

ORDINANCE 2001- 779

ORDINANCE AMENDEING ORDINANCE 599 AND
DECLARING THE SAME AN EMERGENCY.

BE IT ORDAINED by the Council of the Village of Mt. Orab, Ohio, two-thirds of all members elected thereto concurring as follows:

SECTION I: DEFINITIONS.

- (1) "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Service Code.
- (2) "Generic Form" means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income.
- (3) "Intangible income" means income of any of the following types: income yield, interest, 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.
- (4) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
- (5) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.
- (6) "Other Payer" means any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent.
- (7) "Return Preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.
- (8) "Schedule C" means Internal Revenue Service Schedule C filed by a taxpayer pursuant to the Internal Revenue Code.
- (9) Gambling winnings means any game of chance, sweepstakes or similar sources where the proceeds are at least 300 times the amount of the bet or fee if any.
- (10) Recapture of depreciation includes the disposal of depreciated or amortized property for a gain – taxable as ordinary income.
- (11) Stock options include the sale or disposal of assets, stocks, bonds or other negotiable instruments which were obtained in part or in whole through various employer provided means to employees as a additional, alternative or other means of employee compensation or fringe benefit.
- (12) "Domicile" means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence

SECTION II: BUSINESS LOSSES NOT ALLOWABLE AGAINST W-2 INCOME. (Imposition of Tax, Bases of Imposition) (Sec. 3, A)

- (a) The net operating loss sustained by a business or profession is not deductible from employee earnings, but may be carried forward as provided in the rules and regulations.

SECTION III: RENTAL PROPERTY. (Imposition of Tax)(Sec. 3, A)

- (a) As a general rule, rental of real estate for purposes of the Village of Mt. Orab Income Tax Ordinance constitutes the operation of a business, and net profits earned are subject to taxation hereunder.

SECTION IV: STOCK OPTIONS. (Imposition of Tax) (Sec. 3, A)

The following are items which are subject to the tax imposed by Section 3 of the Ordinance.

- (a) Stock Options or other compensation received in the form of property are taxable when included on Form W-2 for Form 1099 for federal purposes.
- (b) Nonqualified pension plans. Contributions of (or premiums paid by) the employer in the case of nonqualified plans are taxable when made and reported on IRS form W-2 or Form 1099.

SECTION V: RECAPTURE OF DEPRECIATION. (Imposition of tax) (Sec. 3. A)

Capital gains and losses from sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned. However, any amounts of value realized on a sale, exchange or other disposition of tangible personal property or real property used in business in excess of book value shall be treated as taxable income under the Chapter to the extent of depreciation allowed or allowable.

SECTION VI: GAMBLING WINNINGS. (Imposition of Tax, Residents)(Sec. 3, A-1)

- (a) Amount received as gambling winnings and reported on IRS Form W-2G or Form 5754 and or any other form from the Internal Revenue Service that reports winnings from gambling. Gambling includes but is not limited to bingo, keno, slot machines, casino games, horse racing, dog racing, jai alai, sweepstakes, wagering pools, lotteries, prizes and any other wagering transactions.

SECTION VII: 12-DAY OCCASIONAL ENTRY RULE. (Imposition of Tax, Nonresident Employee, Nonresident Unincorporated Business) (H.B. 483 which superseded H.B. 477) (Sec. 3, A, 2-4)

- A. The Village of Mt. Orab shall not tax the compensation of an individual if all of the following apply
 - (1) the individual does not reside in the Village of Mt. Orab.
 - (2) the compensation is paid for personal services performed by the individual in the Village of Mt. Orab on twelve or fewer days during the calendar year.
 - (3) 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 Mt. Orab 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.
 - (4) the individual is not a professional entertainer or professional athlete, the promoter of a

professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the Village of Mt. Orab.

- B. This rule replaces the itinerant definition and rule as listed in original ordinance and accompanying rules and regulations

SECTION VIII: 3-YEAR LOSS CARRY FORWARD, IMPLEMENTED IN INCREMENTAL STAGES.
(Imposition of Tax, Operating Loss Carry-Forward) (Sec. 3, C)

1. The portion of a net operating loss, based on income taxable under the Ordinance, sustained in the taxable year beginning after December 31, 2000, allocable to the Village of Mt. Orab may be applied against the portion of succeeding years allocable to the Village of Mt. Orab until exhausted, but in no event for more than four (4) years immediately following the year in which the loss was sustained. No portion of a net operating loss shall be carried back against the net profits of any prior year.
2. The portion of a net operating loss, based on income taxable under the Ordinance, sustained in the taxable year beginning after December 31, 2001, allocable to the Village of Mt. Orab may be applied against the portion of succeeding years allocable to the Village of Mt. Orab until exhausted, but in no event for more than three (3) years immediately following the year in which the loss was sustained. No portion of a net operating loss shall be carried back against the net profits of any prior year.

