

INCOME TAX ORDINANCE

ORDINANCE NO. 2006-38

AMENDING ORDINANCE 2004-16 TO PROVIDE FUNDS FOR GENERAL OPERATIONS AND PERMANENT IMPROVEMENTS BY LEVYING A TAX ON ALL QUALIFYING WAGES, COMMISSIONS, AND OTHER COMPENSATION EARNED BY NON-RESIDENTS FOR WORK DONE OR SERVICES PERFORMED IN THE VILLAGE OF SOUTH LEBANON; ON THE NET PROFITS OF ALL UNINCORPORATED BUSINESS, PROFESSIONS, OR OTHER ENTITIES FROM SALES MADE, WORK DONE AND SERVICES PERFORMED OR BUSINESS OR OTHER ACTIVITIES CONDUCTED IN THE VILLAGE OF SOUTH LEBANON. WHETHER OR NOT SUCH UNINCORPORATED BUSINESS, PROFESSIONS, OR OTHER ENTITIES HAVE AN OFFICE OR PLACE OF BUSINESS IN THE VILLAGE OF SOUTH LEBANON; ON A RESIDENT'S SHARE OF NET PROFITS OF AN UNINCORPORATED BUSINESS, PROFESSION, OR OTHER ENTITY, WHETHER LOCATED IN OR OUTSIDE OF THE VILLAGE OF SOUTH LEBANON, NOT ATTRIBUTABLE TO SOUTH LEBANON; AND ON THE NET PROFITS OF ALL CORPORATION FROM SALES MADE, WORK DONE, AND SERVICES PERFORMED, OR BUSINESS OR OTHER ACTIVITIES CONDUCTED IN THE VILLAGE OF SOUTH LEBANON, WHETHER OR NOT SUCH CORPORATIONS HAVE AN OFFICE OR PLACE OF BUSINESS IN THE VILLAGE OF SOUTH LEBANON; REQUIRING THE FILING OF RETURNS AND THE FURNISHING OF INFORMATION BY EMPLOYERS AND ALL THOSE SUBJECT TO SAID TAX AT THE SOURCE AND PAYING THE SAME TO THE VILLAGE OF SOUTH LEBANON; PROVIDING FOR THE ADMINISTRATION, COLLECTION, AND ENFORCEMENT OF SAID TAX; CREATING A 50% INCOME TAX CREDIT PAID TO ANOTHER MUNICIPALITY; DECLARING VIOLATION THEREOF TO BE MISDEMEANORS, AND IMPOSING PENALTIES THEREFOR.

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF SOUTH LEBANON, STATE OF OHIO, TWO-THIRDS OF ALL MEMBERS ELECTED THERETO CONCURRING:

SECTION I 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 South Lebanon there shall be and is hereby levied as a tax on salaries, wages, commissions, and other compensation, and on net profits as hereinafter provided.

SECTION II, DEFINITIONS.

As used in this Ordinance, the following words shall have the meaning ascribed to them in this section, except as and if they clearly indicate or require a different meaning.

ASSOCIATION. A partnership, limited partnership, or and other form of unincorporated enterprise, owned by two or more persons.

BOARD OF REVIEW. The Board created by and constituted as provided for in Section XIII of this Ordinance.

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

CORPORATION. A corporation or joint stock association, including Chapter S Corporations as defined in the Federal tax code, 26 U.S.C. 1361, organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.

DOMICILE – Means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence.

EMPLOYEE. One who receives wages, salary, commission, or other types of compensation in the services of any employer.

EMPLOYER. An individual, partnership, association, corporation, governmental body, unit, or agency, or any other entity, whether

or not organized for profit, who or that employees one or more persons on a salary, wage, commission, or other compensation basis.

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

GROSS RECEIPTS. The total revenue derived from sales, work done, or service rendered, before any deductions, exceptions, or credits are claimed.

INCOME. Shall include all monies derived from any source whatsoever, including but not limited to:

1. All salaries, wages, commissions, other compensation and other income from whatever source received by residents of the Municipality.

2. All salaries, wages, commissions, other compensation and other income from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in the Municipality.

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

MUNICIPALITY. The Village of South Lebanon.

