

# RECORD OF ORDINANCES

THIS ORDINANCE WAS DEFEATED BY THE ELECTORS ON JUNE 23, 1970

COLUMBUS BLANK BOOK CO., COL., O.

Form No. 2806-A

Ordinance No. 14-70 Passed 17th day of March, 19 70

### ORDINANCE NO. 14-70

AN ORDINANCE LEVYING A TAX TO PROVIDE FUNDS FOR THE PURPOSES OF GENERAL MUNICIPAL OPERATIONS, MAINTENANCE, NEW EQUIPMENT, EXTENSION AND ENLARGEMENT OF MUNICIPAL SERVICES AND FACILITIES, AND CAPITAL IMPROVEMENTS ON ALL SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY RESIDENTS OF THE CITY OF CENTERVILLE; ON ALL SALARIES, WAGES, COMMISSIONS AND OTHER COMPENSATION EARNED BY NON-RESIDENTS OF THE CITY OF CENTERVILLE FOR WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE CITY OF CENTERVILLE; ON THE NET PROFITS EARNED ON ALL BUSINESSES, PROFESSIONS OR OTHER ACTIVITIES CONDUCTED BY RESIDENTS OF THE CITY OF CENTERVILLE; ON THE NET PROFITS EARNED ON ALL BUSINESSES, PROFESSIONS OR OTHER ACTIVITIES CONDUCTED IN THE CITY OF CENTERVILLE BY NON-RESIDENTS; AND ON THE NET PROFITS EARNED BY ALL CORPORATIONS DOING BUSINESS IN THE CITY OF CENTERVILLE AS THE RESULT OF WORK DONE OR SERVICES PERFORMED OR RENDERED IN THE CITY OF CENTERVILLE; REQUIRING THE FILING OF RETURNS AND FURNISHING OF INFORMATION BY EMPLOYERS AND ALL THOSE SUBJECT TO SAID TAX; IMPOSING ON EMPLOYERS THE DUTY OF COLLECTING THE TAX AT THE SOURCE AND PAYING THE SAME TO THE CITY OF CENTERVILLE; PROVIDING FOR THE ADMINISTRATION, COLLECTION AND ENFORCEMENT OF SAID TAX; DECLARING VIOLATION THEREOF TO BE A MISDEMEANOR AND IMPOSING PENALTIES THEREFOR.

THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

#### SECTION 1. PURPOSE

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the City of Centerville there shall be, and is hereby levied, a tax on salaries, wages, commissions and other compensation, and on net profits as hereinafter provided.

#### SECTION 2. DEFINITIONS

As used in this Ordinance, the following words shall have the meaning ascribed to them in this Section, except as and if the context clearly indicates or requires a different meaning.

**ASSOCIATION**--A partnership, limited partnership, or any other form of unincorporated enterprise, owned by two (2) or more persons.

**BOARD OF ADJUDICATION**--The Board created by and constituted as provided in Section 13A of this Ordinance.

**BOARD OF TAX APPEALS**--The Board created by and constituted as provided in Section 13B of this Ordinance.

**BUSINESS**--An enterprise, profession, undertaking or other activity of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity.

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

**EMPLOYEE**--One who works for wages, salary, commission or other type of compensation in the service of an employer.

**EMPLOYER**--An individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, having a place of business or doing business within the City of Centerville and who or that employs one (1) or more persons on a salary, wage, commission, or other compensation basis.

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

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**GROSS RECEIPTS**--The total income from any source whatsoever required to be included in the return.

**NET PROFITS**--The net gain from the operation of a business, profession, enterprise or other activity excluding capital gains and losses after provision for all ordinary and necessary expenses, paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, adjusted to the requirements of this Ordinance.

**NON-RESIDENT**--Any individual who is not a resident as herein defined.

**NON-RESIDENT UNINCORPORATED BUSINESS ENTITY**--An unincorporated business entity not having a place of business within the City of Centerville.

**OTHER ACTIVITY**--Any undertaking, not otherwise specifically defined herein which is normally entered into for profit, including, but not limited to, rental of real and personal property and a business conducted by a trust or guardianship estate.

