

Village of Mariemont – Tax Department
INCOME TAX RULES & REGULATIONS

Adopted under the Authority of Section 9C of the Mariemont Income Tax Ordinance

ARTICLE I

PURPOSE

Section 1 of the ordinance outlines the uses to which funds raised are to be put and the items on which the tax is to be applied.

ARTICLE II

DEFINITIONS

As used in these Rules & Regulations, the following words shall have the meaning ascribed to them in this Article, except as and if the context clearly indicates or requires a different meaning.

"Adjusted federal taxable income" means a "C" corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute

"Adjusted Federal Taxable Income" as if the pass-through entity was a "C" corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

"Administrator" - The individual designated by the ordinance, appointed to administer and enforce the provisions of the ordinance.

"Association" means a partnership, limited partnership, limited liability company, or any other form of unincorporated enterprise, owned by one or more persons.

"Board of Review" means the Board created by and constituted as provided in Section 14.

"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.

"Corporation" means a corporation, Sub-S 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.

"Day" means a full day or any fractional part of a day.

"Domicile" means the place where a taxpayer has his true, fixed, and permanent legal residence. A taxpayer may have more than one residence but not more than one domicile. Factors to be considered

when determining domicile include, but are not limited to: registration of vehicles; current driver's license; address on Federal and State income tax returns; address of voter's registration; attendance at schools by taxpayer's family; county of taxpayer's estate if deceased.

"Employee" means one who works for income, wages, salary, commission or other type of compensation in the service and under the control of an employer.

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

"Fiduciary" means a guardian, trustee, executor, administrator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.

"Fiscal year" means an accounting period of twelve months ending on any day other than December 31.

"Generic Form" means an electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or separate requests for refunds that contain all the information required on Mariemont's regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms without altering the Village's procedures for processing forms.

"Gross receipts" means the total revenue derived from sales, work done, or service rendered.

"Income" means all monies, subject to limitations imposed by ORC 718, derived from any source whatsoever, including but not limited to:

(A) All income, qualifying wages, commissions, other compensation and other income from whatever source received by residents of the Village.

(B) All income, qualifying wages, commissions, other compensation and other income from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in the Village.

(C) The portion attributable to the Village of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in the Village.

"Net Profits" - (See "Adjusted Federal Taxable Income").

"Nonresident" means an individual domiciled outside the Village.

"Nonresident unincorporated business entity" means an unincorporated business entity not having any office or place of business within the Village.

"Pension" means income earned or received as a result of retirement from employment from an IRS qualified retirement plan and which is generally, although not exclusively, reported to the taxpayer by the payor on a Form 1099-R or similar form.

"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 a corporation, the officers thereof.

"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 employees or agents.

"Qualifying wage" means wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. "Qualifying wage" represents employees' income from which municipal tax shall be deducted by the employer, and any wages not considered a part of "qualifying wage" shall not be taxed by the Village. This definition is effective January 1, 2004.

"Resident" means an individual domiciled in the Village.

"Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Village.

"Taxable Year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net profits are to be computed under this ordinance and, in the case of a return for a fractional part of a year, the period for which such return is required to be made. Unless another accounting period is approved by the Administrator, the taxable year of an individual shall be a calendar year. Also, a month is considered to be a full month or any fractional part thereof.

"Taxpayer" means a person, whether an individual, partnership, association or any corporation or other entity, subject to the tax imposed by this ordinance or required hereunder to file a return or pay a tax. It does not include any person that is a disregarded entity or a qualifying subchapter S (if the subchapter S is a subsidiary entity). The term "taxpayer" does include any other person who owns the disregarded entity or subchapter S subsidiary.

"Village" means the Village of Mariemont, Hamilton County, Ohio.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

ARTICLE III IMPOSITION OF TAX

A. Bases.

1. Resident:

a. In the case of residents of the Village an annual tax of one and one-quarter percent (1 1/4%) is imposed on all income, qualifying wages, commissions, other compensation (including earnings deposited by the employee into qualified and non-qualified deferred compensation plans), earned or received during the effective period of the ordinance, whether such income is received or earned

directly or through an agent and whether paid in cash or in property. For the purpose of determining the tax on the earnings of resident taxpayers taxed under Section 3 of the ordinance, the source of the earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings wherever earned or paid are taxable, except that tax shall not be levied on expenses reported on Federal Form 2106, subject to audit and approval by the Village of Mariemont Income Tax Department.

b. The following items are subject to the tax imposed by Section 3:

(1) Income, including but not limited to qualifying wages, commissions and other compensation that is subject to Medicare withholding in accordance with Internal Revenue Code Sec. 3121(a), whether directly or through an agent, and whether in cash or in property for services rendered during the tax period as an officer, director or employee of a corporation (including charitable and other non-profit organizations), or association or any other entity or person; an officer or employee (whether elected, appointed, or commissioned) of the United States Government or any of its agencies or of the State of Ohio or any of its political sub-divisions or agencies thereof; or any foreign country or dependency except as provided in Section 3 of the ordinance.

(a) "Qualifying wages" means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

(1A) Deduct any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.

(2A) Add the following amounts:

(i) Any amount not included in wages solely because the employee was employed by the employer prior to April 1, 1986;

(ii) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. This sub-paragraph applies only to those amounts constituting ordinary income.

(iii) Any amount not included in wages if the amount is an amount described in section 401(k) or 457 of the Internal Revenue Code. This sub-paragraph applies only to employee contributions and employee deferrals.

(iv) Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.

(b) The definition for "qualifying wage" is effective for taxable years beginning after 2003.

(2) The 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, if an incentive stock option is exercised as a disqualifying disposition, the income is then considered

ordinary income (vs. capital gains) and therefore is subject to Medicare, and consequently subject to tax by the Village of Mariemont.

(3)(i) 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 or, if the income is subject to Medicare withholding, by the employer's exemption from the requirement to withhold the tax.

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

(4) Fees, unless such fees are properly includible as part of the net profits of a trade, business, profession, or enterprise regularly carried on by an unincorporated entity or association owned or partly owned by said individual and such net profits are subject to Article III A3 and/or A4 of the Rules & Regulations.

(5) Other compensation and other income, as reported on W-2's or 1099's, including but not limited to tips; bonuses; profit sharing; severance or termination pay; wage continuation payments made as a result of early retirement or employment termination; wage continuation payments made as a result of sickness or temporary disability and whether paid by the recipient's employer or by a third party; tips or gratuities received; employee contributions to tax sheltered annuities, non-qualified pension plans, or into employer or third party trusts or pension plans as permitted by IRS; ordinary income portion of stock options or employee stock purchase plans; strike pay; jury duty pay; employee contributions or amounts credited to non-qualified pension plans or deferred compensation plans at the time of deferral and to the extent subject to Medicare Tax; working conditions fringe benefits subject to tax by IRS; guardian, executor, conservator, trustee, or administrator fees; ordinary income portion of lump sum distributions which become subject to federal tax because the recipient did not roll over the distribution within the time required by IRS; lottery winnings, sports winnings, gambling winnings of any type, income from games of chance (from which no deductions are permitted, unless the taxpayer is considered a professional gambler by IRS rules and is accordingly required to file a Schedule C with the IRS; in such case the taxpayer may take appropriate deductions against income from gambling activities); gifts of any type in connection with services rendered; compensation paid to casual employees and other types of employees, and compensation received by domestic servants.