NET PROFITS. The net gain from all operations including those pertaining to capital gains and losses of a business, profession, or enterprise after provision for all ordinary and necessary expense, except taxes imposed by this Ordinance and federal and other taxes based on income, paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, and, in the case of an association, without deduction of salaries paid to partners or other owners.

NON—RESIDENT. A person, whether an individual, association, corporation, or other entity, domiciled outside the Village of South Lebanon.

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

PERSON. Every individual person, partnership, fiduciary, association, corporation, or other entity. Whenever used in any clause prescribed and imposing a penalty, the term “persons” as applied to any association shall include the partners or members thereof, and as to corporation, 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 employees, regularly in attendance.

QUALIFYING WAGES. An employer is required to withhold only on “qualifying wages”, which are wages as defined in IRC Section 3121(a), generally the Medicare Wage in Box 5 of the Form W-2, with an exception to include exempt employees hired before April 1, 1986.

1. Cafeteria Plans – IRC Section 125 wages are not included in the definition of Medicare wages and do not need to be deducted from Box 5.

2. Stock Options – Income from the exercise of stock options is included in the definition of “qualifying wages”.

3. Nonqualified Deferred Compensation Plan – Income from nonqualified plans are included in the definition of “qualifying wages” at the time they are deferred. Distributions received after January 1, 2004 will no longer be subject to local taxation.

4. 401K, 457 and Supplemental Unemployment Compensation Benefits – These items all should be included in Box 5 and subject to withholding requirements.

5. Disqualifying Disposition of an Incentive Stock Option – Employer is not required to withhold, but the income is considered “qualifying wages” and the recipient is liable for the tax. The taxpayer or employer is required to give an explanation when

Box 5 is not the largest wage figure on the W-2.

RESIDENT. A person, whether an individual, association, corporation, or other entity, domiciled in the Village of South Lebanon.

RESIDENT UNINCORPORATED BUSINESS ENTITY. An unincorporated business entity having a place of business within the Municipality.

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

TAX COMMISSIONER. The Tax Commissioner of the Village of South Lebanon or the person executing the duties of the aforesaid Commissioner.

TAX PAYER. A person, whether an individual, partnership, association, corporation or other entity, required by this Ordinance to file a return or pay a tax.

TAXABLE INCOME. Income minus the deductions and credits allowed by this ordinance. (See "Income" definition.)

VILLAGE. The Village of South Lebanon, Ohio the singular shall include the plural, and the masculine shall include the feminine and the neuter.

SECTION III. IMPOSITION OF TAX.

(A) BASIS OF IMPOSITION.

Subject to provisions of Section XVI of this Ordinance, an annual tax, for the purposes specified in Section I hereof shall be, and is hereby, levied on and after January 1, 2005, at the rate of One (1) Per Annum upon the following:

1. On all qualifying wages, including sick and vacation pay, commissions, and other compensation earned during the effective period of this ordinance by residents.
2. On all qualifying wages, including sick and vacation pay commissions, and other compensation earned, during the effective period of this ordinance by non—residents for work done or service performed or rendered in the Municipality.

Effective January 1, 2005, South Lebanon shall not tax the compensation paid to a non-resident individual for personal services or work performed by the individual in the Municipality on twelve (12) or fewer days in a calendar year (which hereby classifies the individual as an "occasional entrant") unless one of the following applies:

A. Effective January 1, 2005, South Lebanon shall not tax the compensation paid to a non-resident individual for personal services or work performed by the individual in the Municipality on twelve (12) or fewer days in a calendar year (which hereby classifies the individual as an "occasional entrant") unless one of the following applies:

1. The individual is the employee of another person, the principal place of business in which the employee normally works is located in another municipal corporation in this State that imposes a tax applying to compensation paid to the individual for services performed on those days, and the individual is not liable to that other municipal corporation for tax on the compensation paid for such services.
2. The individual is a professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the Municipality.

- B. For purposes of the 12-day calculation, any portion of a day worked in South Lebanon shall be counted as one day worked in South Lebanon.
- C. Beginning with the thirteenth day, the employer of said individual shall begin withholding South Lebanon income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to South Lebanon in accordance with Section VI of the income tax ordinance. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in South Lebanon by the individual for the first twelve (12) days. If the individual is self- employed or an independent contractor, it shall be the responsibility of the individual to remit the appropriate income tax to

the Municipality.

