Administrator may require.

(c) The Income Tax Administrator may extend the time for filing of the annual return upon the request of the taxpayer for a period of not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for filing of the Federal Income Tax Return. The Income Tax Administrator 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. There shall be a penalty of Twenty-five (\$25.00) Dollars imposed against taxpayers whose returns are postmarked after April 15<sup>th</sup> each year, or after the due date as extended by the Income Tax Administrator. This penalty shall apply even if there is no tax liability. Returns postmarked on or before April 15<sup>th</sup>, or by the date as extended by the Income Tax Administrator, but incomplete (e.g. unsigned, missing required attachments, etc.) will be considered late and subject to the \$25.00 penalty.

The Income Tax Administrator may deny a taxpayer's request for extension if the taxpayer:

- a. fails to timely file the request; or
- b. fails to file a copy of the federal extension request, (if applicable); or
- c. owes the Municipality any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of income tax; or
- d. has failed to file any required income tax return, report, or other related document for a prior tax period.

(d) (1) The taxpayer making a return shall, at the time of the filing hereof, pay to the Income Tax Administrator the amount of taxes shown as due thereon; provided, however, that whereby any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 6, or where any portion of such tax shall have been paid by the taxpayer pursuant to the provisions of Section 7, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 12, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing such return.

(2) A taxpayer who has overpaid the amount of tax to which the Village 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.

(e) Amended Returns

- (1) Where necessary an amended return shall 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 Sections 11 and 15. Such amended return shall be on a form obtainable on request from the Income Tax Administrator. A taxpayer may not change the method of accounting or appointment of net profits after the due date for filing the original return.
- (2) Within three months from the final determination of any Federal tax liability affecting the taxpayer's Village tax liability, such taxpayer shall make and file an amended Village return showing income subject to the Village tax based upon such final determination of Federal tax liability, and any additional tax shown due thereon or make claim for refund of any overpayment..

(f) 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 Tax Ordinance. Provided, however, that the taxpayer shall have ten (10) days after notification by the Tax Administrator, or his authorized representative, to file the items required by this paragraph.

## SECTION 6. COLLECTION AT SOURCE.

(a) **Withholding by Employer.** Each employer within or doing business within, the Village of Malvern, who employs one or more persons on a salary, wages, commission or other compensation basis shall deduct, when such salary, wage, commission or other compensation is paid, allocated, apportioned or set aside, the tax at the rate of one percent (1%) on the qualifying wages due by such employer to each such employee and shall, on or before the last day of each month, make a return and pay to the Tax Administrator the amount of taxes so deducted during the prior month. The return shall be on a form or forms prescribed by or acceptable to the Tax Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such taxes have in fact been withheld. Nothing in this section prohibits an employer from withholding tax on a basis greater than qualifying wages. The Tax Administrator may require withholding payment to be made by electronic funds transfer or by any other electronic payment remittance method.

(b) 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.

(c)(1) An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by a municipal corporation 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 Malvern the tax withheld and shown as withheld on the employee's W-2 year end statement 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.

(d) The Tax Administrator shall have the authority to approve the filing of quarterly withholding payments. Upon approval, the employer shall, on or before the last day of each month following the calendar quarters ending March 31, June 30, September 30 and December 31, make a return and pay the tax withheld during the preceding calendar quarter. The Tax Administrator may revoke the approval of quarterly filing and payments whenever the Tax Administrator has reason to believe that the conditions for granting such authorization have changed, were judged incorrectly, were not met, or when it is in the best interest of the Village of Malvern to do so. Notice of withdrawal shall be made in writing and, in such case; the employer must begin to file in accordance with this section.

(e) Employer Considered as Trustee. Each employer in collecting such tax shall be deemed to hold the same, until payment is made by such employer to the Village of Malvern, as a trustee for the benefit of the Village of Malvern, and any such tax collected by such employer from his employees shall, until the same is paid to the Village of Malvern, 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.

(f) Any person who is required to withhold tax from qualifying wages shall pay all such tax to the Village of Malvern in accordance with the provisions of this section. In the event taxes withheld from the qualifying wages of employees are not paid to the Village of Malvern in accordance with the provisions of this section, all officers, members, managers, employees, and trustees having control or supervision of or charged with the responsibility of filing the return and making payment are jointly and severally personally liable for the tax not returned or paid to the Village of Malvern as well as any related interest and penalties, and are also liable under the provisions of section 12 of this Ordinance. The dissolution, termination, or bankruptcy of a corporation, limited liability company, or business trust to file returns or pay said taxes.

