

# Tax Code Ordinance

ORDINANCE NO. 01-1612

Passed NOVEMBER 5, 2001

**An Ordinance Amending and replacing Ordinance No. 412, passed June 9, 1969, Bringing the Municipal Income Tax Code into compliance with Sub. H.B. 477.**

BE IT ORDAINED by the Council of the Village of Sugarcreek as follows:

Section 1. The Village of Sugarcreek Tax Code is hereby repealed and replaced by the following:

## **SECTION 1. PURPOSE.**

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the Village of Sugarcreek 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.

**ADMINISTRATOR** - The individual designated by the ordinance to administer and enforce the provisions of the ordinance.

**ASSOCIATION** - A partnership, limited partnership, or any other form of pass-through business enterprise, owned by two or more persons.

**BOARD OF REVIEW** - The Board created by and constituted as provided in Section 13 of this ordinance.

**BUSINESS** - An enterprise, activity, profession, or undertaking of any nature conducted for profit, whether by an individual, partnership, limited 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, and taxed as a C-corporation under the Internal Revenue Code.

**EMPLOYEE** - An individual whose earnings are subject to the withholding of Federal Income Tax or Social Security Tax.

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

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

**GROSS RECEIPTS** - The total income from any source whatsoever.

NET PROFITS - A net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, without deduction of taxes imposed by this ordinance, federal, state, and other taxes based on income; and in the case of an association without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of this ordinance.

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

NON-RESIDENT PASS-THROUGH BUSINESS ENTITY - A pass-through business entity not having an office or place of business within the Village of Sugarcreek.

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

PERSON - Every natural person, partnership, limited partnership, fiduciary, association, or corporation. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any pass-through business entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

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

RESIDENT - An individual domiciled in the Village of Sugarcreek.

RESIDENT PASS-THROUGH BUSINESS ENTITY - A pass-through business entity having an office or place of business within the Village of Sugarcreek.

TAXABLE INCOME - Wages, salaries, and other compensation paid by an employer or employers before any deductions and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of the ordinance.

TAXABLE YEAR - The calendar year, or the fiscal year upon the basis of which net profits are to be computed under this ordinance and, in the case of a return for a fractional part of a year, for the period for which such return is required to be made.

TAXPAYER - A person, whether an individual, partnership, limited partnership, association, or 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 the purposes specified in Section 1 hereof shall be imposed on and after July 1, 1969 at the rate of one (1) percent (%) per annum, and any duly certified additions thereto upon the following:

1. On all salaries, wages, commissions and other compensation earned on and after July 1, 1969, by residents of Sugarcreek.

2. On all salaries, wages, commissions and other compensation earned on and after July 1, 1969 by non-residents for work done or services performed or rendered in Sugarcreek unless the non-resident earned compensation for personal services by working 12 days or less through the applicable calendar year. Professional entertainers, professional athletes, and promoters of professional entertainment and sporting events must pay tax on all salaries, wages, and commissions and other compensation earned for work done or services performed or rendered in Sugarcreek regardless of the number of days worked in the applicable calendar year.

3. (a) On the portion attributable to Sugarcreek of the net profits earned on or after July 1, 1969 of all resident pass-through businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in Sugarcreek.

(b) On the portion of the distributive share of the net profits earned on and after July 1, 1969 of a resident partner or owner of a resident pass-through business entity not attributable to Sugarcreek and not levied against such pass-through business entity.

4. (a) On the portion attributable to Sugarcreek of the net profits earned on and after July 1, 1969 of all non-resident pass-through businesses, professions or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in Sugarcreek, whether or not such pass-through business entity has an office or place of business in Sugarcreek.

(b) On the portion of the distributive share of the net profits earned on and after July 1, 1969 of a resident partner or owner of a non-resident pass-through business entity not attributable to Sugarcreek and not levied against such pass-through business entity.

5. On the portion attributable to Sugarcreek, of the net profits earned on and after July 1, 1969 of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in Sugarcreek, whether or not such corporations have an office or place of business in Sugarcreek.

B. The portion of the net profits attributable to Sugarcreek of a taxpayer conducting a business, profession or other activity both within and without the boundaries of Sugarcreek shall be determined as provided in Section 718.02 of the Revised Code of Ohio and in accordance with the rules and regulations adopted by the Council of the Village of Sugarcreek pursuant to this ordinance.

C. Operating Loss Carry Forward.

(1) The portion of a net operating loss sustained in any taxable year subsequent to July 1, 1969 allocable to Sugarcreek may be applied against the portion of the profit of succeeding year(s) allocable to Sugarcreek, until exhausted but in no event for more than five (5) taxable years. No portion of any net operating loss shall be carried back against net profits of any prior year.

(2) The portion of a net operating loss sustained shall be allocated to Sugarcreek in the same manner as provided herein for allocating net profits to Sugarcreek.

(3) The Administrator shall provide by Rules and Regulations the manner in which such net operating loss carry-forward shall be determined.

D. EXCEPTION. The tax provided for herein shall not be levied upon the military pay or allowances of members of the armed forces of the United States, or upon the net profits of any civic, charitable, religious, fraternal or other organization specified in Section 718.01 of the Revised Code of Ohio to the extent that such net profits are exempted from municipal income taxes under said Section.

#### **SECTION 4. EFFECTIVE PERIOD.**

Said tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensations, and with respect to the net profits of businesses, professions or other activities earned on and after July 1, 1969.

#### **SECTION 5. RETURN AND PAYMENT OF TAX.**

A. Each taxpayer, except as herein provided, 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 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 Administrator 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 Administrator shall be accepted as the return required of any employee whose sole income, subject to tax under this ordinance, is such salary, wages, commissions or other compensation.

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

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

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

(3) Such other pertinent statements, information returns, or other information as the Administrator may require.

C. The Administrator may extend the time for filing of the annual return upon the request of the taxpayer for a period of not to exceed six (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 Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

D. (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 6 of this ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 7 of this ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 15 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 of Sugar Creek is entitled under the provisions of this ordinance may have any subsequent liability hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

E. (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 over-paid, subject to the requirements and/or limitations contained in Sections 11 and 15. Such amended returns shall be on a

form obtainable on 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 Sugarcreek tax liability, such taxpayer shall make and file an amended Sugarcreek return showing income subject to the Village of Sugarcreek 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. CONSOLIDATED RETURNS: Corporate groups that file consolidated returns for Federal income tax may file a consolidated return for Village income tax.

## **SECTION 6. COLLECTION AT SOURCE.**

A. In accordance with Rules and Regulations prescribed by the Administrator, each employer within or doing business within Sugarcreek shall deduct at the time of the payment of salary, wage, commission or other compensation, the tax of one (1) percent (%), plus any duly certified additions thereto, of the gross salaries, wages, commissions or other compensation due by the said employer to said employee and shall on or before the last day of the month following the close of each calendar quarter make a return and pay to the Administrator the amount of taxes so deducted. Said returns shall be on a form or forms prescribed by or acceptable to the Administrator and shall be subject to the Rules and Regulations prescribed therefor by the Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

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

C. Provided, however, that no person shall be required to withhold the tax on the wages or other compensation paid to the following:

(1). Domestic servants employed exclusively in or about such person's residence;

(2). Employees of a non-resident employer provided the withholding for the applicable calendar year would not or does not exceed \$150.00.

## **SECTION 7. DECLARATIONS.**

A. Every person who anticipates 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 estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any; provided, however, if a person's income is wholly from wages from which the tax will be withheld and remitted to the Village of Sugarcreek 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 of the date the taxpayer becomes subject to tax for the first time.