3. A. On the portion attributable to the Municipality of the net profits earned during the effective period of this Ordinance of all residents associations, unincorporated businesses, professions, or other entities, derived from sales made, work done, or services performed or rendered, or business or other activities connected in the Municipality.

B. On a resident Partner's or owner's share of the net profits earned during the effective period of the Ordinance of a resident association or other unincorporated entity not attributable to the Municipality and not levied against such association or other unincorporated entity.

4. A. On the portion attributable to the Municipality of the net profits earned during the effective period of this Ordinance, of all non-residents associations, unincorporated businesses, professions, or other entities, derived from sales, work done, or services performed or rendered or business or other activities conducted in the Municipality, whether or not such association or other unincorporated entity has an office or place of business in the Municipality.

B. On a resident partner's or owner's share of the net profits earned during the effective period of this Ordinance of a non-resident association or other unincorporated entity not attributable to the Municipality, and levied against such association or other unincorporated entity.

5. On the net profits earned during the effective period of this Ordinance of all corporation derived from sales made, work done, or services performed or rendered, and business or other activities conducted in the Municipality whether or not such corporations have an office or place of business in the municipality.

6. Effective for tax years 2004 and later, the distributive share of income paid to an S corporation shareholder shall be taxable in the following manner:

A. If no portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the distributive share is taxable only to the extent that it represents wages or net earnings from self-employment.

B. If any portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the full amount of the distributive share is taxable.

(B). ALLOCATION OF NET PROFITS

Businesses Both In and Outside the Municipal Boundaries. This section does not apply to taxpayers that are subject to and required to file reports under Chapter 5745, of the Ohio Revised Code. Except as otherwise provided in division (D) of this section, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of the following:

1. Multiply the entire net profits of the business by a business percentage to be determined by:

A. Average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

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

B. Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in such municipal corporation to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under section 718.011 of the Ohio Revised Code;

C. Gross receipts of the business or profession from sales made and services performed during the taxable period in

such municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

D. Adding together the percentages determined in accordance with subparagraphs (a), (b), and (c) above, or such of the aforesaid percentages as are applicable to the particular taxpayers, and dividing the total so obtained by the number of percentages used in deriving said total.

1. A factor is applicable even though it may be allocable entirely in or outside the Municipality.

2. Provided, however, that in the event a just and equitable result cannot be obtained under the formulas provided for herein, the Board of Review, upon application of the taxpayer or the Tax Commissioner, shall, under uniform regulations adopted by the Board, have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

(C) OPERATING LOSS CARRY-FORWARD.

1. The portion of a net operating loss sustained in any taxable year, beginning with January 1, 1988 allocable to the Municipality, may be applied against the portion of the profit of succeeding tax years, allocable to the Municipality, until exhausted, but in no event for more than the five (5) taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

2. The portion of a net operation loss sustained shall be allocated to the Municipality in the same manner as provided herein for allocating net profits to the Municipality.

3. The Tax Commissioner shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined.

(D) CONSOLIDATED RETURNS.

1. Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the Municipality. However, once the affiliated group has elected to file a consolidated return with the Municipality, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the Municipality.

2. In the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking or with some other method, the Tax Commissioner shall require such information in addition to ascertain whether net profits are properly allocated to the Municipality. If the Tax Commissioner finds net profits are not properly allocated to the Municipality by reasons of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, he may require the filing of a consolidated return or adjust such transactions so as to produce a fair and proper allocation of net profits to the Municipality.

(E) EXCEPTION.

The tax provided for herein shall not be levied on:

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

2. Pensions paid as a result of retirement, social security, unemployment compensation, and disability benefits received from private industry or local, State or Federal governments, or from charitable, religious or educational organizations.

3. Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide charitable, religious and

educational organizations and associations.