(g) Withholding Return; List of Employees. Each employer shall file a withholding tax reconciliation showing the sum total of all compensation paid all employees, the portion of which, (if any) was not subject to withholding along with an explanation for same, and the portion of which was subject to withholding, together with the amount of such withholdings remitted. Such return shall include information concerning each employee from whom the Municipal tax was withheld, showing the name, address, zip code and social security number of each such employee, the total amount of compensation paid during the year and the amount of Municipal tax withheld. If the total tax withheld from any employee-included tax withheld and remitted to another municipality, the amount of same shall be separately shown on the return of information to the Village of Malvern concerning each employee. The withholding tax reconciliation shall be filed by each employer on or before February 28 following the end of such calendar year. The Tax Administrator may require the filing of such reconciliations and employee information by alternate media.

(h) In addition to the wage reporting requirements of this section, any person required by the Internal Revenue Service to report on Form 1099-Misc. payments to individuals not treated as employees for services performed shall also report such payments to the Village of Malvern

when the services were performed in the Village of Malvern. The information may be submitted on a listing, and shall include the name, address and social security number (or federal identification number), and the amount of the payments made. Federal form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before February 28 following the end of such calendar year.

(i) Domestic Servants. No person shall be required to withhold the tax on the qualifying wages, commissions, other compensation, and other taxable income paid domestic servants employed exclusively in or about such person's residence. However, such domestic servants shall be responsible for filing and paying their own returns and taxes.

## SECTION 7. DECLARATIONS.

### (a) Requirement for Filing.

Every person who anticipates any taxable income which is not subject to section 6 of this Ordinance, or who engages in any business, profession, enterprise or activity subject to the tax imposed by section 3 of this Ordinance, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any. Provided, however, if a person's income is wholly from qualifying wages from which the tax will be withheld and remitted to the Village of Malvern in accordance with section 6 of this Ordinance, such person need not file a declaration.

### (b) Dates for Filing.

1. Such declaration shall be filed on or before April 15 of each year during the life of this Ordinance, or on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the date the taxpayer becomes subject to tax for the first time.
2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the start of each fiscal year or period.

### (c) Forms; Credit for Tax Withheld or Paid Another Community.

1. Such declaration shall be filed upon a form furnished by or obtainable from the Tax Administrator or an acceptable generic form, and credit shall be taken for the Village of Malvern tax to be withheld from any portion of such income. In accordance with the provision of section 16 of this Ordinance, credit may be taken for tax to be withheld and remitted to another taxing municipality.
2. The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.
3. For taxpayers who are individuals, such declaration of estimated tax to be paid to the Village of Malvern shall be accompanied by a payment of at least twenty-two

and one-half percent (22.5%) of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the seventh, tenth, and thirteenth month after the beginning of the taxable year.

4. For taxpayers that are not individuals, such declaration of estimated tax to be paid to the Village of Malvern shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax and at least a similar amount shall be paid on or before the fifteenth (15<sup>th</sup>) day of the sixth, ninth, and twelfth month after the beginning of the taxable year.
5. The mere submission of a declaration estimating a tax liability shall not constitute filing unless accompanied by the required payment.

(d) Amended Declaration.

1. A declaration may be amended at any time.
2. In the event that an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(e) Annual Return Required.

On or before the fifteenth day of the fourth month of the calendar or fiscal year, an annual return shall be filed and any balance which may be due the Village of Malvern shall be paid therewith in accordance with the provisions of section 5 of this Ordinance.

## SECTION 8. DUTIES OF INCOME TAX ADMINISTRATOR.

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

(b) The Income Tax Administrator is hereby charged with the enforcement of the provisions of this ordinance, and is hereby empowered, subject to the approval of the Board of Review, to adopt and to promulgate and to enforce rules and regulations relating to any matter of thing pertaining to the collection of taxes and the administrations and enforcement of the provisions of this ordinance, including provisions s for the reexamination and correction of returns.

The Income Tax Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has provided to the Income Tax Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this ordinance.

Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalties and interest, to become payable upon demand and the provisions of Sections 11 and 12 shall apply.

(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 Income Tax Administrator may determine the amount of the tax appearing to be due the Village from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties therein, if any.

(d) Subject to the consent of a majority of the Board of Review or pursuant to regulations approved by such Board, the Income Tax Administrator shall have the power to compromise any interest or penalty or both, imposed by Section 10.

(e) It shall be the duty of the Income Tax Administrator to maintain flexible office hours at Village Hall, for the purpose of fulfilling the duties set forth in this ordinance: a minimum of fifteen (15) hours each week.