(6) Payments made to an employee by an employer as sick leave, vacation pay, holiday pay, or any other types of payments made under a wage or salary continuation plan, including "SUB" pay (such as pay received from unions by individuals in lieu of wages), during periods of absence from work are taxable when paid.

(7) Payments made to an employee by an employer as separation or severance pay-outs (including but not limited to separation pay, termination pay, and early retirement incentives) and reportable as earned income (including, but not limited to, sick pay and vacation pay) are taxable when paid if applicable tax has not previously been paid. On-going retirement benefits, such as pension payments, are exempt from Village of Mariemont income tax.

(8) Moving expenses, to the extent that they are reimbursed by employers, are not taxable if deducted on Federal return. (A copy of page 1 of the taxpayer's form 1040 and federal form 3903 must be submitted in support of this deduction.)

(9) When compensation is paid or received in property, its fair market value at the time of receipt shall be subject to the tax and to withholding. Board, lodging and similar items received by an employee in lieu of additional cash compensation shall be included in earnings at their fair market value, except in the case of domestics and other employees whose duties require them to live at their place of employment or assignment, board and lodging shall not be considered as wages or compensation earned.

(10) When a resident receives compensation for services for sales of real estate or insurance from an employer whose situs is the Village of Mariemont, that total compensation is taxable at Village of Mariemont's tax rate and is payable to the Village of Mariemont. The site of the property sold or residence of the purchaser of insurance has no bearing on the taxing of the compensation.

(11) For an individual who has income required to be reported on federal schedules C, E, and/or F, the income shall be considered to be "net profits".

(12) Loss from the operation of a business, including rental losses, may not be used to offset the income on a taxpayer's W-2 form, nor offset the income on the W-2 form of the taxpayer's spouse.

(13) A husband and wife may, for any tax year, elect to file separate or joint returns.

2. Non-Resident:

a. In the case of individuals who are not residents of the Village, there is imposed under Section 3 of the ordinance, a tax of one and one-quarter percent (1 1/4%) on all income, qualifying wages, commissions, other compensation (including earnings deposited by the employee into qualified and non-qualified deferred compensation plans) earned or received during the effective period of the ordinance for work done or services performed or rendered within the Village, whether such income is received or earned directly or through an agent and whether paid in cash or in property. The location of the place from which payment is made is immaterial. Tax shall not be levied on expenses reported on Federal Form 2106, subject to audit and approval by the Village of Mariemont Income Tax Department.

b. The items subject to tax for non-residents are the same as those listed and defined in Article III A1b(1) - (7) above, except that the Village tax shall not be imposed on non-resident income from lottery winnings, sports winnings, gambling winnings of any type, or income from games of chance. (For the methods of computing the extent of such work or services performed within the Village, in cases involving compensation for personal services partly within and partly without the Village, see Article VI A5 of these regulations.)

c. When a non-resident receives compensation for services for sales of real estate or insurance from an employer whose situs is the Village of Mariemont, that total compensation is taxable at Village of Mariemont's tax rate and is payable to the Village of Mariemont. The site of the property sold or residence of the purchaser of insurance has no bearing on the taxing of the compensation.

d. Occasional entrant.

(1) Effective January 1, 2001, the Village of Mariemont shall not tax the compensation paid to a non-resident individual for personal services or work performed by the individual in the Village on twelve (12) or fewer days in a calendar year (which hereby classifies the individual as an “occasional entrant”) unless one of the following applies:

(a) The individual is the employee of another person, the principal place of business in which the employee normally works is located in another municipal corporation in this state that imposes a tax applying to compensation paid to the individual for services performed on those days, and the individual is not liable to that other municipal corporation for tax on the compensation paid for such services.

(b) The individual is a professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the Village.

(2) For purposes of the 12-day calculation, any portion of a day worked in the Village of Mariemont shall be counted as one day worked in the Village of Mariemont.

(3) Beginning with the thirteenth day, the employer of said individual shall begin withholding Village of Mariemont income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the Village of Mariemont in accordance with Section 7 of the income tax ordinance. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in the Village of Mariemont by the individual for the first twelve (12) days. If the individual is self-employed or an independent contractor, it shall be the responsibility of the individual to remit the appropriate income tax to the Village of Mariemont.

(4) Any tax withheld for the Village of Mariemont under Article III A2d(1) is subject to being refunded only to the municipality in which the employer’s principal place of business is located, and only after the municipality has established that the individual has a liability to them.

3. Resident Unincorporated Businesses:

a. In the case of resident unincorporated businesses, associations, or other entities, there is imposed an annual tax of one and one-quarter percent (1 1/4%) on the individual members or owners of resident associations of the net profits earned, accrued or received during the effective period of the ordinance attributable to the Village under the formula or substitute accounting methods provided in Section 3 of the ordinance, derived from work done or services performed or rendered and business or other activities conducted in the Village.

b. The tax imposed on the individual members or owners of resident associations and/or unincorporated entities shall be collected by the resident associations and/or unincorporated entities, and remitted on behalf of the individual members or owners.

c. The tax imposed by Section 3 of the ordinance and remitted in accordance with Article III A3b is imposed on all individual members or owners of such resident unincorporated business entities or

associations, regardless of where the individual members or owners of such resident unincorporated business entities or associations reside.

d. If all the individual members or owners of a resident unincorporated entity or association owned by one or more persons are residents of the Village, the tax paid by the entity on their behalf shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits.

e. A resident individual who is sole owner of a resident unincorporated entity or association shall disregard the business allocation formula and pay the tax on the entire net profits of his resident unincorporated business entity or association.

f. In the case of a resident individual partner or part owner of a resident unincorporated entity or association, there is imposed an annual tax of one and one-quarter percent (1 1/4%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the ordinance not attributable to the Village, under the method of allocation provided for in Section 3 of the ordinance.

4. Non-resident Unincorporated Businesses or Associations:

a. In the case of resident unincorporated businesses, associations, or other entities, there is imposed an annual tax of one and one-quarter percent (1 1/4%) on the net profits earned, accrued or received attributable to the Village during the effective period of the ordinance, under the formula or substitute accounting method provided for in Section 3 of the ordinance.

b. The tax imposed on individual members or owners of non-resident unincorporated entities or associations owned by one or more persons shall be collected and remitted by the entities, for payment on behalf of the individual members or owners thereof

c. If all the individual members or owners of a non-resident unincorporated entity or association owned by one or more persons are residents of the Village, the tax paid by the entity on their behalf shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits.

d. A resident individual who is sole owner of a non-resident unincorporated business entity or association shall disregard the business allocation formula and pay the tax on the entire net profits of his unincorporated entity or association.

e. In the case of a resident individual partner or part owner of non-resident unincorporated entity or association, there is imposed an annual tax of one and one-quarter percent (1 1/4%) on such individual's distributive share of net profits earned, accrued or received during the effective period of the ordinance not attributable to the Village under the method of allocation provided for in Section 3 of the ordinance and not taxed against the entity.