(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 from, the Administrator, provided, however, credit shall be taken for Sugarcreek tax to be withheld from any portion of such

income. 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 increased or decreased on or before any subsequent quarterly payment date as provided for herein.

D. Such declaration of estimated tax to be paid Sugarcreek shall be accompanied by a payment of at least one-fourth ( $\frac{1}{4}$ ) of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the sixth, ninth and twelfth 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.

E. On or before the last day of the fourth month of the 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 Village of Sugarcreek shall be paid therewith in accordance with the provisions of Section 5 hereof.

### **SECTION 8. DUTIES OF ADMINISTRATOR.**

A. (1) It shall be the duty of the Administrator 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 all monies so received.

(2) The taxes imposed and levied pursuant to the provisions of this ordinance shall be administered by an Administrator, appointed by the Council of the Village of Sugarcreek, and such other employees as may be from time to time determined by the Council of the Village of Sugarcreek, and they shall receive such salary as may be determined by the Village Council.

(3) It shall be the duty of the Administrator to enforce payment of all taxes owing Sugarcreek, 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. Said Administrator is hereby charged with the enforcement of the provisions of this ordinance, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter of thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this ordinance, including provisions for the re-examination and correction of returns.

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. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the ordinance.

Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Section 11 and 12 of the ordinance shall apply.

C. In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due Sugarcreek from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

D. Subject to the consent of the Board of Review or pursuant to regulation approved by said Board, the Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 10 of this ordinance.

## **SECTION 9. INVESTIGATIVE POWERS OF THE ADMINISTRATOR --**

### **PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.**

A. The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Administrator 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 upon written request by the Administrator, or his duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

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

C. The refusal to produce books, papers, records and federal income tax returns, or the refusal to submit to such examination by 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 Administrator 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 in accordance with proper judicial order. Any person divulging such information in violation of this ordinance, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine 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.

In addition to the above penalty, any employee of the Village of Sugarcreek 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 after they become due shall bear interest at the rate of none-half of one percent ( $\frac{1}{2}\%$ ) 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 percent (½%) per month or fraction thereof.

2. For failure to remit taxes withheld from employees: three percent (3%) per month or fraction thereof.

C. EXCEPTIONS. 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; 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 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.

#### **SECTION 11. COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.**

A. All taxes imposed by this ordinance shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three (3) years from the time the return was due or filed whichever is later, provided, however, in those cases in which a Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitation, the period within which an additional assessment may be made by the Administrator shall be one (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. Amounts of less than One Dollar (\$1.00) shall not be collected or refunded.

#### **SECTION 12. VIOLATIONS -- PENALTIES.**

A. Any persons who shall:

1. Fail, neglect or refuse to make any return or declaration required by this ordinance; or

2. Make any incomplete, false or fraudulent return; or

3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this ordinance; or,

4. Fail, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or

5. Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and Federal income tax returns relating to the income or net profits of a taxpayer; or

6. Fail to appear before the Administrator and to produce his books, records, papers or Federal income tax returns relating to the income or net profits of a taxpayer upon order of 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 of subpoena of the Administrator authorized hereby; or

9. Give to an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer or 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 Sugarcreek tax withheld, or to 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;

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. 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, 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.

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

### **SECTION 13. BOARD OF REVIEW.**

A. A Board of Review, consisting of the Treasurer, President of Council and the Village Solicitor, is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 9 hereof with reference to the confidential character of information required to be disclosed by the ordinance shall apply to such matters as may be heard before the Board on appeal.

B. All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this 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.

C. 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 of Review within thirty (30) days from the announcement of such ruling or decision by the Administrator. The request must be in writing and must state the alleged errors in the decision. The Board shall schedule a hearing within 45 days of receiving the request unless the taxpayer waives the hearing. The taxpayer may be represented at the hearing. The Board, on hearing, shall have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. The Board must issue a decision within 90 days of the final hearing and send notice of its decision to the taxpayer within 15 days after issuing the decision.

D. Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision.

#### **SECTION 14. ALLOCATION OF FUNDS.**

The funds collected under the provisions of this ordinance shall be deposited in a special fund known as "Income Tax Fund" and said funds shall be disbursed in the following manner:

1. Such part thereof as shall be necessary to defray all costs of collecting the taxes and the cost of administering and enforcing the provisions thereof.
2. Not more than forty percent (40%) of the net available income tax receipts received annually shall be deposited in the General Fund to defray operating expenses of the Village.
3. At least sixty percent (60%) of net available income tax receipts received annually shall be deposited in the Permanent Improvement Fund to be used for capital improvement for the Village.

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

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

B. Every individual taxpayer who resides in Sugarcreek who receives net profits, salaries, wages, commissions or other personal service compensation for work done or services performed or rendered outside of Sugarcreek, 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 Administrator may be regulation provide.

#### **SECTION 16. SAVING CLAUSE.**

If any sentence, clause, section or part of this ordinance, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this ordinance and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this ordinance. It is hereby declared to be the intention of the Council of Sugarcreek 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 in the aforesaid period are fully paid and any and 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.

Section 2. This ordinance shall take effect at the earliest period allowed by law.

Passed: November 5, 2001

\_\_\_\_\_ Mayor

ATTEST \_\_\_\_\_

**RESOLUTION 01-1613**

**ACCEPTING AND APPROVING AMENDED REGULATIONS ISSUED BY THE TAX ADMINISTRATOR  
IN ORDER TO**

**COMPLY WITH SUB H.B. 477.**

BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF SUGARCREEK AS FOLLOWS:

Section 1. The following Regulations are hereby approved by the Council of the Village of Sugar creek:

**VILLAGE OF SUGARCREEK**

**INCOME TAX RULES & REGULATIONS**

**ISSUED BY TAX ADMINISTRATOR**

**Under Authority of Section 8 of Ordinance 01-1612**

**approved by Council on NOVEMBER 5, 2001**

**ARTICLE I**

Section 1 of the ordinance deals only with the purposes for which the tax collected will be used.

**ARTICLE II**

## Definitions

As used in these rules and 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.

**ADMINISTRATOR** means the individual designated by the ordinance, whether appointed or elected, to administer and enforce the provisions of the ordinance, regardless of the particular title assigned such individual.

**ASSOCIATION** means a partnership, cooperative, limited partnership, or any other form of pass-through business enterprise owned by two or more persons.

**THE BOARD** means the Board of Review provided for by Section 13 of the ordinance.

**BUSINESS** means an enterprise, cooperative 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. The ordinary administration of a decedent's estate by the executor or administrator, and the mere custody, supervision and management of trust property under passive trust, whether intervivos or testamentary, unaccompanied by the actual operation of a business as herein defined, shall not be construed as the operation of a business.

**BUSINESS ALLOCATION** as used in these regulations, means the proportion of net profits to be allocated to Sugarcreek as having been made in Sugarcreek, either under separate accounting method, or under the three factor formula of property, payroll and sales, provided for in Section 3 of the ordinance.

**VILLAGE** means the Village of Sugarcreek, Tuscarawas County.

**CORPORATION** means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency, and taxed as a C-corporation under the Internal Revenue Code.

**EMPLOYEE** means one who works for wages, salary, commission or other types of compensation in the service of an employer. Any person upon whom an employer is required to withhold for either federal income or social security or on whose account payments are made under the Ohio Workmen's Compensation law shall prima facie be an employee.