#### SECTION 9. INVESTIGATIVE POWERS; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

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

(b) The Income Tax Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and Federal 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 and presumed to be

subject to the tax or by any officer, agent or employee of a persons 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 Income Tax Administrator authorized hereby shall be deemed a violation of this ordinance, punishable as provided in Section 12.

(d) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this ordinance shall be confidential, except for official purposes, or except in accordance with proper judicial order. Any person divulging such information in violation of this ordinance, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500.00) or six months in jail or both. Each disclosure shall constitute a separate offense.

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

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

#### SECTION 10. INTEREST AND PENALTIES.

(a) All taxes imposed and all money withheld or required to be withheld by employers under the provisions of this ordinance and remaining unpaid after they become due shall bear interest at the rate of one and one-half percent (1 1/2 %) per month or fraction thereof.

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

- (1) For failure to pay taxes due other than taxes withheld; One and one-half percent (1 1/2%) per month or fraction thereof.
- (2) For failure to remit taxes withheld from employees; Ten percent (10%) late fee, or twenty-five dollars (\$25.00), whichever is greater.

(c) Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Income Tax Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Income Tax Administrator; and provided further, that in the absence of fraud, neither penalty nor interest shall be assessed or 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.

(d) Upon recommendation of the Income Tax Administrator, the Board of Review may abate penalty or interest or both, or upon appeal from the refusal of the Income Tax Administrator, to recommend abatement or penalty and interest, the Board may nevertheless abate penalty or interest, or both.

#### SECTION 11. COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENT

(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.

Except in the case of fraud, omission of a substantial portion of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed whichever is later, provided, however, in those cases in which a Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitation, the period within which an additional assessment may be made by the Administrator shall be one year from the time of the final determination of Federal tax liability.

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

(c) Amounts of less than two dollars (\$2.00) shall not be collected or refunded.

## SECTION 12. 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 Income Tax Administrator; or
- (5) Refuse to permit the Income Tax Administrator or any duly authorized agent or employee to examine his books, records, papers and Federal income tax returns relating to the income or net profits of a taxpayer; or
- (6) Fail to appear before the Income Tax Administrator and to produce the books, records, papers, or Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Income Tax Administrator; or
- (7) Refuse to disclose to the Income Tax Administrator any information with respect to the income or net profits of a taxpayer; or
- (8) Fail to comply with the provisions of this ordinance or any order or subpoena of the Income Tax Administrator authorized hereby; or
- (9) Give to an employer false information as to his true name, correct social security

number, and residence address, or fail to promptly notify an employer of any change in residence address, and date thereof; or

(10) Fail to use ordinary diligence in maintaining proper records of employee's residence address, total wages paid and Village tax withheld or knowingly give the Income Tax Administrator false information; or

(11) Attempt to do anything whatever to void 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 months, or both.

(b) All prosecution under this section shall be commenced within three years from the time of the offense complained of; 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 shall be commenced shall be three years from the date the return was due or the false or fraudulent return was filed.

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

#### SECTION 13. REQUIREMENT OF OWNERS OF RENTAL OR LEASED PROPERTY TO PROVIDE THE TAX ADMINISTRATOR WITH INFORMATION REGARDING TENANTS.

(a) On or before July 1<sup>st</sup> of each year, all property owners who rent to tenants of residential, commercial, or industrial premises, shall file with the Tax Administrator, a report showing the name(s) and address (and phone number, if available) of each such tenant who occupies residential, commercial, or industrial premises within the Village of Malvern. The list shall also include all names and addresses (and phone numbers, if available) of any tenant who has vacated the property in the preceding twelve (12) month period and must include the date vacated and any forwarding address. This information may also be requested at any time under audit by the Tax Administrator.

(b) Such report shall be in writing, and shall be delivered to the Tax Administrator by one of the following methods:

1. Regular U.S. Mail delivery to the Income Tax Administrator.
2. Electronic mail (E-Mail) directly to the Income Tax Administrator.
3. Facsimile transmission directly to the Income Tax Administrator.
4. Hand delivery directly to the Tax Administrator.

Forms and instructions for reporting shall be made available on the Village of Malvern's website.