5. Imposition of Tax on Net Profits of Corporations:

a. In the case of corporations (including Sub-S Corporations), whether domestic or foreign and whether or not such corporations have an office or place of business in the Village, there is imposed an annual tax of one and one-quarter percent (1 1/4%) on the net profits earned, received or accrued during the effective period of the ordinance attributable to the Village under the formula or substitute accounting method provided for in Section 3 of the ordinance.

b. Subject to the provisions of ORC 5745, the income of an electric company, combined company, and telephone company (each as defined in ORC 5727.01), shall pay tax on all income apportioned to the Village of Mariemont.

c. In determining whether a corporation is conducting a business or other activity in the Village, the provisions of Article III C of these regulations shall be applicable.

B. Clarification of taxation of net profits (i.e., adjusted federal taxable income):

The following information is provided to clarify the calculations for net profits subject to taxation.

1. Net Profits (“adjusted federal taxable income”) means, for tax years 2004 and later, a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

a. Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

b. Add an amount equal to five per cent of intangible income deducted under division B1a 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;

c. Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

d. (1) Except as provided in subparagraph B1d(2) 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;

(2) Subparagraph B1d(1) 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.

e. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

f. 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;

g. 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:

- (1) 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
- (2) Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

h. Rentals from real property received by the taxpayer are to be included only if and to the extent that the rental, ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by taxpayer individually or through agents or other representative) constitutes a business activity of the taxpayer in whole or in part.

(1) Where the gross monthly rental of any real properties, regardless of number and value, aggregates in excess of \$250.00 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 properties shall be subject to tax:

(a) 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 \$250.00 per month.

(b) 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 receipts derived from the farm, whether or not the gross income exceeds \$250.00 per month.

(c) Provided further that the person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds \$250.00 per month.

(2) In determining the amount of gross rental of any real property periods during which (by reason of vacancy or any other cause) rentals that are not received shall not be taken into consideration by the taxpayer.

(3) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.

(4) Real property, as the term is used in this Article, shall include commercial property, residential property, farm property, and any and all other types of real estate.

(5) In determining the taxable income from rentals, the deductible expenses therefrom shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for Federal income tax purposes.

(6) Residents of the Village are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned.

(7) Non-residents of the Village are subject to such taxation only if the real property is situated within the Village. Non-residents, in determining whether gross monthly rentals exceed \$250.00, shall take into consideration only real estate situated within the Village.

(8) To be considered non-taxable as ground rents, the property must be under a perpetual leasehold by the term of which the lessor performs no services of any type, including the payment of taxes on the property.

(9) Corporations owning or managing real estate are taxable only on that portion of income derived from property located in the Village.

(10) Within thirty (30) days after a new tenant occupies rental property of any kind within the Village of Mariemont the owner of such rental property shall file with the Administrator a report showing the name, address, and telephone number, if available, of each such tenant. Within thirty (30) days after a tenant vacates rental property located within the Village of Mariemont, the owner of such vacated rental property shall file with the Administrator a report showing the days of vacation from the rental property and identifying each such vacating tenant along with a forwarding address. In addition, on June 30th and December 31st of each year, the owner of rental property shall furnish to the Administrator an updated listing of all tenants as of those dates on a form to be furnished by the Administrator. Violation of this ordinance shall be an offense punishable by a fine of up to \$100.00.

i. Income in the form of royalties is taxable if the taxpayer's activities produced the publication or other product, the sale of which produces the royalties.

j. Income derived from the operation of oil and/or gas wells shall be taxable, and expenses incurred in connection therewith shall be considered in determining net profits.

k. Net operating losses may be carried forward for five (5) years. No portion of a net operating loss shall be carried back against net profits of a prior year. Losses shall not be allowed (in whole or in part) to be allocated to the Village of Mariemont as loss carry forward if the loss occurred during a time period in which gross receipts (in whole or in part) were not allocated and reported to the Village of Mariemont.

l. In determining income subject to taxation, losses from the operation of a business or profession cannot be used to reduce wages from employment or other employment compensation.

C. Allocation of Business Profits:

1. Business Allocation Method:

a. STEP 1: Calculate the percentage allocable to the Village of the average net book value of total real and tangible personal property (including lease-hold improvements), wherever situated, owned or used in the business during the period covered by the return.

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

(a) The net book value of real and tangible personal property rented by the taxpayer shall be determined by multiplying gross annual rents payable by eight (8).

(b) Gross rent means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or possession of property and includes:

(1A) Any amount payable for the use or possession of real and tangible personal property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;

(2A) Any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs or other amounts required to be paid by the terms of a lease or other arrangement.

b. STEP 2: Calculate the percentage allocable to the Village of the total gross receipts of the taxpayer derived from sales made, work done and services rendered, wherever derived, during the period covered by the return.

(1) The following sales shall be considered Village of Mariemont sales:

(a) All sales made through retail stores located within the Village to purchasers within or without the Village except such of said sales to purchasers outside the Village that are directly attributable to regular solicitations made outside the Village personally by the taxpayer or his employees.

(b) All sales of tangible personal property delivered to purchasers within the Village if shipped or delivered from an office, store, warehouse, factory or place of storage located within the Village.

(c) All sales of tangible personal property delivered to purchasers within the Village even though transported from a point outside the Village if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village and the sale is directly or indirectly the result of such solicitation.

(d) All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within the Village to purchasers outside the Village if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place of delivery.

(e) Charges for work done or services performed incident to a sale, whether or not included in the price of the property, shall be considered gross receipts from such sale.

(2) In the application of the foregoing sub-paragraphs, a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale; and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside the

Village by mail, phone, or other electronic means from an office or place of business within the Village shall be considered a solicitation of sales within the Village.

c. STEP 3: Calculate the percentage allocable to the Village of the total wages, salaries, commissions, other compensation and other income of employees, within and without the Village, during the period covered by the return.

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

(2) Wages, salaries, and other compensation shall be computed on the cash or accrual basis in accordance within the method of accounting used for income tax purposes.

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

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

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

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

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

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

3. Substitute Method:

a. In the event a just and equitable result cannot be obtained under the formula the Administrator, upon application of the taxpayer, may substitute other factors in the formula or prescribe other methods of allocating net income calculated to effect a fair and proper allocation.

b. Application to the Administrator to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing before the end of the taxable year. The application shall state the specific grounds on which the substitution of factors or use of different

method is requested and the relief sought to be obtained. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the Administrator.