**PERSON**--Every natural person, partnership, fiduciary, association or corporation. Whenever used in any section prescribing and imposing a penalty, the term "person" includes an officer or employee of a corporation, or a member or employee of an association, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

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

**RESIDENT**--An individual domiciled in the City of Centerville. Any person who maintains a place of abode within the City of Centerville for a total of 183 days or more within any twelve (12) month period shall be deemed a resident.

**RESIDENT UNINCORPORATED BUSINESS ENTITY**--An unincorporated business entity having a place of business within the City of Centerville.

**SUPERINTENDENT OF TAXATION (ALSO REFERRED TO AS SUPERINTENDENT)**--The Superintendent of Taxation of the City of Centerville, Ohio, or the person executing the duties of the aforesaid Superintendent of Taxation.

**TAXABLE INCOME**--Gross wages, salaries and other compensation paid by an employer or employers before any deductions, other than ordinary and necessary business expenses in the same manner as provided by the Internal Revenue Code, and/or net profits as herein defined.

**TAXABLE YEAR**--The calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this Ordinance and, in the case of a return for a fractional part of a year, the period for which such return is required to be made. Unless approved by the Superintendent, the taxable year of a wage earner shall be a calendar year.

**TAXPAYER**--A person, whether an individual, partnership, association, or any corporation or other entity, required hereunder to file a return or pay a tax.

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

**SECTION 3. IMPOSITION OF TAX**

A. Subject to the provisions of Section 16 of this Ordinance, an annual tax for the purposes specified in Section 1 hereof shall be imposed for the period beginning August 1, 1970 at the rate of one and one-quarter per cent (1.25%) per annum upon the following:

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1. On all salaries, wages, commissions and other compensation received during the effective period of this Ordinance by residents of the City of Centerville.
2. On All salaries, wages, commissions and other compensation received during the effective period of this Ordinance by non-residents for work done or services performed or rendered in the City of Centerville.
3. (a) On the portion attributable to the City of Centerville of the net profits earned and accrued or received during the effective period of this Ordinance of all resident associations, unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City of Centerville.  
 (b) On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this Ordinance of a resident partner or owner of a resident unincorporated business entity not attributable to the City of Centerville upon which the tax was not paid by the entity.
4. (a) On the portion attributable to the City of Centerville of the net profits earned and accrued or received during the effective period of this Ordinance of all non-resident associations, unincorporated businesses, professions or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in the City of Centerville, whether or not such association or other unincorporated business entity has an office or place of business in the City of Centerville.  
 (b) On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this Ordinance of a resident partner or owner of a non-resident association or other unincorporated business entity not attributable to the City of Centerville on which the tax was not paid by the entity.
5. On the portion attributable to the City of Centerville of the net profits earned and accrued or received during the effective period of this Ordinance of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the City of Centerville whether or not such corporations have a place of business in the City of Centerville.

B. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the City of Centerville, in the absence of actual records thereof, shall be determined as follows:

1. Multiply the entire net profits by a business allocation percentage to be the average ratio of:
  - (a) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City of Centerville during the taxable period to the average net book value of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight (8).

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(b) Wages, salaries, and other compensation paid or accrued during the taxable period to persons employed in the business or profession for services performed in the City of Centerville to wages, salaries and other compensation paid or accrued during the same period to persons employed in the business or profession, wherever their services are performed.

(c) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City of Centerville to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

In the event that the foregoing allocation formula does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result.

2. As used in Paragraph B-1(c) of this Section, "sales made in the City of Centerville" means:

(a) All sales of tangible personal property which is delivered within the City of Centerville regardless of where title passes if shipped or delivered from a stock of goods within the City of Centerville;

(b) All sales of tangible personal property which is delivered within the City of Centerville regardless of where title passes even though transported from a point outside the City of Centerville if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Centerville and the sales result from such solicitation or promotion;

(c) All sales of tangible personal property which is shipped from a place within the City of Centerville to purchasers outside the City of Centerville regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

C. For the purpose of this Section, the taxable base shall be determined in accordance with Federal tax interpretations, when applicable, and with the accounting method used by the taxpayer for Federal income taxes adjusted to the requirements of this Ordinance.

D. CONSOLIDATED RETURNS.

1. Filing of consolidated returns may be permitted or required in accordance with Rules and Regulations prescribed by the Superintendent.