**EMPLOYER** means an individual, partnership, association, corporation (including a corporation not for profit), governmental agency, board, body, bureau, department, subdivision, or unit or any other entity, who or that employs one or more persons on a salary, wage, commission or other compensation basis whether or not such employer is engaged in business. It does not include a person who employs only domestic help for such person's private residence.

**FISCAL YEAR** means an accounting period of twelve (12) months or less ending on any day other than December 31st. Only fiscal years accepted by the Internal Revenue Service for federal income tax purposes may be used for Sugarcreek tax purposes.

**GROSS RECEIPTS** means total income from any source whatsoever.

**NET PROFITS** means a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, without deduction of taxes imposed by this ordinance, federal, state and other taxes based on income; and in the case of an

association, without deduction of salaries paid to partners, and other owners; and otherwise adjusted to the requirements of this ordinance.

NON-RESIDENT means an individual domiciled outside the Village of Sugarcreek.

NON-RESIDENT PASS-THROUGH BUSINESS ENTITY - A pass-through business entity not having an office or place of business within the Village of Sugarcreek.

THE ORDINANCE means Ordinance No. 412 enacted by the Council of Sugarcreek and any amendments and supplements thereto effective on and after July 1, 1969. (NOTE: Hereinafter this will be referred to as "effective period of ordinance".)

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

PERSON means every natural person, partnership, fiduciary, association, corporation, or other entity. Whenever used in a clause prescribing or imposing a penalty, the term PERSON as applied to any pass-through business entity shall mean the partners or members thereof, and as applied to a corporation, the officers thereof, and in the case of any pass-through business entity or corporation not having any partner, member or officer within the Village of Sugarcreek any employee or agent of such pass-through business entity or corporation who can be found within the corporate limits of the Village of Sugarcreek.

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

RESIDENT means an individual domiciled in the Village of Sugarcreek.

RESIDENT PASS-THROUGH BUSINESS ENTITY means a pass-through business entity having an office or place of business within Sugarcreek.

TAXABLE INCOME means wages, salaries and other compensation paid by an employer or employers before deductions of any kind, and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of the ordinance and these regulations.

TAXABLE YEAR means the calendar year, or the fiscal year, used as the basis on which net profits are to be computed under the 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.

TAXPAYER means an individual, association, corporation or other entity required by the ordinance to file a return and/or to pay a tax.

In all definitions and these regulations, 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 Employee:

a. In the case of residents of Sugarcreek an annual tax of one percent (1%), and any duly certified additions thereto, is imposed on all salaries, wages, commissions, and other compensation earned during the effective period of the ordinance. For the purposes of determining the tax on the earnings of resident taxpayers taxed under Section 3, paragraph A-1 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.

b. The following are items which are subject to the tax imposed by Section 3, paragraph A-1 of the ordinance:

.1 Salaries, wages, bonuses and incentive payments earned by an individual whether directly or through an agent and whether in cash or in property for services rendered during the tax period as:

.01 An officer, director or employee of a corporation (including charitable and other non-profit organizations), joint stock association, or joint stock company;

.02 An employee (as distinguished from a partner or member) of a partnership, limited partnership, or any form of pass-through business enterprise owned by two or more persons;

.03 An employee (as distinguished from a proprietor) of a business, trade or profession conducted by an individual owner;

.04 An officer or employee (whether elected, appointed or commissioned) of the United States Government or of a corporation created and owned or controlled by the United States Government, or any of its agencies; or of the State of Ohio or any of its political subdivisions or agencies thereof; or any foreign country or dependency except as provided in Section 3 of the ordinance;

.05 An employee of any other entity or person, whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piecework rates; and whether paid by an individual, partnership, association, corporation (including charitable and other non-profit corporation), governmental administration, agency, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity.

.2 Commissions earned by a taxpayer whether directly or through an agent and whether in cash or in property for services rendered during the effective period of the ordinance, regardless of how computed or by whom or wheresoever paid.

.01 If amounts received as a drawing account exceed the commissions earned and the excess is not subject to the demand of the employer for repayment, the tax is payable on the amounts received as a drawing account.

.02 Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expenses or advances as such from his gross income for the purpose of determining his net profits taxable under federal law, and the employee is not required to include such receipts as income on his federal income tax return.

.03 If commissions are included in the net earnings of the trade, business, profession, enterprise, or activity, carried on by an pass-through business entity of which the individual receiving such commission is owner or part owner and therefore subject to the tax under paragraphs A-3 or A-4 of Section 3 of the ordinance, they shall not be taxed under Section 3, paragraph A-1.

.3 Fees, unless such fees are properly includible as part of the net profits of a trade, business, profession, or enterprise regularly carried on by a pass-through business entity owned or partly owned by said individual and such net profits are subject to the tax under Section 3, paragraph A-3 of the ordinance.

.4 Other compensation, including tips, bonuses or gifts of any type, and including compensation paid to domestic servants, casual employees and other types of employees.

.5 Payments made to employees by an employer as vacation wages are taxable. Payments made to an employee by an employer under a wage continuation plan during periods of disability or sickness, are taxable.

c. Where 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.

.1 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.

## 2. Non-resident Employee:

a. In the case of individuals who are not residents of Sugarcreek, there is imposed under Section 3, paragraph A-2 of the ordinance, a tax of one percent (1%), and any duly certified additions thereto, on all salaries, wages, commissions, and other compensation earned during the effective period of the ordinance for work done or services performed or rendered within Sugarcreek whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property unless the non-resident earned compensation for personal services by working 12 days or less through the applicable calendar year. Professional entertainers, professional athletes, and promoters of professional entertainment and sporting events must pay tax on all salaries, wages, and commissions and other compensation earned for work done or services performed or rendered in Sugarcreek regardless of the number of days worked in the applicable calendar year. The location of the place from which payment is made is immaterial.

b. The items subject to tax under Section 3, paragraph A-2 of the ordinance are the same as those listed and defined in Article III-A. For the methods of computing the extent of such work or services performed within Sugarcreek, in cases involving compensation for personal services partly within and partly without Sugarcreek, see Article VI-A.6.

## 3. a. Imposition of Tax on Net Profits of Resident Pass-through Businesses:

.1 In the case of resident pass-through businesses, professions, enterprises, undertakings or other entities conducted, operated, engaged in, prosecuted or carried on, irrespective of whether such taxpayer has an office or place of business in Sugarcreek, there is imposed an annual tax of one percent (1%), and any duly certified additions thereto, on the net profits earned, accrued or received during the effective period of the ordinance and attributable to Sugarcreek, under the formula or separate accounting method provided for in Section 3 of the ordinance, derived from sales made, work done or services performed or rendered and business or other activities conducted in Sugarcreek.

.2 The tax imposed on resident associations or other pass-through business entities owned by two or more persons is upon the entities rather than the individual members or owners thereof, but the tax imposed on a resident pass-through business entity owned by one person is upon the individual owner. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III-A.3b).

.3 The tax imposed by Section 3, paragraph A-3a of the ordinance is imposed on all resident pass through business entities having net profits attributable to Sugarcreek under the method of allocation provided for in the ordinance, regardless of where the owner or owners of such resident pass-through business entity reside.

.4 Resident pass-through business entities owned by two or more persons all of whom are residents of Sugarcreek shall disregard the method of allocation provided for in the ordinance and pay the tax on their entire net profits thereof. In such case, the tax paid by the entity shall constitute all tax due from the owners or members of the entity for their distributive share of such net profits; however, an additional return shall be required from any such owner or member having taxable income other than the distributive share of the net profits from the entity. See Article XV for credits.

b. Imposition of Tax on Resident's Distributive Share of Profits of a Resident Pass-through Business Entity, Not Attributable to Sugarcreek.