4. The gross income and gross receipts of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property, or tax exempt activities.
5. Unemployment insurance benefits, welfare benefits, and workers' compensation.
6. Proceeds of insurance paid by reason of death of the insured; retirement disability benefits, annuities, or gratuities not in the nature of compensation for services rendered from whatever source derived.
7. Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation.
8. Gains from involuntary conversions, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio, and income of a decedent's estate during the period of administration (except such income from the operation of a business).
9. Expenses reported for Federal Form 2106, subject to audit and approval by the Municipality income tax office.
10. Compensation paid under Ohio R.C. 3501.28 or 3501.36 to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars (\$1,000.00) annually.
11. Income, salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from interstate commerce.
12. Salaries, wages, commissions, other compensation, other income and net profits, including interest and dividends as provided in Ohio R.C. 718.01, the taxation of which is prohibited by the Constitution of the State or any act of the Ohio General Assembly limiting the power of the Municipality to impose net income taxes.
13. Any person who is a full-time student at a high school, college, university, technical school or any other accredited post secondary educational institution is exempted from paying income tax.

SECTION IV. EFFECTIVE PERIOD.

The tax imposed by this Ordinance shall be levied, collected, and paid with respect to all income and net profits, subject to the tax, earned on or after January 1, 2005.

SECTION V. RETURN AND PAYMENT OF TAX.

(A) DATES AND EXEMPTIONS

Each person who, engaged in business, or whose qualifying wages, commissions, or other compensation are subject to the tax imposed by this Ordinance shall, whether or not a tax be due thereon, make and file, on or before April 15th in each year, beginning with the year 2004, a return with the Tax Commissioner. A taxpayer on a fiscal year accounting basis for federal income tax purposes shall, beginning with his first fiscal year, any part of which falls within the effective period of this Ordinance, file his return on or before the fifteenth (15) day of the fourth (4) month following the end of the such fiscal year or period. The Tax Commissioner 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 Tax Commissioner 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) RETURN AND CONTENTS THEREOF

The return, including W-2 and 1099 forms, shall be filed with the Tax Commissioner on a form or forms furnished by or obtainable upon request from the Tax Commissioner setting forth:

1. The aggregate amounts of income, qualifying wages, commissions, and other compensation earned, and gross income from any 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; and
3. Such other pertinent statements, information returns, or other information as the Tax Commissioner may require, including but not limited to copies of all W-2 forms, 1099 Miscellaneous Income Forms, page one of form 1040, Page One and Two of Form 1120, 1120S (including (K-1), 2106, 1065, Schedule C (including cost of goods manufactured and/or sold), Schedule E, Schedule F and any other applicable Federal Schedules.
4. The Municipality Income Tax Department shall accept a generic form of its annual income tax return if the generic form once completed and filed contains all of the information required to be submitted with the Municipality's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the Municipality governing the filing of returns, reports or documents.

(C) EXTENSIONS.

The Tax Commissioner may extend the time for filing of the annual return upon the request of the taxpayer, however, the extended due date of the municipal income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. any extension requested of or granted by the Internal Revenue Service for filing of the Federal Income Tax Return. The Tax Commissioner 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. . The tax Commissioner may deny the extension if the taxpayer's income tax account with the Municipality is delinquent in any way. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax is paid within the period as extended.

(D) PAYMENT WITH RETURNS.

1. The taxpayer making a return shall at the time of the filing thereof pay to the Tax Commissioner the amount of taxes shown as due thereon: provided however, that where the source. pursuant to the provisions of Section VI of this Ordinance where and portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Section VII of this Ordinance, of where an income tax. creditable against the South Lebanon Tax Pursuant to Section XV hereof has been paid to another Municipality, credit for the amount so paid 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 Municipality is entitled under the provisions of this Ordinance may have such overpayment applied against any subsequent liability hereunder or as 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 limitations contained in Section XI and XV, such Amended Returns shall be on a form obtainable on request from the Tax Commissioner. A taxpayer may not change the method of accounting (i.e., cash or accrual) 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 South Lebanon tax liability, such taxpayer shall make and file an amended South Lebanon return, showing income subject to the municipality 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.

SECTION VI. COLLECTION AT SOURCE.

(A) WITHHOLDING BY EMPLOYER.