4. A request to change methods of allocation must be made, in writing, to the Administrator before the close of the taxable year.

5. If the Administrator approves the use of books and records as a substitute method, the following shall apply:

a. The net profits allocable to the Village from business, professional or other activities conducted in the Village by corporations or unincorporated entities (whether resident or non-resident) may be determined from the records of the taxpayer only if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within the Village.

b. If the books and records of the taxpayer are used as the basis for apportioning net profits, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Administrator to determine whether the net profits attributable to the Village are apportioned with reasonable accuracy.

c. In determining the income allocable to the Village from the books and records of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the Village.

D. Consolidated Returns:

1. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership provided such group files consolidated returns for Federal income tax purposes pursuant to section 1501 of the Internal Revenue Code. For a subsidiary corporation to be included in a consolidated return 80% of its stock must be owned by the other members of the affiliated group. A consolidated return must include all companies that are so affiliated.

2. Once a consolidated return has been filed for any taxable year the consolidated group must continue to file consolidated returns in subsequent years unless:

a. Permission in writing is granted by the Administrator to file separate returns.

b. A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year.

c. A corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.

3. If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income from the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary

which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group, but separate returns must be filed for the period after it ceases to be a member.

If a subsidiary is a member of a consolidated group for only part of a taxable year, the income considered to be earned in such fractional part of the year shall be that portion of the net income for the entire year which the number of days it was a member of the group bears to the total number of days in the taxable year.

4. In determining the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property factor (Step 1 of the formula) shall be determined on the basis of the average original cost of the property during the period such corporation was a member of the group. The rental portion of the factor, however, shall be computed at 8 times the annual rent. The gross receipts and wage factors shall be based on the actual figures.

5. All subsidiary corporations must agree in writing to the filing of the consolidated return as they will be liable for the tax as well as the parent corporation.

E. Exceptions:

The tax provided for herein shall not be levied on:

1. Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard.

2. 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, and only to the extent that the said income is exempt from federal income tax.

3. Social Security benefits, unemployment insurance benefits except for supplemental unemployment benefits, IRS qualified retirement plan or similar payments, disability benefits received from local, state or Federal governments or charitable religious or educational organizations. The disability benefits excludable must be a permanent nature as determined by a physician or government entity.

4. Proceeds of insurance paid by reason of death of the insured, payments received from pensions, including industrial pensions, disability benefits paid for total and permanent disability, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.

5. Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from seasonal or casual entertainment, amusement, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational

organizations and associations and only to the extent that the said income is exempt from Federal Income Tax.

6. Alimony received. Alimony is not deductible by the payor.

7. Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exclusion does not apply to compensation paid for lost salaries or wages.

8. Interest, dividends and other revenue from intangible property as set forth in O.R.C. 718.01.

9. The income, qualifying wages, and other compensation of individuals under 18 years of age. The taxable portion of the year in which an individual turns 18 shall be determined by the birthdate of the individual.

10. Compensation paid under Section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually.

11. 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. The minister must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and must have authority to perform all sacraments of the church.

12. Income, qualifying wages, commissions and other compensation 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 interstate commerce.

13. Income, qualifying wages, commissions and other compensations and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of a municipality to impose net income taxes.

14. The amount of unreimbursed employee business expenses (2106 expenses) which the employee deducted, subject to review and approval of the Village of Mariemont Tax Office. Taxpayer must furnish a copy of the form 2106 and Schedule "A" of form 1040 as filed with IRS. This deduction must be allocated first to the municipality where the employment occurred.

15. For the "12-day occasional entrant" exception see Article III A2d, and for "moving expenses" see Article III A8.)

ARTICLE IV

EFFECTIVE PERIOD OF TAX

The tax imposed by Section 3 shall be levied, collected and paid during the effective period of the ordinance.

ARTICLE V

RETURN AND PAYMENT OF TAX

A. Date and Requirement and Filing.

1. a. Except as otherwise herein provided, each taxpayer or person 18 years of age or older, who engages in business as hereinbefore defined, or whose income, wages, salaries, commissions or other compensation are subject to the tax imposed by this ordinance, shall, whether or not a tax is due thereon, make and file a return on or before April 15th of each year with the Administrator. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or other period. Any person otherwise subject to the tax who is registered with the Village as being retired with no earned income, shall be exempt from filing an annual tax return at the discretion of the Administrator.

b. The Village of Mariemont accepts generic forms for Village of Mariemont's annual tax return. However, to be acceptable the generic form must contain all the information on Village of Mariemont's regular tax return forms, must comply with all the rules and ordinances of Village of Mariemont regarding income tax forms, and must be in a format that will allow processing of the generic forms without altering Village of Mariemont's procedures for processing forms. Determination as to whether a generic form meets the criteria shall be the responsibility of the Administrator.

c. The fact that a taxpayer is not required to file a Federal tax return does not relieve the taxpayer from filing a Village of Mariemont tax return.

d. The failure of any taxpayer to receive or procure a return, declaration, withholding form, or other required form shall not excuse the taxpayer from filing such forms or from paying the tax 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 the fiscal year or other period.

3. Any taxpayer who received taxable income not subject to withholding under the ordinance must file a return.

4. Any taxpayer having income, wages, other compensation or other income for which a return must be filed, and also having net profits from a business covering the same or a different period, is required to file only one return if self-employed.

5. Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof.

6. Retired residents having no taxable income for Village of Mariemont income tax purposes shall, at the discretion of the Administrator, be exempt from these filing requirements. The request for registering for the retiree exemption shall be made in writing to the Administrator. If granted, such exemption shall be in effect until such time as the retiree receives income taxable to the Village of Mariemont, at which time the retiree shall be required to comply with all applicable provisions of this ordinance. A form to maintain and update registration shall be mailed to retirees periodically.

7. A husband and wife may file a joint or separate returns.

8. The annual tax return is considered received: (1) if mailed, on the date postmarked by the United States Postal Service or (2) on the date delivered without mailing to the Village Tax Office.

9. The officer or employee of such employer having control or supervision or charged with the responsibility of filing the return and making the payment, shall be personally liable for failure to file the return or pay the tax, penalties, or interest due as required herein. The dissolution, bankruptcy or reorganization of any such employer does not discharge an officer's or employee's liability for a prior failure of such business to file a return or pay taxes, penalties, or interest due.

10. Payments received for taxes due shall be allocated first to penalties due, then to interest due, and then to taxes due.

B. Information Required and Reconciliation with Federal Returns:

1.a. Every person subject to the provisions of Section 3 of the ordinance shall, except as hereinafter provided, file a return setting forth:

(1) The aggregate amount of income, qualifying wages, commissions, and other personal service compensation, net profits from business or other activities, including the rental from real and personal property, and other income taxable under the ordinance, received for the period covered by the return.

(2) The amount of tax imposed by this ordinance thereon.

(3) Any credits to which the taxpayer may be entitled under Sections 7, 8, and 16 of the ordinance.