SECTION IX: 2106 EXPENSE. (Return and payment tax) (Sec. 5, A)

- (a) The municipal corporation shall deduct from the taxpayer's taxable income the amount shown as a deduction on Federal Form 2106, as filed with the Internal Revenue Service. (H.B. #65, 2-11-82). Such amounts must be properly reported on Form 2106 and must be verifiable. An employee who is permitted to deduct business expenses from gross wages, salaries, or commissions must file a return in order to claim such deductions even though all or part of such wages, salaries, or commissions are subject to withholding.

SECTION X: DUE DATE OF RETURN. (Return and Payment of Tax, Date and Requirement For Filing) (Sec. 5, A)

1. On or before April 30th of each year, every person subject to the provisions of Section 3, of the Ordinance shall, except as hereinafter provided, make and file with the Tax Commissioner, a return on a form prescribed by and obtainable upon request from the Tax Commissioner, whether or not a tax is due.
2. If the return is made for a fiscal year or any period less than a year, said return shall be made within four (4) months from the end of each fiscal year or other period.

SECTION XI: GENERIC FORM. (Return and Payment of Tax, Date and Requirement for Filing) (Sec. 5, B)

The Village of Mt. Orab 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 Mt. Orab's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the Village of Mt. Orab governing the filing of returns, reports or documents.

SECTION XIII: ACCEPTANCE OF FEDERAL EXTENSIONS. (*Return and Payment of Tax, Extensions*)(Sec. 5, C)

- (a) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a Village of Mt. Orab tax return. The taxpayer shall make the request by filing a copy of the taxpayer's request for a federal filing extension with the Tax Commissioner.
- (b) Any taxpayer not required to file a federal income tax return may request an extension for filing a Village of Mt. Orab tax return in writing.
- (c) The request for extension shall be filed no later than the last day for filing the Village of Mt. Orab income tax as prescribed by ordinance.
- (d) A valid extension request extends the due date for filing a return six (6) months from the original due date of such return.
- (e) The Village of Mt. Orab may deny a taxpayer's request for extension if the taxpayer:
 - (1) fails to timely file the request;
 - (2) fails to file a copy of the federal extension request
 - (3) owes the Village of Mt. Orab any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or nonpayment of income tax;
 - (4) has failed to file any required income tax return, report or other related document for a prior tax period.
- (f) The granting of an extension for filing a Village of Mt. Orab income tax return does not extend the last date for payment of the tax; hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by Section 10 as amended by this ordinance. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the extension period provided all other filing and payment requirements of the Tax Code have been met. Any extension by the Tax Commissioner shall be granted with the understanding that declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that declaration filing and payment requirements have not been fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.

SECTION XIV: MINIMUM PAYMENT/REFUND \$5.00 (Payment with returns) (Sec. 5, D)

- (a) A taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this Ordinance may have such overpayment applied against any subsequent liability or at his election indicated on the return, such overpayment, or part thereof, shall be refunded provided that no refunds of less than five dollars (\$5.00) will be refunded.
- (b) A taxpayer who has underpaid the amount tax to which the Municipality is entitled under the provisions of this Ordinance must pay the amount of such underpayment when the return is due and filed but in no case will the underpayment be collected and due if the total amount due including tax liability, interest and penalty charges (if any) is less than five dollars (\$5.00).

SECTION XV: EMPLOYEE WITHHOLDING. (Collection of Tax at the Source) (Sec. 6, A)

In accordance with rules and regulations prescribed by the Tax Commissioner, each employer within or doing business within the Village of Mt. Orab shall deduct at the time of payment of such salary, wage, commission or other compensation, a tax at the rate provided in Section

hereof on the gross salaries, wages, commissions or other compensation due by the employer to the employee and shall, on or before the fifteenth (15th) day of the month following such withholding, make a return and pay to the Tax Commissioner the amount of taxes so deducted. The return shall be on a form or forms prescribed by or acceptable to the Tax Commissioner and shall be subject to the rules and regulations prescribed by the Tax Commissioner. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

- (a) so long as the taxes withheld by an employer for the Village of Mt. Orab during the measurement period are less than one hundred dollars (\$100) per quarter, payments may be made quarterly on or before the last day of the month following the end of the quarter, subject to the approval of the Tax Commissioner. The Tax Commissioner may revoke the approval of quarterly filing and payments whenever he 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 City 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.