.1 A resident individual who is sole owner of a resident pass-through business entity shall disregard the business allocation formula and pay the tax on the entire net profits of his resident pass-through business entity. See Article XV.

.2 In the case of a resident individual partner or part owner of a resident pass-through business entity, there is imposed an annual tax of one percent (1%), and any duly certified additions thereto, on such individual's distributive share of net profits earned, accrued or received during the effective period of the ordinance not attributable to Sugarcreek under the method of allocation provided for in Section 3 of the ordinance, and not taxed against the entity. (See Article XV).

4. a. Imposition of Tax on Net Profits of Non-Resident Pass-through Businesses:

.1 In the case of non-resident pass-through businesses, professions, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on, there is imposed an annual tax of one percent (1%), and any duly certified additions thereto, on the net profits earned, accrued or received during the effective period of the ordinance attributable to Sugarcreek, under the formula or separate accounting method provided for in the ordinance.

.2 The tax imposed on non-resident pass-through business entities owned by two or more persons is upon the entities rather than the individual members or owners thereof. (For tax on that part of a resident owner's distributive share of net profits not taxed against the entity, see Article III-A.4b).

.3 Non-resident pass-through entities owned by two or more persons all of whom are residents of Sugarcreek may elect to disregard the method of allocation provided for in the ordinance and pay the tax on the entire net profits. In such case, the tax paid by the entity shall constitute all tax due from the owners, or members of the entity for their distributive share of the net profits; however, a return shall be required from such owners or member having taxable income other than the distributive share of the net profit from the entity. See Article XV for Credits.

b. Imposition of Tax on Resident's Share of Profits of a Non-Resident Pass-through Business Entity Not Attributable to Sugarcreek. See Article XV for Credits.

.1 A resident individual who is sole owner of a non-resident pass-through business entity shall disregard the business allocation formula and pay the tax on the entire net profits of his pass-through business entity.

.2 In the case of a resident individual partner or part owner of a non-resident pass-through business entity, there is imposed an annual tax of one percent (1%), and any duly certified additions thereto, 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, whether domestic or foreign and whether or not such corporations have an office or place of business in Sugarcreek, there is imposed an annual tax of one percent (1%), and any duly certified additions thereto, on the net profits earned, received or accrued during the effective period of the ordinance attributable to Sugarcreek under the formula or separate accounting method provided for in the ordinance.

b. In determining whether a corporation is conducting a business or other activity in Sugarcreek, the provisions of Article III-B of these regulations shall be applicable.

c. Corporations which are required by the provisions of Section 5727.38 to 5727.41, inclusive, of the Revised Code of Ohio, to pay an excise tax in any taxable year as defined by the ordinance, may exclude that part of their gross receipts upon which the excise tax is paid. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to the tax imposed by the ordinance.

#### 6. Amplification:

In amplification of the definition contained in Article II-A of these regulations but not in limitation thereof, the following additional information respecting net business profits is furnished.

##### a. NET PROFITS

.1 Net Profits as used in the ordinance and these regulations means net profits derived from any business, profession or other activity or undertaking carried on for profit or normally carried on for profit.

.2 Net Profits as disclosed on any return filed pursuant to the provisions of the ordinance shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service (providing such method does not conflict with any provisions of the ordinance). Net profits, shown on returns filed pursuant to the ordinance must be reconciled with the income reported to the Federal Internal Revenue Service.

##### b. GROSS RECEIPTS

.1 Gross Receipts shall include but not be limited to income in the form of commissions, fees, rentals from real and tangible personal property, and other compensation for work or services performed or rendered as well as income from sales of stock in trade.

.2 From gross receipts there shall be deducted allowable expenses to arrive at the net profit subject to tax.

##### c. EXPENSES

.1 All ordinary and necessary expenses of doing business, including reasonable compensation paid to employees, shall be allowed but no deduction may be claimed for salary or withdrawal of a proprietor or of the partners, members, or other owners of an pass-through business or enterprise.

.01 If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty, not compensated for by insurance or otherwise of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the federal income tax. Provided, however, that loss on the sale, exchange or other disposition of depreciable property or real estate, used in the tax payer's business shall not be allowed as a deductible expense.

.02 Current amortization of emergency facilities under the provisions of the Internal Revenue Code, if recognized as such for federal income tax purposes, may be included as an expense deduction hereunder.

.03 Where depreciable property is voluntarily destroyed only the cost of such demolition and the undepreciated balance thereof will be allowed as an expense in the year of such demolition, to the extent allowable for federal income tax purposes.

.04 Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, or at the discretion of the Administrator (if the reserve method is used), a reasonable addition to the reserve may be claimed, but in no event shall the amount exceed the amount allowable for federal income purposes.

.05 Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax, then taxes on and other expenses of said property are not deductible. In any event, the following taxes are not deductible from income: (1) the tax under the ordinance; (2) federal or other taxes based upon income; (3) gift, estate or inheritance taxes; and (4) taxes for local benefits or improvements to property which tend to appreciate the value thereof.

.06 In general, non-taxable income and expenses incurred in connection therewith are not to be considered in determining net profits. Income from intangibles, by way of dividends, interest and the like, shall not be included if such income is subject to taxation under the intangible personal property laws of the State of Ohio or is specifically exempt from taxation under said law.

.07 If the taxpayer reports income that is nontaxable under the ordinance and such amounts are deducted in order to reconcile the Sugarcreek return with the taxpayer's federal income tax return, expenses attributable to this nontaxable income shall not be allocated. In the absence of records showing the actual expenses attributable to such nontaxable income, and upon approval of the administrator, such amount shall be deemed to equal five percent of such nontaxable income.

.08 With respect to certain tangible personal property used in business, the "Federal Investment Credit" for current year investments, as determined for federal income tax purposes, shall be treated as a deduction from income with respect to new or used property (subject to federal tax limitations in the case of used property, acquired after December 3, 1961) and the remaining costs shall be depreciated in succeeding years on the same basis used for federal income tax purposes. In the event that "Federal Investment Credit" is required to be adjusted by reason of a sale or other early disposition affecting the original amount of the "Federal Investment Credit," such adjustment must be reported and treated as taxable income under the ordinance in the year of such sale or other early disposition.

.09 Capital gains and losses from sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned. Any amount received on a sale or other disposition of tangible personal property used in business, in excess of book value, shall be treated as taxable income under the ordinance to the extent of depreciation allowable after January 1, 1962. The balance shall be treated as a capital gain.

## 7. Rentals from Real Property.

a. Rentals 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 the taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

b. Where the gross monthly rental of any real properties, regardless of number and value, aggregate in excess of \$100.00 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; 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 \$100.00 per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the crops or when the rental is based on a percentage of the gross of net receipts derived from the farm, whether or not the gross income exceeds \$100.00 per month; and provided further 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 \$100.00 per month.

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

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

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

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

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

h. Non-residents of Sugarcreek are subject to such taxation only if the real property is situated within the Village of Sugarcreek. Non-residents, in determining whether gross monthly rentals exceed One Hundred Dollars (\$100.00) shall take into consideration only real estate situated within Sugarcreek.

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

## 8. Patents and Copyrights:

a. Income from patents or copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to the State Intangible Tax. Conversely, such a state intangible tax is not deductible in determining Village tax. Such items shall be clearly disclosed on an attachment to be filed with the Village tax return.