(4) Such other pertinent statements, information returns or other information as the Administrator may require, including but not limited to copies of all W-2 forms, 1099 Miscellaneous Income Forms, page one of form 1040 (income on Form 1040 not subject to Village of Mariemont income tax may be deleted), Page One and Two of Form 1120, 1120S (including (K-1), 2106, 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, schedule F and any other Federal Schedules if applicable.

b. Where figures of total income, total deductions, and net profits are included, as shown by a Federal return, any items of income which are not subject to the Village of Mariemont tax and allowable expenses shall be eliminated in determining net income subject to the Village of Mariemont tax.

c. A loss from the operation of a business or profession may be offset against net profits from other business or professional activities in the amount of the loss commensurate with the portion of profits, if profits existed, with respect to which credit could not be claimed for tax paid to another municipality. Accordingly, if the profits of an activity are subject to tax by another municipality, the portion of a loss that may not be used to offset profits is determined by multiplying the loss by a fraction, the numerator being either the tax rate of the other taxing municipality or the percentage rate to which credit for tax paid to another municipality is limited, whichever is the lesser, and the denominator being the existing Mariemont tax rate. Any unused loss, or portion thereof, allowable for offset as determined in this manner, may be carried forward as set forth in Article III B1k of these Rules & Regulations.

d. Losses from the operation of a farm, determined in accordance with accounting methods used by taxpayer for federal income tax purposes, shall be allowable as an offset to net profit as set forth herein.

2. In returns filed hereunder there shall be set forth the amount of tax imposed by the ordinance on all taxable income. Any credits due may then be deducted and the balance of tax, or overpayments if any, set forth.

3. Information returns, schedules and statements and/or other documents required to support tax returns shall be attached. The Administrator may require additional information at any time he deems necessary to verify the accuracy of any return.

C. Acceptance of Federal Extensions.

1. 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 Mariemont income tax return. The taxpayer shall make the request by filing a copy of the taxpayer's request for Federal filing extension with the Administrator.

2. Any taxpayer not required to file a Federal income tax return may request an extension for filing a Village of Mariemont tax return in writing.

3. The request for an extension shall be filed not later than the last day for filing the Village of Mariemont tax return as prescribed by ordinance or rule of this municipal corporation.

4. A valid extension request extends the due date for filing a return six (6) months from the original due date of such return. However, for taxable year 2004 the extended due date 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. For taxable years subsequent to 2004 the extended due date shall be the last day of the month to which the due date of the federal income tax return has been extended.

5. The Administrator may deny a taxpayer's request for extension if the taxpayer:

a. Fails to timely file the request;

b. Fails to file a copy of the Federal extension (if applicable);

c. Owes the Village of Mariemont any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or nonpayment of income tax;

d. Has failed to file any required income tax return, report or other related document for a prior tax period.

6. The granting of an extension for filing a Village of Mariemont income tax return does not extend the last date for payment of the tax; therefore, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by Section 6H. 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 Administrator 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.

D. Payment With Return.

1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator 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 7 of the ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 8 of the ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 16 hereof, shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing said return.
2. A taxpayer who has overpaid the amount of tax to which the Village is entitled under the provisions of the 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 additional taxes or refunds of less than five dollars (\$5.00) shall be collected or refunded.

E. Amended Returns.

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

F. Information returns, schedules and statements and/or other documents 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 and/or other documents shall be deemed to be a violation of the ordinance. Provided, however, that the taxpayer shall have ten days after notification by the Administrator, or his authorized representative, to file the items required by this subsection.

G. Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this ordinance.

ARTICLE VI

COLLECTION AT SOURCE

A. Duty of Withholding.

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within the Village to deduct, each time any compensation is paid, the Mariemont income tax of one and one-quarter percent (1 1/4%) from the gross amount of all income, qualifying wages, bonuses, incentive payments, fees, commissions or other forms of compensation paid to employees for service rendered, work performed or other activities engaged in within the Village.
2. Employers who do not maintain a permanent office or place of business in the Village but who are subject to tax on net profits attributable to the Village under the method of allocation provided for in the ordinance, are considered to be employers within the Village and subject to the requirements of withholding.
3. The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation paid. If the employer has withheld the tax and failed to pay the tax withheld to the Administrator, the employee is not liable for the tax so withheld.
4. Commissions and fees paid to independent contractors are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file a declaration and return and pay the tax pursuant to the provisions of the ordinance and Articles V and VII of these Rules & Regulations.
5. Where a non-resident receives compensation for personal services rendered or performed partly within the Village, the employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within the Village in accordance with the following rules of apportionment:
 - a. If the non-resident is a salesman, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by him, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee within the Village bears to the total volume of business transacted by him, except as clarified in Article III.
 - b. The deducting and withholding of personal service compensation of other non-resident employees, including officers of corporations, shall attach to the proportion of the personal service compensation of such employee which the total number of his working hours within the Village is of the total number of working hours.
 - c. The fact that non-resident employees are subject to call at any time does not permit the allocation of pay for time worked within the Village on a seven-day per week basis. The percentage of time worked in the Village will be computed on the basis of a forty-hour week unless the employer notifies the Commissioner that a greater or lesser number of hours per week is worked.
 - d. Wage continuation plans paid by the employer for purpose of health, rest, recuperation or other reward are deemed to have the same tax situs as the primary job assignment or job location of the employee and are taxable on the same ratio as the normal earnings of such employee for his primary job assignment.

6. An employer shall withhold the tax on the full amount of any advances made to any employee on account of commissions.

7. An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his services, provided such expenses are incurred in earning compensation, including commissions, and are not deducted as a business expense by the employee under Article III of these regulations.

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

1. The deductions from income, qualifying wages, other compensation and other income required to be made by employers are to begin with the compensation earned on and after the effective date of the ordinance. The employer (in addition to any return required to be filed with respect to his own earnings or net profits) shall make a return and pay to the Administrator the tax withheld during the preceding month. Said payment shall be remitted in a manner such that it is received by the Village of Mariemont on or before the fifteenth day of the month following the month for which the taxes were withheld.

a. Any employer who normally withholds less than \$200 per month for the Village of Mariemont (based on the average monthly withholdings for the previous tax year), and who wishes to file and remit on a quarterly basis, may request the authority for quarterly filing from the Administrator. Such request must be in writing, stating the name and Village of Mariemont Withholding Account Number of the employer, the address to which tax documents should be mailed, the estimated amount of tax to be withheld each quarter, and the name and title of the person responsible for complying with the withholding requirements of the ordinance.

b. In considering such a request, the Administrator will base his decision on the facts so that the best interests of the Village of Mariemont are served. He shall refuse such authority if he has reason to believe that the employer is a below average credit risk, engaging in seasonal or transitory business in fact or as to location, or for any other reason known to him which might place a burden upon the Village or where such request is contrary to the policy of the Village. The Administrator will notify the employer, in writing, of the decision made upon his request.

c. If the request is granted the notice will specify the effective date of the authorization. In such case the employer shall, on or before the thirtieth day of each month following the calendar quarters ending March 31, June 30, September 30, and December 31, make a return and pay to the Administrator the tax withheld during the preceding calendar quarter. Once this approval is granted, the employer may continue on such basis unless notified in writing by the Administrator that approval to file quarterly is withdrawn.

d. The Administrator may withdraw the authorization from 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 to the best interest of the Village to do so. Notice of the withdrawal shall be made in writing and may be served in person or mailed to the address where the returns are mailed. In such case, the employer must begin to file monthly.

e. Payments received for withholding taxes due shall be applied first to penalties due, then to interest due, and then to taxes due.