SECTION XVI: \$150 DEMINIMUS RULE. (*Collection of Tax at the Source, Duty of Withholding*) (Sec. 6, A)

- A. A nonresident employer, agent of such an employer, or other payer that is not situated in the Village of Mt. Orab shall not be required to deduct and withhold taxes from the taxable income of an individual unless the total amount of tax required to be deducted and withheld for the Village of Mt. Orab on account of all of the employer's employees or all of the other payer's payees exceeds one hundred fifty dollars (\$150) for a calendar year.
- B. If the total amount of tax required to be deducted and withheld on account of all of the nonresident employer's employees or all of the other payer's payees exceeds one hundred fifty dollars (\$150) for a calendar year, the employer, agent of such an employer or other payer must deduct and withhold taxes in that calendar year and in each ensuing year even if the amount required to be deducted and withheld in each of those ensuing years is one hundred fifty dollars (\$150) or less, until such time that the tax so deducted and withheld is one hundred fifty dollars (\$150) or less for three (3) consecutive years
- C. This rule replaces the itinerant definition and rule as listed in original ordinance and accompanying rules and regulations

SECTION XVII: INTEREST AND PENALTIES. (Interest and Penalties) (Sec. 10, A)

- (a) All taxes imposed upon individuals and all monies withheld or required to be withheld under the provisions of this ordinance and remaining unpaid after they become due shall bear interest at the same rate which Section 718.06 of the Ohio Revised Code requires be paid, i.e. the federal short-term rate as defined in Section 5706.47 of the Revised Code, plus three percent (3%) per year.

SECTION XVIII: BOARD OF REVIEW. (Board of Review, Appeals) (Sec. 13, C)

- A. Whenever the Tax Commissioner issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the Village of Mt. Orab, the Tax Commissioner shall notify the taxpayer at the same time of the taxpayer's

right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

- B. Any person who is aggrieved by a decision by the Tax Commissioner and who has filed with the Village of Mt. Orab the required returns or other 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 Tax Commissioner. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Tax Commissioner has issued the decision.
- C. The imposition of penalty and interest as prescribed in the codified ordinance of the Village of Mt. Orab is not a sole basis for an appeal.
- D. The Board of Review shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing.
- E. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative.
- F. The Board may affirm, reverse, or modify the Tax Commissioner's decision or any part of that decision. The Board shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send notice of its decision by ordinary mail to the petitioner within fifteen (15) days after issuing the decision.
- G. Each Board of Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Section 149.43 of the Ohio Revised Code. Hearings requested by a taxpayer before a Board of Review created pursuant to this section are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code.

SECTION XIX: CREDIT FOR OTHER MUNICIPAL TAXES. (*Credit for Tax Paid to Another Municipality*) (Sec. 15, B)

- 1. The taxpayer making a return shall, at the time of filing hereof, 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 Chapter of the Ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Chapter of the Ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid is limited to the tax rate of the Village of Mt. Orab, in accordance with Chapter hereof, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.

SECTION XX: INFORMATION BY LANDLORDS.

- (a) Within thirty (30) days after a new tenant occupies rental property of any kind within the Municipality, all owners of rental property who rent to tenants of apartments, room and other rental accommodations shall file with the Tax Commissioner a report showing the name,


address and telephone number, if available, of each such tenant who occupies an apartment, room or other rental property with the Municipality.

- (b) Within thirty (30) days after a tenant vacates an apartment, room or other rental property located within the Municipality, the owner of such vacated rental property shall file with the Tax Commissioner a report showing the date of vacation from the rental property and a forwarding address.


SECTION XXI: DECLARING AN EMERGENCY

This Ordinance is an necessity for the income to the Village and it is therefore in the best interest of the residence of the Village of Mt. Orab, Ohio that this matter be declared an emergency and in the financial best interest of the Village, that this Ordinance shall take effect at the earliest time allowed by law

Passed this 15TH day of May, 2001.



Mayor



President of Council

ATTEST:



Clerk