## B. Allocation of Business Profits.

A request to change the method of allocation must be made in writing before the end of the taxable year.

### 1. Separate Accounting Method

a. The net profits allocable to Sugarcreek from business, professional, or other activities conducted in Sugarcreek or by corporations or pass-through business entities (whether resident or non-resident) may be determined from the records of the taxpayer if 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 Sugarcreek.

b. If the books and records of the taxpayer are used as the basis for apportioning net profits rather than the business allocation formula, 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 or not the net profits attributable to Sugarcreek are apportioned with reasonable accuracy.

c. In determining the income allocable to Sugarcreek 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 Sugarcreek.

## 2. Business Allocation Percentage Method.

a. STEP 1: Ascertain the percentage which the average net book value of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within Sugarcreek is of the average net book value of all real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated during the period covered by the return.

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

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

.02 Gross rents 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:

.001 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;

.002 Any amount payable as additional rent 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: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made and services rendered in Sugarcreek is of the total gross receipts wherever derived during the period covered by the return.

1. The following sales shall be considered Sugarcreek sales:

.01 All sales made through retail stores located within Sugarcreek to purchasers within or without Sugarcreek except such of said sales to purchasers outside Sugarcreek that are directly attributable to regular solicitations made outside Sugarcreek personally by taxpayer's employees.

.02 All sales of tangible personal property delivered to purchasers within Sugarcreek if shipped or delivered from an office, store, warehouse, factory, or place of storage located within Sugarcreek.

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

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

.05 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 subparagraphs 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 Sugarcreek by mail or phone from an office, or place of business within Sugarcreek shall not be considered a solicitation of sales outside Sugarcreek.

c. STEP 3: Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within Sugarcreek is of the total wages, salaries, commissions and other compensation of all the taxpayer's employees within and without Sugarcreek 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 with the method of accounting used in the computation of the entire net income of the taxpayer.

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

.01 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 Sugarcreek.

.02 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 Sugarcreek bears to the value of all his services; and

.03 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 Sugarcreek is of his total working time.

d. STEP 4: Add the percentages 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 ascertaining 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 Sugarcreek. 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 in Sugarcreek.

### 3. Substitute Method:

a. In the event a just and equitable result cannot be obtained under the formula, the Board, upon application of the taxpayer or the Administrator, 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 Board 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 and shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. A copy thereof shall be served at the time of filing upon the taxpayer or Administrator as the case may be. 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 Board of Review.

### C. Operating Loss Carry Forward.

1. The portion of a net operating loss, based on income taxable under the ordinance, sustained in any taxable year subsequent to July 1, 1969 allocable to Sugarcreek may be applied against the portion of the profit of succeeding year(s) allocable to Sugarcreek until exhausted, but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.

2. In the event net profits are allocated both within and without Sugarcreek, the portion of a net operating loss sustained shall be allocated to Sugarcreek in the same manner as provided herein for allocating net profits to Sugarcreek. The portion of net operating loss to be carried forward shall be determined in the year the net operating loss is sustained, on the basis of the allocation factors applicable to that year. The same method of accounting and allocation must be used in the year to which an operating loss is carried as was used in the year in which the operating loss was sustained.

3. In the case of fiscal years beginning prior to the effective date of the ordinance, the net operating loss deduction will be that portion of the operating loss that the number of months of the fiscal year after the effective date of the ordinance bears to the total number of months in such fiscal year.

4. A short fiscal year (a fiscal year of less than twelve (12) months) in cases where there has been a change in accounting period, where a new taxpayer selects a short fiscal year, or where a new taxpayer operates in Sugarcreek for less than his full accounting period, shall be considered as a full taxable fiscal year.

5. In any return in which a net operating loss deduction is claimed, a schedule should be attached showing:

a. Year in which net operating loss was sustained.

b. Method of accounting and allocation used to determine portion of net operating loss allocable to Sugarcreek.

c. Amount of net operating loss used as a deduction in prior years.

d. Amount of net operating loss claimed as a deduction in current year.

6. The net operating loss of a business which loses its identity through merger, consolidation, etc., shall not be allowed as a carry-forward loss deduction to the surviving business entity.

7. In the case of a net operating loss in the filing of consolidated returns, see Article III, paragraph D.

#### D. Consolidated Returns:

1. Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership. 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 which 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 for 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 for the period after it ceases to be a member, separate returns must be filed. If a corporation has been a member of the affiliated group for less than one month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one month.

If a subsidiary is a member of the 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 a group or ceases to be a member of the group during the taxable year, the property fraction (Step 1 of the formula) shall be determined on the basis of the average net book value of the property during the period such corporation was a member of the group. The rental portion of the fraction, however, shall be computed at 8 times the annual rent. The gross receipts and wage fraction 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 will be the parent corporation.
6. The net operating loss carry-over of a corporation which filed a separate return in a prior year may be carried over to the consolidated return but will be limited in amount to the amount of that same corporation's net income included in the consolidation. The net operating loss carry-over from a separate year shall be deducted first before application of the allocation fraction. After application of the allocation fraction the consolidated net operating loss carry-over allocated to Sugarcreek shall be allowed.

7. In consolidating the net income, the taxable income of each corporation shall be computed in accordance with the provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of the affiliated group.

8. In determining expenses that are not allowable because they are allocated to non-taxable income, such calculations shall be based on the consolidated net income. As an example, inter-company dividends which are eliminated in the consolidation will not be taken into consideration in determining non-taxable income.

E. Exceptions.

The following shall not be considered taxable.

1. Poor relief, unemployment insurance benefits, supplemental unemployment benefits, old age pensions or similar payments received from local, state or federal governments or charitable or religious organizations.

2. Proceeds of insurance, annuities, workman's compensation insurance, social security benefits, pensions, compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits.

3. Compensation for damage to property by way of insurance or otherwise.

4. Interest and dividends from intangible property.

5. Military pay and allowances received as a member of the armed forces of the United States.

6. Any charitable, educational, fraternal or other type of non-profit association or organization enumerated in Section 718.01 of the Revised Code of Ohio which is exempt from payment of real estate taxes is exempt from payment of the tax imposed by this ordinance.

7. Any association or organization falling in the category listed in the preceding paragraphs not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the taxes levied under this ordinance on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.

8. Where such non-profit association or organization conducts income producing business both within and without the corporate limits, it shall calculate its profits allocable to Sugarcreek under the method or methods provided above.

9. Earnings and income of all persons under 18 years of age whether residents or non-residents.

#### **ARTICLE IV**

##### **Effective Period of Tax**

A. The tax imposed by Section 3, paragraphs A-1 and A-2 of the ordinances shall be levied, collected and paid with respect to salaries, wages, bonuses, incentive payments, commissions, fees and other compensation earned during the effective period of the ordinance.



B. The tax imposed by Section 3, paragraphs A-3, A-4 and A-5 of the ordinance, with respect to net profits of trades, businesses, professions, enterprises, undertakings and other activities is on the net profits earned during the effective period of the ordinance.