2. If more than the amount of tax required to be deducted by the ordinance is withheld from any employee's pay, such excess may be refunded by the employer or the Administrator. In those cases in which excess has been withheld by the employer from an employee and remitted to the Administrator and there has been a termination of the employee-employer relationship, the taxpayer (employee) may obtain a refund by application to the Administrator, except that refunds will not be made unless claimed within three (3) years after the year for which the tax was withheld as provided in Section 12 of the ordinance and Article XI of these regulations. If less than the amount of tax required to be deducted is deducted and withheld by the employer in any pay period or pay periods, the deficiency shall be deducted in subsequent pay periods.

3. Every employer is deemed to be a trustee for the Village in collecting and withholding the tax required under the ordinance to be withheld and the funds so collected by such withholding are deemed to be trust funds.

4. Every such employer required to deduct and withhold the tax at the source is liable directly to the Village for payment of such tax whether or not the tax was actually collected from such employee.

5. On or before the 28th day of February, following any calendar year in which such deductions have been made by any employer, such employer shall file with the Administrator in the form prescribed by the Administrator, an information return for each employee from whom Village of Mariemont municipal income tax has been withheld, clearly showing the name, address and social security number of the employee, the total Medicare wage and Village of Mariemont wage paid during the year and the amount of Village of Mariemont income tax withheld from such employee. The information provided must include all employees subject to the tax and must be accompanied by a completed Village reconciliation form, indicating the number of employees and total wages and withheld amounts. The gross compensation to be reported for each employee shall be for the full twelve (12) calendar months of the year or such portion thereof as the employee reported on was employed.

6. In addition to the Withholding Statements, and at the time they are filed, each employer shall file with the Administrator a reconciliation of income tax withheld, comparing the returns of income tax withheld to the total amount of taxes withheld as disclosed by the Withholding Statements.

7. It is the responsibility of any entity or individual to provide copies to the Village of Federal Form 1099, or such other form used to report commissions, fees, and other compensation paid to non-employees.

8. All employers that provide any contractual service within the Village, and who employ subcontractors in conjunction with that service, shall provide the Village the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withholding requirements under this ordinance.

C. In deducting and withholding the tax at the source and in payment of any tax due under the ordinance, a fractional part of a cent shall be disregarded unless it amounts to one-half (1/2) cent or

more in which case it shall be increased to one (1) cent. No person shall be entitled to a refund merely because such rounding off of the tax results in an apparent overpayment based on his total earnings.

D. Effective January 1, 2005, every employer required to withhold the tax on compensation paid shall make payments of withheld tax electronically using one of the electronic funds transfer (EFT) methods prescribed by the Village of Mariemont, unless exemption from this requirement is given by the Administrator.

ARTICLE VII

DECLARATIONS

A. Requirements of Filing:

1. A declaration of estimated tax shall be filed by every taxpayer who may reasonably be expected to have taxable income, the tax on which is not or will not be withheld in full by an employer or employers. If, after all applicable credits have been applied, the estimate of tax that will not be withheld equals one hundred dollars (\$100.00) or more, then quarterly payments shall be made in accordance with the requirements of Article VII C. Where required such declaration shall be filed within four (4) months after the beginning of the taxable year.

2. A taxpayer's final return for the preceding year may be used as the basis for computing his declaration of estimated tax for the current year. No penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the Village on the first day of January of the year in which they first became subject to estimated payments, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period, or for estimated payments that equal at least 90% of the final liability for the current tax year completed for which estimated payments have been made.

B. Form For Filing:

1. Such declaration shall be filed upon a form or forms furnished by, or obtainable upon request from, the Administrator, or on other forms deemed acceptable by the Administrator. However, to be acceptable the other form, or generic form, must contain all the information on Village of Mariemont's regular estimated payment form, must comply with all the rules and ordinances of Village of Mariemont regarding income tax forms, and must be in a format that will allow processing of the generic forms without altering Village of Mariemont's procedures for processing forms. Determination as to whether a generic form meets the criteria shall be the responsibility of the Administrator.

2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration at any time. Such amendment may be made on the regular declaration form or a form furnished by and obtainable from the Administrator. An amendment may be filed on or before each quarterly filing date, and must be filed on or before January 31. Interest and penalty amounts may be assessed against estimated payments that result in being less than 100% of the

prior tax year, or 90% of income taxable to the Village of Mariemont for the current tax year completed for which estimated payments were made.

C. Dates of Filing and Payment:

1. A declaration shall be filed on or before April 15 of each year during the life of the ordinance, except as specifically exempted in Article VII A.
2. Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration within four (4) months after the start of each fiscal year or period.
3. In the case of individuals, the estimated tax shall be paid in full with the declaration or in four equal installments on or before the last day of the fourth, seventh, tenth and thirteenth month after the beginning of the taxable year, and in the case of associations, businesses, and corporations the estimated tax shall be paid in full with the declaration or in four equal installments on or before April 15, June 15, September 15, and December 15 of the taxable year. In the case of a fiscal year taxpayer the second, third, and fourth quarterly payments shall be due on the fifteenth day of the sixth, ninth, and twelfth months of the taxable year, respectively.
4. The declaration must be accompanied by at least one installment of the estimated tax shown due thereon.
5. In the event an amended declaration has been filed the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

D. Final Returns Required:

1. The filing of a declaration does not relieve the taxpayer of the necessity of filing a final return even though there is no change in the declared tax liability. A final return must be filed to obtain refund of any overpayment of five dollars (\$5.00) or more.

ARTICLE VIII

DUTIES AND POWERS OF THE ADMINISTRATOR

A. Collection of Tax and Retention of Records:

1. It shall be the duty of the Administrator to receive the tax imposed by the ordinance in the manner prescribed therein from the taxpayers; to keep an accurate record thereof and to report daily all monies so received.
2. It shall be the duty of the Administrator to enforce payment of all taxes owing the Village of Mariemont, to keep accurate records for a minimum of six (6) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

B. Enforcement Provisions:

1. The Administrator is charged with the administration and enforcement of the provisions of the ordinance and is, subject to the approval of the Council by motion, empowered to adopt, promulgate, and enforce Rules & Regulations relating to any matter or thing pertaining to the administration and enforcement of the ordinance. The Administrator has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the ordinance.
2. The Administrator shall have the authority, when requested by the taxpayer and for good cause shown, to extend the time of making and filing any return whenever he deems it necessary so to do, but not to exceed a period of six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax return.
3. The Administrator is authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he is unable to pay the full amount of the tax due, and has submitted a written application for installment payments to the Administrator.
4. Failure to make any installment payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 11 and 12 of the ordinance shall apply.
5. Payments received shall first be applied to delinquent penalties and interest, and then to taxes.