- (c) For purposes of this section, “tenant” means:
1. If there is a written lease or return agreement, the person(s) who signed the written lease or rental agreement with the owner or their agent.
  2. If there is an oral lease or rental agreement, the person(s) who entered into the oral lease or rental agreement with the owner or their agent.
- (d) Failure to comply with this section will result in:
1. Notification (sent by regular U.S. Mail delivery) to landlord requiring compliance within 30 days.
  2. Second notification (sent by certificate of mailing) to landlord requiring compliance within 14 days.
  3. Subpoena (sent by certified mail) for the owner or agent to appear before the Tax Administrator with required documentation (with hearing schedule within 14 days of date mailed).
  4. Second Subpoena (sent by both certificate of mailing and certified mail) for the owner or agent to appear before the Tax Administrator required documentation (with hearing scheduled within 14 days of date mailed).
  5.
    - (a) Whoever violates or fails to comply with any provision of this Ordinance is guilty of a minor misdemeanor and shall be fined not more than \$100.00. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.
    - (b) Whoever violates or fails to comply with any provision of this Ordinance, and has a previous conviction under this Ordinance, is guilty of a misdemeanor of the third degree and shall be fined not more than \$500.00. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

#### SECTION 14. BOARD OF REVIEW

(a) A Board of Review, consisting of three electors of the Village (consisting of a chairperson and two members), to be appointed by the Mayor and confirmed by Council, is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 9 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.

(b) All rules and regulations and amendments or changes thereto, which are adapted by Council under the authority conferred by this ordinance shall be approved by the Board of Review before the same becomes effective. The Board shall hear and pass on appeals from any ruling or decision of the Income Tax Administrator, and, at the request of the taxpayer or Income Tax Administrator, is empowered to substitute alternate methods of allocation.

(c) Any person dissatisfied with any ruling or decision of the Income Tax Administrator which is made under the authority conferred by this ordinance may appeal therefrom to the Board of Review within thirty days from the announcement of such ruling or decision by the Income Tax Administrator, and the Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any such ruling or decision or any part thereof.

#### SECTION 15. ALLOCATION OF FUNDS.

The funds collected under the provision of this ordinance, or such part thereof, as may appropriated by Council, shall be paid into the General Fund and shall be applied as Council shall direct.

#### SECTION 16. CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

(a) Where a resident of the Village 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 high rate.

(b) Every individual taxpayer who resides in the Village who receives net profits, salaries, wages, commission or other personal service compensation for work done or services performed or rendered outside the Village, if it be made to appear that he has paid a municipal income tax on the same income taxable under this ordinance to any municipality, shall be allowed a credit against the tax imposed by this ordinance of the amount so paid by him or in his behalf to such other municipality. The credit shall not exceed the sum of one percent (1%) per employer per individual of the amount so paid by the taxpayer or in his behalf to such other municipality.

(c) A claim for refund or credit under this section shall be made in such manner as the Income Tax Administrator may provide.

#### SECTION 17. SAVING CLAUSE.

If any sentence, clause, section or part of this ordinance or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this ordinance. It is hereby declared to be the intention of Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section, or part thereof not been included herein.

#### SECTION 18. COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE.

(a) This ordinance shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions of proceeding for collecting any tax so levied or enforcing any provision of this ordinance are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this ordinance shall have been fully terminated, subject to the limitations contained in Sections 11 and 12.

(b) Annual returns due for all or any part of the last effective year of this ordinance shall be due on the date provided in Sections 5 and 6 as though the same were continuing.

**SECTION 19. REVOCATION OF INCONSISTENT ORDINANCES.**

That existing Ordinance 2002-24, existing Ordinance 6-2003, or any other Ordinance or part(s) thereof, inconsistent with this Ordinance are hereby revoked effective January 1, 2011.

**SECTION 20. EFFECTIVE DATE OF ORDINANCE**

This ordinance shall be in effect on and after January 1, 2011.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
ALAN ARTZNER  
President of Council

Approved:

\_\_\_\_\_  
STEVEN ADAMS, Mayor

\_\_\_\_\_  
NANCY YEAGER  
Village Fiscal Officer

Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section, or part thereof not been included herein.

SECTION 18. COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE.

(a) This ordinance shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions of proceeding for collecting any tax so levied or enforcing any provision of this ordinance are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this ordinance shall have been fully terminated, subject to the limitations contained in Sections 11 and 12.

(b) Annual returns due for all or any part of the last effective year of this ordinance shall be due on the date provided in Sections 5 and 6 as though the same were continuing.

SECTION 19. REVOCATION OF INCONSISTENT ORDINANCES.

That existing Ordinance 2002-24, existing Ordinance 6-2003, or any other Ordinance or part(s) thereof, inconsistent with this Ordinance are hereby revoked effective January 1, 2011.

SECTION 20. EFFECTIVE DATE OF ORDINANCE

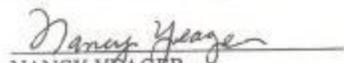
This ordinance shall be in effect on and after January 1, 2011.

PASSED this 1<sup>st</sup> day of November, 2010.

  
ALAN ARTZNER  
President of Council

Approved:

  
STEVEN ADAMS, Mayor

  
NANCY YEAGER  
Village Fiscal Officer