## **ARTICLE V**

### **Return and Payment of the Tax**

#### **A. Date and Requirement for Filing:**

1. On or before April 30 of the year following the effective date of the ordinance and each year thereafter, every person subject to the provisions of Section 3, paragraphs A-1 to A-5, inclusive, of the ordinance shall, except as hereinafter provided, make and file with the Administrator, a return on a form prescribed by and obtainable upon request from the Administrator, whether or not a tax be due.
2. If the return is made for a fiscal year or any period less than a year, said return shall be made within four (4) months from the end of each fiscal year or other period.
3. Every person subject to the provisions of Section 3 of the ordinance shall, except as hereinafter provided, file a return setting forth the aggregate amount of salaries, wages, commissions and other personal service compensation, net profits from business or other activities, including the rental from use of real and personal property, and other income taxable under the ordinance, received for the period covered by the return and such other pertinent facts and information in detail as the Administrator may require.
4. Where an employee's entire earnings for the tax period are paid by an employer or employers, and the proper percentage tax thereon has in each instance been withheld and deducted by the employer or employers from the gross amount of the entire earnings of such employee-taxpayer, and where the employer of such employee has filed a report or return in which such employee's entire and only earnings are reported to the Administrator, and where such employee has no taxable income other than such earnings and the tax so withheld has been paid to the Administrator, such employee need not file a return.
5. An employee who is permitted to deduct business expenses from gross wages, salaries, or commissions must file a return in order to claim such deductions even though all or part of such wages, salaries, or commissions are subject to withholding.
6. Any taxpayer who received taxable income not subject to withholding under the ordinance must file a return.
7. Any taxpayer having income, wages, or other compensation 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.
8. Trustees of active trusts are required to file reports and pay the tax on the taxable income thereof.
9. Except as provided for herein, the tax is on the partnership or association as an entity whether resident or non-resident and a return is required disclosing the net profits allocable to Sugarcreek and the tax paid thereon. However, any resident partner or resident member of a pass-through business entity is required to make a return and pay the tax in accordance with Article III-A-3b.2 of these regulations.
10. A husband and wife may, in any tax year, elect to file separate or joint returns.

11. Operating losses from business or professional activities, the profits of which would be taxable under the ordinance, may be offset against salaries, wages, commissions and other personal service compensation or against net profits from other business or professional activities. To the extent that such losses are offset they shall not be allowable as an operating loss carry forward under Section 3c of the ordinance or Article III-C of the regulations.

b. Information Required and Reconciliation With Federal Returns.

1. In returns filed hereunder there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation subject to the tax earned from each employer, taxable net profits and other pertinent information as the Administrator may require.

2. Where figures of total income, total deductions, and net profits are included, as shown by a federal return, any items of income as are not subject to Sugarcreek tax and unallowable expenses shall be eliminated in determining net income subject to Sugarcreek tax. In the absence of records showing the actual unallowable expenses, such expenses shall be determined in accordance with Article III A-6.c.1.08 of these regulations. The fact that any taxpayer is not required to file a federal tax return does not relieve him from filing a Sugarcreek tax return.

3. If a change in federal income tax liability, made by the Federal Internal Revenue Service, or by a judicial decision, results in an additional amount of tax payable to Sugarcreek, a report of such change shall be filed by the taxpayer within three (3) months after receipt of the final notice from the Federal Internal Revenue Service or final Court decision. See Article XI-B-2.

4. If a change in federal income tax liability results in a reduction of taxes owed and paid to Sugarcreek, a claim for refund shall be filed with the Administrator as prescribed in Section 11 of the ordinance and Article XI-C of these regulations.

C. Extensions.

1. Upon written request of the taxpayer made on or before the date for filing the return, and for good cause shown, the Administrator may extend the time for filing such return for a period of not to exceed six (6) months, or to one (1) month beyond any extension requested of or granted by the Federal Internal Revenue Service. Whenever he deems such necessary, the Administrator may require a tentative return accompanied by payment of the estimated tax. No penalty or interest will be assessed in those cases in which the return is filed and the final tax paid within the period as extended provided all other filing and payment requirements of the ordinance have been met.

2. Information returns, schedules and statements needed to support tax returns are to be filed within the time limits set forth for filing the tax returns.

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 6 of the ordinance, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section 7 of the ordinance, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 15 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 Sugarcreek Village is entitled under the provisions of the ordinance may have such overpayment applied against any subsequent liability

hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than One Dollar (\$1.00) shall be collected or refunded.

#### E. Amended Returns.

1. Where necessary an amended return 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 and 12. Such amended return shall be on a form obtainable on 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 Sugarcreek tax liability, such taxpayer shall make and file an amended Sugarcreek return showing income subject to the Sugarcreek 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.

## ARTICLE VI

### Collection of Tax at the Source

#### A. Duty of Withholding.

1. Except as otherwise provided herein, it is the duty of each employer within or doing business within Sugarcreek, who employs one or more persons whether as an employee, officer, director or otherwise, to deduct each time any compensation is paid the tax of one percent (1%), and any duly certified additions thereto, from:

a. The gross amount of all salaries, wages, bonuses, incentive payments, fees, commissions or other forms of compensation paid to residents of Sugarcreek, regardless of the place where the services are rendered; and

b. All compensation paid non-residents for services rendered, work performed or other activities engaged in within Sugarcreek.

2. All employers within or doing business within Sugarcreek are required to make the collections and deductions specified in this article, regardless of the fact that the services on account of which any particular deduction is required, as to residents of Sugarcreek, were performed outside Sugarcreek.

3. Employers who do not maintain a permanent office or place of business in Sugarcreek, but who are subject to tax on net profits attributable to Sugarcreek, under the method of allocation provided for in the ordinance, are considered to be employers within Sugarcreek and subject to the requirement of withholding.

4. 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.

5. Commissions and fees paid to professional men, brokers and others who are independent contractors, and not employees of the payor, 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 Article V and VII of the regulations.

6. Where a non-resident receives compensation for personal services rendered or performed partly within and partly without Sugarcreek, the withholding employer shall deduct, withhold and remit the tax on that portion of the compensation which is earned within Sugarcreek, 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 Sugarcreek bears to the total volume of business transacted by him within and outside Sugarcreek.

b. The deducting and withholding of personal services 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 Sugarcreek 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 Sugarcreek on a seven-day per week basis. The percentage of time worked in Sugarcreek will be computed on the basis of a forty-hour week unless the employer notifies the Administrator that a greater or lesser number of hours per week is worked.

d. The occasional entry into Sugarcreek of a non-resident employee who performs the duties for which he is employed primarily outside the Village, shall not be deemed to take such employee out of the class of those rendering their services entirely outside Sugarcreek. An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions.

e. An non-resident employer shall not be required to deduct and withhold taxes from an employee unless the total amount owed to the Village of Sugarcreek exceeds \$150.00 in the applicable calendar year.

8. 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.

9. An employer whose records show that an employee is a non-resident of Sugarcreek and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside Sugarcreek by such employee, provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Administrator notifies said employer in writing that such employee is a resident of Sugarcreek. All employees are required to notify the employer of any change of residence and the date thereof.

10. A Sugarcreek employer required to withhold the tax from a Sugarcreek resident for work done or services performed in another municipality, and who does so withhold and remit to such other municipality, shall be relieved from the requirement of withholding the Sugarcreek tax from such Sugarcreek resident, except where the rate of tax for such other municipality is less than the rate of tax imposed by this ordinance. In such case the employer shall withhold and remit the difference to Sugarcreek.

11. Subject to approval by the Board of Review, the Administrator shall have authority to permit the filing of individual returns and payment thereon of employers of less than four (4) employees and to enter into agreements with other taxing municipalities permitting an employer to withhold the entire tax on the wages of a taxpayer working in more than one taxing municipality either for the taxing municipality in

which the employer has his principal place of business or the taxing municipality in which the employee resides.

12. No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed exclusively in or about such person's residence, but such employee shall be subject to all of the requirements of the ordinance.