C. Assessment of Tax by Administrator:

In any case where a taxpayer or employer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may assess the amount of tax appearing to be due, together with interest and penalties thereon, if any, in the following manner:

1.a. If the Administrator determines that any taxpayer subject to the provisions of the ordinance has a tax liability for which he has filed no return, or has filed an incorrect return and/or has failed to pay the full amount of tax due, the Administrator shall issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.

(1) Such a proposed assessment shall be served upon the taxpayer in person or by mailing to his last known address. Proof of mailing furnished by the U. S. Post Office shall be presumptive proof of receipt thereof by the addressee.

(2) A taxpayer may, within fifteen days after the date the proposed assessment was served or mailed, file a written protest with the Administrator. Within thirty days after receipt of the protest the Administrator shall give the protestant an opportunity to be heard; provided further that the Administrator may extend the date of hearing for good cause shown. After the hearing the Administrator shall withdraw the assessment or he shall adjust or reaffirm the assessment and it shall then become final. If no protest is filed as herein provided, such proposed assessment shall become final thirty days after being served.

b. After a proposed assessment becomes final, notice of such final assessment shall be issued and shall be served in the same manner as a proposed assessment. The taxpayer may then appeal to the Board of Review as provided for in Section 13 of the ordinance.

c. When any taxpayer subject to the provisions of the ordinance has filed a return indicating the amount of tax due and has failed to pay said tax to the Village as required by the ordinance, the Administrator need not issue an assessment but may proceed under the provisions of Sections 11 and 12 of the ordinance.

d. Any taxpayer or employer who does not file a notice of appeal to the Board of Review from a final assessment issued against him shall pay the amount thereof within thirty days after service of such final assessment.

2. Provisions Affecting Employers:

a. If the Administrator determines that an employer subject to the provisions of the ordinance has failed to file a return for tax withheld and has failed to pay to the Village the full amount of said taxes, the Administrator shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon.

b. If the Administrator determines that an employer subject to the provisions of the ordinance has failed to withhold tax the Administrator shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon.

c. When an employer subject to the provisions of the ordinance has filed a return indicating the amount of tax withheld and has failed to pay said tax to the Village as required by the ordinance, the Administrator may proceed under the provisions of Sections 11 and 12 of the ordinance and need not issue an assessment.

ARTICLE IX

INVESTIGATIVE POWERS OF THE ADMINISTRATOR;

PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION

A. Investigation by Administrator:

1. The Administrator, or his duly authorized agent, is empowered to examine the books, papers, records and copies of Federal and State income tax returns of any employer, taxpayer or person subject to the ordinance, for the purpose of verifying the accuracy of any return made to the Village; or if no return was made, to ascertain the tax due under the ordinance.

2. An employer or taxpayer shall furnish within ten (10) days following a written request by the Administrator, or his duly authorized agent, the means, facilities and opportunity for making examinations and investigations authorized by the ordinance.

B. Subpoena of Records and Persons:

1. The Administrator, or any person acting in his capacity, is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income. The Administrator may compel the production of books, papers, records and copies of Federal and State income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of the facts concerning any supposed income or supposed transactions of the taxpayer pertinent to such inquiry.

2. The Administrator may order the appearance before him, or his duly authorized agent, of any party whom he believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayer under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Administrator is specifically authorized to order the appearance of the local manager or representative of any taxpayer. Persons required to attend any hearings shall be notified no less than ten (10) days prior to the time of the hearing and what books, papers, or records the witness is to make available at such hearing.

C. Penalty for Non-Compliance.

The refusal, by any employer or person subject or presumed to be subject to the tax or by any officer or agent or employee of a person subject to the tax or required to withhold tax, to produce books, papers, records and copies of Federal income tax returns, and/or to submit to examination by the Administrator or his duly authorized agent, shall be deemed a violation of the ordinance, punishable as provided in Section 13. Further, the failure of any person to comply with the provisions of the section or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of the ordinance, punishable as provided in Section 13.

D. Confidential Nature of Examinations.

Any information gained as a result of any returns, investigations, verifications or hearings before the Administrator required by the ordinance or authorized by these Rules & Regulations shall be confidential and no disclosure thereof shall be made except for official tax purposes or as ordered by a court of competent jurisdiction or upon receipt of a waiver signed by the individual who has submitted the return. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of five hundred dollars (\$500.00) or imprisonment for not more than six months, or both. In addition to the above penalty, any employee of the Village of Mariemont who violates the provisions of Section 10 of the ordinance relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

E. Retention of Records.

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

ARTICLE X

INTEREST AND PENALTIES

A. Interest:

All taxes imposed, including estimated payments, and all monies withheld or required to be withheld by employers under the provisions of the ordinance and remaining unpaid after they become due shall bear interest at the rate of one-percent (1%) per month.

B. Penalties:

In addition to interest as provided in paragraph A hereof, penalties based on the tax remaining after they become due are hereby as follows:

1. For failure to pay taxes due, other than taxes withheld: one-percent (1%) per month.
2. For failure to remit taxes withheld from employees: three percent (3%) per month.
3. For failure to file a tax return by the due date, including extended due dates, a penalty of twenty-five dollars (\$25) shall be assessed. This is in addition to all other penalties and interest, even if no tax is due.
4. Except in the case of fraud, the penalty shall not exceed fifty percent (50%) of the unpaid tax.
5. A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator. Further, in the absence of fraud, neither penalty or interest shall be assessed on any additional tax assessment resulting from a federal audit, provided an amended return is filed and the additional tax is paid within three months after final determination of the federal tax liability.
6. Any person required to withhold the tax who knowingly fails to withhold such tax, or pay over such tax or knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not withheld, or not paid over. No other penalty under this section shall be applied to any offense to which this penalty is applied.
7. Upon recommendation of the Administrator, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Administrator to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest, or both.

ARTICLE XI

COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS

A. Unpaid Taxes, Penalties, and Interest:

1. All taxes imposed by the ordinance and not paid when due become, together with interest and penalties thereon, a debt due the Village from the taxpayer and are recoverable as are other debts suit. Employers who are required under Section 7 of the ordinance to withhold and remit the taxes, and who fail to withhold and/or remit such taxes, become liable to the Village of Mariemont in a suit to enforce the payment of the debt created by such failure.

2. No additional assessment shall be made by the Administrator after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be a six (6) year period of limitation on such additional assessments in the case of a return that omits a substantial portion of income, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report 25% or more of gross income shall be considered a substantial omission.