2. Allocation of income and deductions between related taxpayers; in the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the City of Centerville constituting a portion only of its total business, the Superintendent may require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City of Centerville. If the Superintendent finds net profits are not properly allocated to the City of Centerville by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with

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such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the City of Centerville.

## E. EXCEPTIONS.

The tax provided for herein shall not be levied upon:

1. Pay or allowances of active members of the Armed Forces of the United States, or the income 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.
2. Poor relief, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, State or Federal governments or charitable, religious or educational organizations.
3. Proceeds of insurance paid by reason of the death of the insured; pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
4. Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by a bona fide charitable, religious or educational organizations and associations.
5. Personal earnings of all persons under eighteen (18) years of age.
6. Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio from which the City of Centerville is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business).
7. Salaries, 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 sub-divisions to impose net income taxes on income derived from interstate commerce.
8. Salaries, wages, commissions and other compensation 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 the City of Centerville to impose net income taxes.

## SECTION 4. EFFECTIVE PERIOD

A. Said tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation received and shall be levied with respect to the net profits of businesses, professions or other activities earned and accrued or received from and after August 1, 1970 to December 31, 1976.

## SECTION 5. RETURN AND PAYMENT OF TAX

A. Each person who engages in business or other activity or whose salary, wage, commission or other compensation is subject to the tax imposed by this Ordinance, shall, whether or not a tax be due thereon, make and file a return on or before April 30 of the year following the effective date of this

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Ordinance, and on or before April 30 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four (4) months from the end of such fiscal year or period. The Superintendent is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by said employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by him or them to the Superintendent may be accepted as the return required of any employee whose sole income, subject to tax under this Ordinance, is such salaries, wages, commissions or other compensation.

B. The return shall be filed with the Superintendent on a form or forms furnished by or obtainable upon request from the Superintendent setting forth:

- 1. The aggregate amount of salaries, wages, commissions and other compensation received by him and gross income from business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to said tax; and
- 2. The amount of the tax imposed by this Ordinance on such earnings and profits; and
- 3. Such other pertinent statements, information returns or other information as the Superintendent may require.

C. The Superintendent may extend the time for filing of the annual return upon the request of the taxpayer for a period of not to exceed six (6) months, or one (1) month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax return. The Superintendent may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due.

D. 1. The taxpayer making a return shall, at the time of the filing thereof, pay to the Superintendent the amount of taxes shown as due thereon; provided, however, that credit shall be allowed for:

- (a) Any portion of the tax so due which shall have been deducted at the source pursuant to the provisions of Section 6 of this Ordinance; and
- (b) Any portion of said tax which shall have been paid by the taxpayer pursuant to the provisions of Section 7 of this Ordinance; and
- (c) Credit to the extent allowed by Section 15 hereof for tax paid to another municipality.

2. Subject to the limitations contained in Section 11 of this Ordinance, any taxpayer who has overpaid the amount of tax to which the City of Centerville is entitled under the provisions of this Ordinance may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded.

E. 1. AMENDED RETURNS.

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 11. Such amended returns shall be on a form obtainable upon request from the Superintendent. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return without the approval of the Superintendent.

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2. Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's City of Centerville tax liability, such taxpayer shall make and file an amended City of Centerville return showing income subject to the City of Centerville tax based upon such final determination of Federal tax liability and pay any additional tax shown due thereon or make claim for refund of any overpayment.

F. Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be deemed to be a violation of this Ordinance. Provided, however, that the taxpayer shall have ten (10) days after notification by the Superintendent, or his authorized representative, to file the items required by this paragraph.

## SECTION 6. COLLECTION AT SOURCE

A. 1. Each employer shall at the time of the payment of any salary, wage, commission or other compensation, deduct the tax of one and one-quarter percent (1.25%) beginning August 1, 1970 of the gross salaries, wages, commissions or other compensation due by the said employer to his employees who are subject to the provisions of this Ordinance. In making such deduction at the time of payment, the employer shall compute the tax to the nearest full cent so that mills of five (5) or more shall be increased to the next full cent and mills less than five (5) shall be dropped. 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. Each employer shall, on or before the last day of each month, make a return and pay to the Superintendent, the tax withheld during the preceding month. Provided, however, the Superintendent shall have the authority to approve the filing of returns and payments of the tax withheld on a quarterly basis. In such case, the employer shall, on or before the last day of each month following the calendar quarters ending March 31, June 30, September 30 and December 31, make a return and pay to the Superintendent the tax withheld during the preceding calendar quarter. Such approval for quarterly filings and payments may be withdrawn by the Superintendent when it is to the best interest of the City of Centerville to do so. The Superintendent shall provide by regulation, the manner in which such approval is to be granted or withdrawn.