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

1. The deductions from salaries, wages, and other compensation 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, on or before the last day of the month next following each quarterly period, make a return (Form W-1) and pay to the Administrator the full amount of the tax so deducted or withheld with respect to compensation paid all of his employees subject to the tax under the ordinance. Provided, however, that where he deems such precaution necessary, the Administrator may require an employer to remit withholding taxes at more frequent intervals.

The return (Form W-1) required to be filed under this article shall be made on a form furnished by or obtainable on request from the Administrator.

2. If more than the amount of tax required to be deducted by the ordinance is withheld from an employee's pay, such excess may be refunded by the employer or the Administrator, depending upon the circumstances and the time when the over-withholding is determined as follows:

##### a. Current employees;

.1 If the over-withholding is discovered in the same quarterly period, the employer shall make the necessary adjustment directly with the employee and the amount to be reported on the quarterly W-1 as withheld shall be the corrected amount;

.2 If the over-withholding is discovered in a subsequent quarter of the same calendar year the employer may make proper adjustment with the employee. In such case the W-1 for the quarter in which the adjustment is made shall indicate the total amount actually withheld, the amount of the adjustment deducted therefrom, and the corrected amount reported on the W-1;

.3 If the over-withholding is discovered in the following year, the employer should notify the Administrator of such over-withholding and the circumstances thereof. Upon proper verification the Administrator shall refund to the employee the amount of such excess withholding;

##### b. Former employees:

.1 In case too much has been withheld from an employee who is no longer employed by the employer, the employer shall notify the Administrator of the amount and circumstances of such over-withholding and the Administrator shall then refund to the employee the amount of such excess withholding; or

.2 If the error is discovered by the employee, such employee shall file a claim with the Administrator and, upon verification thereof by the employer, the Administrator shall refund to the employee the amount of such excess withholding;

##### c. Non-Residents Employed Outside the Village:

.1 Where an employer has withheld the tax from all wages of a non-resident of Sugarcreek and such non-resident has been employed outside of Sugarcreek for all or a part of the time, such employee shall file a claim with the Administrator covering such erroneous withholding and the Administrator shall, upon verification thereof by the employer, refund to the employee the amount of such excess withholding;

d. Insufficient Withholding:

.1 If less than the amount of tax required to be deducted is withheld from an employee, such deficiency shall be withheld from subsequent wages. However, if the employee-employer relationship has terminated, the employer shall notify the Administrator of such deficiency and the reason therefor.

3. Every employer is deemed to be a trustee for the Village of Sugarcreek in collecting and holding 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 Sugarcreek for payment of such tax whether actually collected from such employee or not.

5. On or before the 31st day of January, 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 Sugarcreek income tax has been withheld, showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of Sugarcreek income tax withheld from such employee.

6. For the convenience of employers, the information return may be made in one of three ways at the election of each employer, as follows:

a. Those employers using Form W-2 furnished commercially, may submit a copy of such commercial Form W-2 providing the copy furnished the Sugarcreek Village clearly shows the information required in paragraph 5 immediately preceding.

b. Those employers not using Form W-2 furnished commercially may obtain forms upon request from the Administrator.

c. Where the furnishing of this information as above indicated will create a distinct hardship, the employer, upon written request to the Administrator, may be permitted to furnish a list of all employees subject to the tax, which list shall show the employee's full name, last known address, social security number, gross amount of compensation paid during the year and the amount of Sugarcreek income tax withheld. Such list may be compiled on any mechanical equipment presently used by the employer, but provision must be made for spacing equal to at least three lines between each name. The employer's name must be indicated on each sheet, each sheet must be numbered and the total number of sheets comprising the complete report indicated on the first page.

d. 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.

7. In addition to such information returns, and at the time the same are filed, such employer shall file with the Administrator Form W-3 to enable the Administrator to reconcile the sum total of compensation paid and taxes withheld as disclosed by information return W-2, or list of employees, and prior returns and remittances made pursuant to the ordinance.

c. Fractional Parts of Cent: In deducting and withholding the tax at the source and in payment of any tax due under the ordinance, a fractional part or a cent shall be disregarded unless it amounts to one-half cent ( $\frac{1}{2}\phi$ ) or more in which case it shall be increased to one cent ( $1\phi$ ).

## **ARTICLE VII**

### **Declarations**

#### **A. Requirement 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 by an employer or employers. 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. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith.

#### **B. Date of Filing:**

1. A person or other entity conducting a business not previously subject to the tax, or whose employer does not withhold the tax, shall file a declaration within four (4) months after the date he becomes subject to the tax.

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.

#### **C. Form for Filing:**

1. Such declaration shall be filed upon a form or forms furnished by or obtainable from the Administrator, provided, however, credit shall be taken for Sugarcreek tax to be withheld from any portion of such income. In accordance with the provisions of Section 15 of the ordinance, credit may be taken for tax to be withheld and remitted to another taxing municipality.

2. The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any quarterly payment date as set forth in Article VII-D.1. Such amendment may be made on the regular declaration form or on the back of any quarterly notice form (Q-1).

#### **D. Dates of Payments:**

1. The estimated tax may be paid in full with the declaration or in equal installments on or before the last day of the fourth, sixth, ninth and twelfth month after the beginning of the taxable year.

2. The declaration must be accompanied by at least one-fourth ( $\frac{1}{4}$ ) of the estimated tax shown due thereon.

3. 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.

#### **E. 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 a refund of any overpayment of over One Dollar (\$1.00).

## **ARTICLE VIII**

### **Duties of 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 herein from the taxpayers; to keep an accurate record thereof, and to report all monies so received.

2. It shall be the duty of the Administrator to enforce payment of all taxes owing Sugarcreek, 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. 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 Board of Review, empowered to adopt, promulgate, and enforce rules and 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. Any taxpayer or employer desiring a special ruling on any matter pertaining to the ordinance or these rules and regulations, should submit to the Administrator in writing all the facts involved and the ruling sought.

3. These regulations, together with all amendments and supplements hereto and all changes herein, will be on file at the office of the Administrator, Sugarcreek, and will be open to public inspection.

4. 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. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under the ordinance.

5. Failure to make any deferred payment when due, shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Section 11 and 12 of the ordinance shall apply.

#### **C. Estimation of Tax by Administrator:**

1. Whenever the Administrator has been unable to secure information from the taxpayer as to his taxable income for any year, he may determine the amount of tax appearing to be due and assess the taxpayer upon the basis of such determination, together with the interest and penalties as prescribed in Section 10 of the ordinance.

2. Such determination of tax may be adjusted upon submission by the taxpayer of actual records from which his tax may be computed.



D. Subject to the consent of the Board of Review or pursuant to regulation approved by said Board, the Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 10 of the ordinance.

## **ARTICLE IV**

### **Examination of Books and Records, Information**

#### **So Obtained Confidential: Penalty**

##### **A. Investigations by Administrator.**

1. The Administrator, or his duly authorized agent, is authorized to examine the books, papers, records and federal income tax returns of any employer, taxpayer or person subject to the ordinance, or whom the Administrator believes is subject to the provisions of the ordinance, for the purpose of verifying the accuracy of any return made; 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 and records and 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 transaction of the taxpayer.

2. The Administrator's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the office of the Administrator.

3. 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.

4. Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show the time and place of the hearing and what books, papers or records the witness is to make available at such hearing.

5. The notice shall be served by the Administrator, or his duly authorized agent, by delivering it to the person named personally, or by leaving the notice at his usual place of business or residence or by mailing it to the person by registered mail, return receipt requested, addressed to his usual place of business or residence.