3. In those cases in which the Administrator of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an assessment may be made by the Administrator is extended to one (1) year from the time of final determination of the Federal tax liability.

4. Those officers or employees having control or supervision of, or charged with, the responsibility of filing the return and making payments for a corporation or association shall be personally liable for failure to file the return or pay the taxes due as required. The dissolution, bankruptcy, or reorganization of any employer does not discharge the officers' or employees' liability for a prior failure of such business to file a return or pay the taxes due.

B. Refunds and Overpayments:

1. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made, or the return was due, or three (3) months after the determination of the Federal income tax liability, whichever is later. However, in the case of refunds due against tax paid on income from non-qualified deferred compensation plans, see ORC 718.021 for the applicable provisions.

2. No refund shall be made to any taxpayer until he has complied with all provisions of the ordinance and has furnished all information required by the Administrator.

3. Items included on Federal Form 2106 are eligible as deductions, subject to review and approval by the Administrator.

4. Overpayments will be either refunded, or credited to the taxpayer's current year's liability, at his option. Where no election has been made, overpayments of any year's taxes shall be applied as follows:

a. To unpaid penalty and interest assessments.

b. To the taxes owed for any previous year in the order in which such taxes became due.

c. To his current estimated tax liability.

5. Refunds for days worked out of Village of Mariemont are available only to non-residents, and refunds shall be computed by dividing total wages by total days worked in order to determine an average daily wage. The work year shall be considered two hundred sixty (260) days. Saturdays and Sundays shall not normally be considered work days. Wage continuation plans of any type (including, but not limited to, vacation days, holidays, personal days, and sick days) are deemed to be days spent in the Village of Mariemont for purposes of the refund calculation. Additions, deletions, or other changes to the method for calculating refunds shall be at the discretion of the Administrator.

6a. Income tax that has been deposited with the Village of Mariemont, but should have been deposited with another municipality, is allowable by the Village of Mariemont as a refund but is subject to the three-year limitation on refunds. The refund will be paid to the municipality to which the income tax should have been deposited.

b. Income tax due the Village of Mariemont but which was paid to another municipality shall be subject to recovery by the Village of Mariemont, but a non-refundable credit will be allowed for any amount that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than the Village of Mariemont's. If the Village of Mariemont's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the Village of Mariemont.

7. Amounts of less than five dollars (\$5.00) shall not be refunded or assessed.

ARTICLE XII

VIOLATIONS--PENALTIES

A. No person shall:

1. Fail, neglect or refuse to make any return, information return, or declaration required by this ordinance; or
2. Make any incomplete, false or fraudulent return, or knowingly make any incomplete 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 Administrator; or
5. Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and Federal and State income tax returns relating to the income or net profits of a taxpayer; or
6. Fail to appear before the Administrator and to produce his or his employers' books, records, papers or Federal or State income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator; or
7. Refuse to disclose to the 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 Administrator; or
9. Give to an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or

10. Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and the Village of Mariemont tax withheld, or knowingly give the Administrator false information; or

11. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this ordinance.

12. Fails neglects or refuses to complete and return to the Administrator any tax form whose purpose is to determine if a resident must file a Village tax return.

B. Prosecutions.

Any taxpayer found to be in violation the provisions of paragraph A shall be guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six (6) months or both, for each offense. Prosecutions for an offense made punishable under this Article or any section or provision of the ordinance shall be commenced within three (3) years after the commission of the offense, provides that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.

C. Failure to Receive Forms--Not a Defense.

The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him (1) from making any information return, declaration, or return, (2) from filing such form, or (3) from paying the tax.

ARTICLE XIII

BOARD OF REVIEW

A. Board of Review.

A Board of Review, consisting of a chairman and two other individuals, each to be appointed by the Mayor and approved by Council, is hereby created.

B. Appeals by Taxpayers.

1. Any person dissatisfied with any ruling or decision of the Administrator, which is made under the authority conferred by this ordinance, may appeal therefrom to the Board within thirty (30) days from the announcement of such ruling or decision by the Administrator, provided the taxpayer making the appeal has filed with the Village the required return or other documents concerning the obligation at issue. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any ruling or decision or any part thereof. Such hearing shall be scheduled within forty-five (45) days from the date of appeal, unless the taxpayer waives a hearing. The Board's ruling must be made within ninety (90) days from the date of the closing of the record, shall be in writing and filed with the Administrator, and within

fifteen (15) days of its decision shall send notice of its decision by ordinary mail to the taxpayer making the appeal.

2. A taxpayer dissatisfied with a decision or filing by the Board of Review may appeal to a court of competent jurisdiction within thirty days from the date of filing of the ruling or decision to which exception is taken. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

3. The taxpayer may appear before the Board at the hearing, and/or be represented by an attorney at law, certified public accountant, or other representative.

C. Organizational Procedures.

1. A majority of members present at any hearing or meeting shall constitute a quorum.

2. The Board of Review shall adopt its own procedural rules and keep records of all proceedings accordingly.

3. All hearings upon appeal by the Board shall be conducted privately, unless a public hearing is requested by the taxpayer, and the provisions of Section 10 of the ordinance 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 of Review.

D. Adoption of Rules & Regulations.

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

ARTICLE XIV

USE OF FUNDS

Funds shall be allocated to the General Fund and the Capital Improvement Fund as may be determined by Council.

ARTICLE XV

CREDIT ALLOWED FOR TAX PAID IN ANOTHER MUNICIPALITY

A . Credits to Residents.

Every individual taxpayer who resides in the Village of Mariemont who receives net profits, income, qualifying wages, commissions or other personal service compensation for work done or services performed or rendered outside Village of Mariemont, if it be made to appear that he has paid a

Municipal income tax to another municipality on the same income taxable under the ordinance and these rules & regulations, shall be allowed a credit against the tax imposed by the ordinance. The credit shall not exceed one percent (1%) on such income earned in such other municipality or municipalities where such tax is paid.

1. If the tax paid to such other municipality or municipalities was less than one percent (1%) of income subject to the Village of Mariemont's income tax, the credit allowed shall be limited to the tax paid to the other municipality or municipalities, subject to the provision in A2 of this subsection.

2. Credit shall not be given for any tax paid on income that is not subject to the Village of Mariemont's income tax.

B. Method of Applying for Credit.

1. If a taxpayer fails, neglects or refuses to file the required return or form to indicate a refund is due, he shall not be entitled to such credit and/or refund and shall be liable for the full amount of tax assessed by this ordinance, together with such interest and penalties, both civil and criminal, as are prescribed in the ordinance and in these Rules & Regulations.

2. No credit shall be given for any tax paid to a school district or a county.

ARTICLE XVI

SAVINGS CLAUSE

If any sentence, clause, section or part of the 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 the ordinance. It is hereby declared to be the intention of Council that the ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

ARTICLE XVII

COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE

A. The ordinance shall continue effective insofar as the levy of taxes is concerned until amended or repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this ordinance are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any 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 6 and 7 as though the same were continuing.