2. The employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax has in fact been withheld.

B. Such employer in collecting said tax, shall be deemed to hold the same, until payment is made by such employer to the City of Centerville, as a Trustee for the benefit of the City of Centerville and any such tax collected by such employer from his employees shall, until the same is paid to the City of Centerville, be deemed a trust fund in the hands of such employer.

C. No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed by him exclusively in or about such person's residence, even though such residence is in the City of Centerville, but such employee shall be subject to all of the requirements of this Ordinance.

D. On or before January 31 of each year beginning with the year 1971, each employer shall file a withholding return on a form prescribed by and obtainable upon request from the Superintendent, setting forth the names and addresses of all employees from whose compensation the tax was withheld during the preceding calendar year and the amount of tax withheld from his employees and such other information as may be required by the Rules and Regulations adopted by the Superintendent.

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## SECTION 7. DECLARATIONS

- A. Every person who anticipates the receipt of any taxable income which is not subject to Section 6 hereof, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 3 hereof, shall file a declaration setting forth such person's estimated taxable income together with any estimated tax due thereon, if any; provided, however, if a person's income is wholly from wages from which the tax will be withheld and remitted to the City of Centerville in accordance with Section 6 hereof, such person need not file a declaration.
- B. 1. Such declaration shall be filed on or before April 30 of each year during the life of this Ordinance, or within four (4) months after the date the taxpayer becomes subject to the provisions of this Ordinance.
2. Those taxpayers reporting on a fiscal year basis shall file a declaration within four (4) months after the beginning of each fiscal year or period.
- C. 1. Such declaration shall be filed upon a form furnished by or obtainable upon request from the Superintendent, provided, however, credit shall be taken for the City of Centerville tax to be withheld from any portion of such income to determine the estimated tax due. In accordance with the provisions of Section 15 hereof, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.
2. The original declaration (or any subsequent amendment thereof) may be amended at any time.
3. An amended declaration must be filed on or before January 31 of the following year, or in the case of a tax payer on a fiscal year, on or before the date fixed by regulation of the Superintendent if it appears that the original declaration made for such taxable year underestimated the taxpayer's income by thirty percent (30%) or more. At such time a payment which, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability shall be made. If upon the filing of the return required by Section 5 hereof, it appears that the taxpayer did not pay seventy percent (70%) of his tax liability, as shown on said return, on or before January 31, or the date fixed by regulations, whichever is applicable, the difference between seventy percent (70%) of said taxpayer's tax liability and the amount of estimated tax actually paid on or before January 31, or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Section 10 hereof.
- D. 1. Such declaration of net estimated tax to be paid the City of Centerville shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax, less credit, and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year. Provided, however, that in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.
2. Provided, further, however, that the last quarterly payment of estimated tax need not be made if the taxpayer files his final return and pays the balance of the tax due thereon within forty-five (45) days following the end of the taxable year.



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E. On or before the last day of the fourth month of the calendar or fiscal year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City of Centerville shall be paid therewith in accordance with the provisions of Section 5 hereof.

## SECTION 8. DUTIES AND POWERS OF THE SUPERINTENDENT OF TAXATION

- A. 1. It shall be the duty of the Superintendent to receive the tax imposed by this Ordinance in the manner prescribed herein 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 Superintendent to enforce payment of all taxes owing the City of Centerville, to keep accurate records for a minimum of five (5) years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.
- B. The Superintendent is hereby charged with the enforcement of the provisions of this Ordinance, and is hereby empowered, subject to the approval of the City Council by motion, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and administration and enforcement of the provisions of this Ordinance, including provisions for the re-examination and correction of returns.

C. 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 Superintendent may assess the amount of tax appearing to be due, together with interest and penalties thereon, if any, in the following manner:

## 1. General Provisions

- (a) If the Superintendent determines that any taxpayer subject to the provisions of this Ordinance has a tax liability for which he has filed no return or has filed an incorrect return and has failed to pay the full amount of tax due, the Superintendent shall issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.
- (1) Such 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 (15) days after the date the proposed assessment was served or mailed, file a written protest with the Superintendent. Within fifteen (15) days after receipt of the protest, the Superintendent shall give the protestant an opportunity to be heard; provided further that the Superintendent may extend the date of hearing for good cause shown. After the hearing the Superintendent 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 fifteen (15) 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.