##### **C. Penalty for Non-Compliance:**

Refusal by any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Administrator or his duly authorized agent to submit to such examination and

to produce the records requested constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 12 of the ordinance.

**D. Confidential Nature of Examination:**

Any information gained as a result of any returns, investigations, verifications or hearings before the Administrator or the Board, required by the ordinance or authorized by these rules and regulations shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. 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 (6) months, or both.

In addition to the above penalty, any employee of the Village of Sugarcreek 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. Retention of Records:**

All employers and taxpayers are required to keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits, or both. Such records shall be preserved for a period of not less than five (5) years from the date the final return is filed and paid or the withholding taxes are paid.

## **ARTICLE X**

### **Interest and Penalties**

**A. Interest:**

1. Except as provided in paragraph C. of this article, all taxes imposed and all monies withheld, or required to be withheld, by employers under the provisions of this ordinance and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of one-half of one percent ( $\frac{1}{2}\%$ ) per month or fraction thereof.

**B. Penalties:**

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 percent ( $\frac{1}{2}\%$ ) per month or fraction thereof.
2. For failure to remit taxes withheld from employees: three percent (3%) per month or fraction thereof.

**C. Exceptions:**

1. No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within the prescribed time.
2. In the absence of fraud, neither penalty nor interest shall be assessed on any additional taxes resulting from a federal audit from federal income tax purposes provided an amended return is filed and the additional tax paid within three (3) months after final determination of the federal tax liability.

3. A taxpayer or employer shall have thirty (30) days after receipt of notice of any proposed imposition of interest and penalties within which to file a written protest or explanation with the Administrator. If no protest or explanation is filed within the prescribed time, the proposed imposition of interest and penalties shall become and be the final assessment. Upon filing of a written protest or explanation, the Administrator shall determine the assessment which may or may not be the same as the proposed assessment.

D. Appeal from Assessment:

1. 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 Refund of Overpayments**

A. Unpaid Sums - A Civil Debt:

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 by civil suit. Employers who are required, under Section 6 of the ordinance, to withhold and remit the taxes required to be withheld at the source, and who fail to withhold and/or remit, become liable to the Village in a civil action 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 no 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 Commissioner 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 federal tax liability.

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.

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

a. To taxes owed for any previous years in the order in which such taxes become due.

b. To his current estimated tax liability.

C. Limitation:

Where the total amount due or refund claimed for a tax year is less than One Dollar (\$1.00) such amount shall not be collected or refunded.

## **ARTICLE XII**

### **Violations, Penalties**

A. Any person who shall:

1. Fail, neglect or refuse to make any return or declaration required by this ordinance; or
2. Make any incomplete, false or fraudulent return; or
3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by this ordinance; or
4. Fail,, neglect or refuse to withhold the tax from his employees or remit such withholding to the Administrator; or
5. Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and federal income tax returns relating to the income or net profits of a taxpayer; or
6. Fail to appear before the Administrator and to produce his books, records, papers or federal 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 authorized hereby; or
9. Give to an employer false information as to his true name, correct social security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or
10. Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and Sugarcreek tax withheld, or to 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,

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. Prosecutions:

Prosecutions under the ordinance must be commenced within five (5) years from the time of the offense except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution 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.

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 from making any information return, declaration or return, from filing such form, or from paying the tax.

## **ARTICLE XIII**

### **Board of Review or Appellate Authority**

#### **A. Composition:**

A Board of Review, consisting of the Treasurer, President of Council and the Village Solicitor is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 9 hereof with reference to the confidential character of information required to be disclosed by the ordinance shall apply to such matters as may be heard before the Board on appeal.

#### **B. Duties:**

All rules and 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.

#### **C. Appeals:**

1. An appeal from a ruling of the Administrator by a taxpayer or employer is effected by filing a written notice of appeal with the Board at Village Hall within thirty (30) days after the announcement of the Administrator's ruling or decision from which the appeal is taken. A copy of such notice of appeal must be filed with the Administrator. The notice must state the alleged errors in the Administrator's decision.
2. The Board shall schedule a hearing within 45 days of receiving the notice of appeal unless the taxpayer waives the hearing. The taxpayer may be represented at the hearing.
3. The Board, by a majority vote, may affirm, modify or reverse, in whole or in part, any such ruling or decision of the Administrator. The Board must issue a decision within 90 days of the final hearing and send notice of its decision within 15 days after issuing the decision.
4. Hearings before the Board shall be private unless the taxpayer requests a public hearing.

## **ARTICLE XIV**

### **Use of Funds**

No regulation on this Section as it is a policy matter for Council.

## **ARTICLE XV**

### **Credit Allowed for Tax Paid in Another Municipality**

#### **A. Limitation:**

1. Where a resident of Sugarcreek is subject to a municipal tax on or measured by income in another municipality either located within or without the State of Ohio, he shall not pay a total municipal tax on the same income greater than the tax imposed at the higher rate.

**B. Credits to Residents:**

Resident individuals of Sugarcreek who are required to pay and do pay a tax to another municipality on salaries, wages, commissions or other compensation for work done or services performed in such other municipality, or on net profits from businesses, professions or other activities conducted in such other municipality, may claim a credit of the amount of tax paid by them or on their behalf to such other municipality, but only to the extent of the tax imposed by the ordinance on such compensation or net profits.

**C. Method of Applying for Credit:**

1. No credit will be given unless the taxpayer claims such on his final return or other form prescribed by the Administrator, and presents such evidence

of the payment of a similar tax to another municipality, as the Administrator may require.

2. A statement satisfactory to the Administrator from the taxing authority of the municipality to which the taxes are paid stating that a Sugarcreek

resident of his or her employer is paying the tax shall be considered as fulfilling the requirement of this article.

## **ARTICLE XVI**

### **Savings Clause**

If any sentence, clause, section or part of these regulations is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of these regulations and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of these regulations.

## **ARTICLE XVII**

### **Collection of Tax After Termination of This Ordinance**

**A. Authority to collect after Termination of Ordinance:**

In the event the tax imposed by the provisions of this ordinance may be

repealed or amended, the ordinance remains in full force and effect for purposes of collection and payment of taxes due and payable beyond that date, subject however, to the provisions of Section 11 of the ordinance with respect to the limitation of time within which an additional assessment may be made.

**B. Payment of Taxes:**

1. Taxes due and unpaid on account of compensation paid or received and on account of profits earned in the last effective year of the ordinance or any

part thereof that remain unpaid in the event of repeal, are payable in full on or before the dates specified in Sections 5 and 6 of the Ordinance and Articles 5 and 6 of these regulations, and all final returns or withholding reports must be filed on or before that date, unless extended by the Administrator.

2. For the purposes of collection of delinquent or unpaid taxes, actions or proceedings for such collection and/or the collection of interest and penalties thereon, or enforcing any provisions of the ordinance (including prosecutions under the criminal sections of the ordinance and including appeals before the Board of Review), the ordinance remains in full force and effect until such time as all taxes accruing during the term of the ordinance shall have been fully paid, and all actions, suits, prosecutions, appeals, and other judicial or administrative proceedings relative to the collection or payment of such taxes, have been finally terminated.

## **ARTICLE XVIII**

### **Amendments and Supplements**

A. From time to time amendments and supplements to these regulations may be issued by the Administrator.

Section 2. This Resolution shall be in effect at the earliest period allowed by law.

Passed: November 5, 2001