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- (1) A taxpayer shall have fifteen (15) days after the date the final assessment was served or mailed within which to file written notice of appeal with the Board of Tax Appeals. Such written notice of appeal shall be filed in a sealed envelope plainly marked "Appeal to Board of Tax Appeals" and mailed or delivered to the Superintendent who shall, within five (5) days after receipt thereof, deliver such appeal to the Chairman of the Board of Tax Appeals, or, if the Chairman is not available, to the Vice-Chairman.
  - (2) The Board of Tax Appeals, upon receipt of a notice of appeal, shall within fifteen (15) days notify the Superintendent thereof who shall forward within fifteen (15) days to the Board a certified transcript of all actions taken by him with respect to said final assessment. Such transcript shall be open to inspection by the appellant and his counsel.
  - (3) Any taxpayer against whom a final assessment has been issued and who has filed a notice of appeal shall be granted a hearing by the Board of Tax Appeals. At such hearing the appellant and the Superintendent shall be given opportunity to present evidence relating to the said final assessment. After the conclusion of such hearing, the Board of Tax Appeals shall affirm, reverse or modify the said final assessment and shall furnish a copy of its decision in respect thereof to the appellant and the Superintendent. The appellant's copy of said decision shall be served upon him in the same manner as herein provided for the serving of assessments.
- (c) When any taxpayer subject to the provisions of this Ordinance has filed a return indicating the amount of tax due and has failed to pay said tax to the Superintendent as required by this Ordinance, the Superintendent need not issue an assessment but may proceed under the provisions of Sections 11 and 12 of this Ordinance.
2. Provisions Affecting Employers.
- (a) If the Superintendent determines that an employer subject to the provisions of this Ordinance has failed to file a return for tax withheld and has failed to pay to the Superintendent the full amount of said taxes, the Superintendent shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon, and the provisions of Paragraphs C1a and C1b of this Section shall then apply.
  - (b) If the Superintendent determines that an employer subject to the provisions of this Ordinance has failed to withhold tax, the Superintendent shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon, and the provisions of Paragraphs C-1a and C-1b of this Section shall then apply.
  - (c) When an employer subject to the provisions of this Ordinance has filed a return indicating the amount of tax withheld and has failed to pay said tax to the Superintendent as required by this Ordinance, the Superintendent may proceed under the provisions of Sections 11 and 12 of this Ordinance and need not issue an assessment as provided in Section 8, Paragraphs C-2a and C-2b.

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D. 1. Any taxpayer or employer who has not filed a notice of appeal to the Board of Tax Appeals from a final assessment issued against him shall pay the amount thereof within fifteen (15) days after service of such final assessment.

2. Any tax payer or employer who has filed a notice of appeal to the Board of Tax Appeals from a final assessment issued against him shall pay the amount determined to be due by the Board of Tax Appeals within fifteen (15) days after service of his copy of the decision of the Board.

E. The Superintendent 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 (6) months, or one (1) month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax return.

F. When an application for deferred payment of tax due is filed by a taxpayer, the Superintendent may authorize partial payments of unpaid taxes when, in his judgment, the taxpayer is unable, due to hardship conditions, to pay the full amount of the tax when due, and when, in his judgment, such deferred payments are the best means of accomplishing the intent of this Ordinance. Provided, however, that the Superintendent shall not authorize an extension of time for the payment of said taxes due for more than six (6) months beyond the date of the filing of the application.

#### SECTION 9. INVESTIGATIVE POWERS OF THE SUPERINTENDENT--PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION

A. The Superintendent, or any authorized employee, is hereby authorized to examine the books, papers, records and copies of Federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Superintendent believes is subject to the provisions of this Ordinance, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this Ordinance. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish within ten (10) days following a written request by the Superintendent, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

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

C. The refusal to produce books, papers, records and copies of Federal income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this Section or with an order or subpoena of the Superintendent authorized hereby shall be deemed a violation of this Ordinance, punishable as provided in Section 12 hereof.

D. Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this Ordinance shall be confidential except for official purposes, or except when ordered by a Court of competent jurisdiction. Any person divulging such information in violation of this Ordinance, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than Five Hundred Dollars (\$500.00) or imprisoned for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

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

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

## SECTION 10. INTEREST AND PENALTIES

A. All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this Ordinance and remaining unpaid ten (10) days after they become due shall bear interest at the rate of one-half of one percent (1/2 of 1%) per month or fraction thereof.

B. In addition to interest as provided in Paragraph A hereof, penalties based on the unpaid tax are hereby imposed as follows:

1. For failure to pay taxes due, other than taxes withheld; one-half of one percent (1/2 of 1%) per month or fraction thereof, or ten (10%) whichever is greater.
2. For failure to remit taxes withheld from employees; three percent (3%) per month or fraction thereof, or ten percent (10%) whichever is greater.
3. Where the taxpayer has failed to file a declaration on which he has estimated and paid a tax equal to or greater than the tax paid for the previous year, or has failed to file a declaration on which he has estimated and paid tax equal to or greater than seventy percent (70%) of the actual tax for the year, or has failed to file a final return and pay the total tax on or before the end of the month following the end of his taxable year; ten percent (10%) of the difference between seventy percent (70%) of the actual tax for the year and the amount paid through withholding or declaration.
4. Except in the case of fraud, the penalty shall not exceed fifty percent (50%) of the unpaid tax.

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

D. Upon recommendation of the Superintendent, the Board of Adjudication may abate penalty or interest, or both.

E. Provided, however, that in no case shall penalty and interest charges be levied when the total of such penalty and interest amounts to less than One Dollar (\$1.00).

F. 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.

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G. Interest but no penalty will be assessed where an extension has been granted by the Superintendent and the final tax paid within the period as extended.

## SECTION II. COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS

A. All taxes imposed by this Ordinance shall be collectable, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of twenty-five percent (25%) of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three (3) years from the time the return was due or filed whichever is later, provided, however, in those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitation, the period within which an additional assessment may be made by the Superintendent shall be one (1) year from the time of the final determination of the Federal tax liability.

B. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date which such payment was made or the return was due, or within three (3) months after final determination of the Federal tax liability, whichever is later.

C. Additional amounts of less than One Dollar (\$1.00) shall not be refunded or assessed unless such assessment results from income which the taxpayer has failed to report.

## SECTION 12. CRIMINAL PENALTIES

A. Any person who shall:

1. Fail, neglect or refuse to make any return or declaration required by this Ordinance; or
2. Make any incomplete, false or fraudulent return; or
3. Knowingly fail or refuse to pay the tax, penalties or interest imposed by this Ordinance; or
4. Knowingly fail or refuse to withhold the tax from his employees and remit such withholding to the Superintendent; or
5. Refuse to permit the Superintendent or any duly authorized agent or employee to examine his or his employer's books, records, papers and copies of Federal income tax returns relating to the income or net profits of a taxpayer; or
6. Fail to appear before the Superintendent and to produce his or his employer's books, records, papers or copies of Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Superintendent; or
7. Refuse to disclose to the Superintendent 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 Superintendent; or
9. Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Ordinance; shall be guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned not more than six (6) months or both, for each offense.

B. 1. Any person subject to the provisions of Sections 1 through 18 inclusive, of this Ordinance, who has failed to file or has filed an incorrect return or has failed to pay the full amount of tax

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due, shall not be deemed to have committed an offense punishable under the provisions of this Section until the assessment issued against him under the provisions of Section 8 of this Ordinance, has become due and payable.

- 2. Any person who has filed a return under the provisions of Sections 1 through 18 inclusive, of this Ordinance, indicating the amount of tax due, and has failed to pay said tax, together with any penalties or interest that may have accrued thereon, shall not be deemed to have committed an offense for having knowingly failed to pay the tax, penalties or interest due as provided in Paragraph A-3 above, until the date of the filing of such return.

C. The term "person" as used in this Section shall, in addition to the meaning prescribed in Section 2 of this Ordinance, include in the case of an association or corporation not having any partner, member or officer within the City of Centerville, any employee or agent of such association or corporation who can be found within the corporate limits of the City of Centerville.

D. All prosecutions under this Section must be commenced within five (5) years from the time of the offense complained of except in the case of failure to file a return or in the case of filing a false or fraudulent return, or failure to pay the tax due, in which event the limitation of time within which prosecution must be commenced shall be ten (10) years from the date the return was due or the date the false or fraudulent return was filed or the tax was due, whichever is later.

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

SECTION 13. BOARD OF ADJUDICATION AND BOARD OF TAX APPEALS

A. Board of Adjudication.

- 1. A Board of Adjudication, consisting of the City Manager, or a person designated by him, the Director of Finance, or a person designated by him, and the Municipal Attorney, or an Assistant Municipal Attorney designated by him, is hereby created. The Board shall select, each year for a one (1) year term, one of its members to serve as Chairman, and one to serve as Secretary. A majority of the members of the Board shall constitute a quorum.
- 2. The Board shall adopt its own procedural rules and shall keep a record of its proceedings. All hearings of the Board shall be conducted privately and the provisions of Section 9 of this Ordinance with reference to the confidential character of information required to be disclosed by this Ordinance shall apply to such matters as may be presented to the Board of Adjudication.
- 3. The Board shall have the authority, upon request of the Superintendent, to modify in whole or in part, any assessment of tax, penalty and/or interest, required to be made by this Ordinance. In addition, the Board may authorize the Superintendent to accept partial payments for a period in excess of the time authorized in Section 8 of this Ordinance.

B. Board of Tax Appeals.

- 1. A Board of Tax Appeals, consisting of three (3) representative citizens of the City of Centerville, not otherwise employed by the City of Centerville, to be appointed by the City Council for a term of one (1) year, hereby is created.
- 2. One of the members of the Board appointed by the City Council shall be chosen by the members as Chairman of the Board and all

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may receive per diem compensation to be fixed by the City Council. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its proceedings. All hearings by the Board may be conducted privately and the provisions of Section 9 hereof with reference to the confidential character of information required to be disclosed by this Ordinance shall apply to such matters as may be heard on appeal before the Board.

3. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such assessment, ruling or decision, or any part thereof, made by the Superintendent from which an appeal has been filed as provided in Section 8 of this Ordinance.

#### SECTION 14. ALLOCATION OF FUNDS

A. The funds collected under the provisions of this Ordinance shall be allocated in the following manner: up to fifty percent may be allocated to general municipal operation, maintenance, new equipment, extension and enlargement of municipal services and facilities and at least fifty percent shall be allocated to capital improvements.

B. The aforesaid allocation of funds shall continue in effect until changed by an ordinance passed by Council.

#### SECTION 15. CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY

A. Where a resident of the City of Centerville is subject to a municipal income tax in another municipality he shall not pay a total municipal income tax on the same income greater than the tax imposed at the highest rate to which he is subject.

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

C. A claim for refund or credit under this Section shall be made in such manner as the Superintendent may by regulation provide.

#### SECTION 16. SAVING CLAUSE

This Ordinance shall not apply to any person, firm, corporation, or income, as to whom, or as to which it is beyond the power of the City Council to impose the tax herein provided for. In any sentence, clause, section or part of this Ordinance, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section, or part of this Ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this Ordinance. It is hereby declared to be the intention of the Council of the City of Centerville that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

#### SECTION 17. COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE

A. This Ordinance shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this Ordinance are concerned, it shall continue effective until all of said taxes levied hereunder are fully paid and any and

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all suits and prosecutions for the collection of said 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 hereof.

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

The City Manager is hereby authorized and empowered to execute a contract with a competent collection municipal agency for the administration and collection of taxes provided for in this Ordinance.

SECTION 19. EFFECTIVE DATE OF ORDINANCE

This Ordinance shall take effect at the earliest time allowed by law.

PASSED this 17th day of March, 1970.

/S/ Paul C. Hoy Mayor - City of Centerville, Ohio

ATTEST:

/S/ Marilyn J. McLaughlin Clerk of the Council of the City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio hereby certifies that the foregoing is a true and correct copy of an ordinance passed by the Council of the City of Centerville, Ohio, on the 17th day of March, 1970.

/S/ Marilyn J. McLaughlin Clerk

Approved as to form consistency with existing ordinances, the charter & constitutional provisions.

Department of Law Robert N. Farquhar Municipal Attorney