Each employer within, or doing business within, the Municipality, who employs one or more persons on a salary wage commission or other compensation basis shall deduct at the time of the payment of such salaries wages commissions or other compensation or other compensation due by said employer to each said employees, and shall on or before the last of April, July, October, and January of the year following the effective date of this Ordinance, and each year thereafter make a return and pay to the Tax Commissioner the amount of taxes so deducted during the preceding Calendar quarter. Said return shall be on a form or forms prescribed by acceptable to shall be subject to the rules and regulation prescribed thereon by the Tax Commissioner.

(B) EMPLOYER CONSIDERED AS TRUSTEE.

Each employer in collecting said tax shall be deemed to hold the same until payment is made by such employer to the Municipality, as a Trustee for the benefit of the Municipality, and any such tax collected by such employer from his employees shall until the same is paid to the Municipality, be deemed a trust fund in the hands of such employer. (Each employee shall be liable for the payment of the tax required to be deducted and withheld. whether or not such tax. in fact. has been withheld.)

(C) CORPORATE OFFICERS PERSONAL LIABILITY.

It shall be the responsibility, jointly and severally, of the president and treasurer of each corporation required to withhold the tax from wages of its employees under this section to see that all such taxes so withheld are paid to the Municipality in accordance with the provisions of this section. In the event taxes withheld by a corporation from the salaries of its employees are not paid to the Municipality in accordance with the provisions of this section, the president and treasurer of said corporation shall each be criminally liable under the provisions of Section XII hereof.

(D) EMPLOYEES: LISTING.

On or before February 28th of each year, each employer shall file a withholding return, on a form prescribed by and obtainable from the Tax Commissioner, setting forth the names, addresses and social security numbers of all employees from whose compensation the tax was withheld during the preceding calendar year, and the amount of tax withheld from the listed employees and such other information as may be required by the rules and regulations adopted by the Tax Commissioner.

(E) DOMESTIC SERVANTS.

Provided, however, that 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. However, such domestic servants shall be responsible for filing and paying their own returns and taxes.

(F) CONTRACTORS AND SUBCONTRACTORS.

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

SECTION VII. DECLARATIONS.

(A) REQUIREMENT FOR FILING.

Every person who anticipates any taxable income which is not subject to Section VI hereof, or engages in any business, profession, enterprise or activity, may file a declaration setting forth such estimated income or the estimated profit or loss from such business activity, together with the return estimated tax due thereon, if any.

(B) DATES FOR FILING.

1. Such declaration shall be filed on or before April 15th of each year during the life of this Ordinance, or within four (4) months of the date the taxpayer first becomes subject to the provisions of this period.

2. Those taxpayers reporting on a fiscal year basis shall file a declaration on or before the 15TH day following the start of each fiscal year or period.

(D) AMENDED DECLARATION.

An amended declaration must be filed on or before January 31st of any year or in the case of a taxpayer on a fiscal year accounting basis, on or before the date fixed by regulation of the Tax Commissioner, if it appears that the original declaration made for such year underestimated the taxpayers income by thirty percent (30%) or more. At such times a payment which, together with prior payments, is sufficient to pay taxpayers entire estimated liability, shall be made. If, upon the filing of the return, on or before January 31st, or the date fixed by regulation, whichever is applicable, the difference between seventy percent (70%) of said taxpayers tax liability and the amount of estimated tax he actually paid on or before January 31st, or the date fixed by regulation, whichever is applicable-

(E) ANNUAL RETURN REQUIRED.

On or before the fifteenth day of the fourth month of the calendar or fiscal year following that for which the declaration was filed, of an annual return shall be filed and any balance which may be due the Municipality shall be paid therewith in accordance with the provisions of Section V hereof.

SECTION VIII, DUTIES OF THE TAX COMMISSIONER.

(A) COLLECTION AND MAINTENANCE RESPONSIBILITY.

1. It shall be the duty of the Tax Commissioner to collect and receive the tax imposed by this Ordinance in the manner prescribed herein, and to keep an accurate record thereof, and to report all moneys so received.
2. It shall be the duty of the Tax Commissioner to enforce payment of all income taxes owing the Municipality, to keep accurate records for a minimum of ~~five (5)~~ SIX (6) years, showing the amount due from each taxpayer required to file a declaration or make any return including a return of taxes withheld, and to show the dates and amounts of payments thereof.

(B) ENFORCEMENT AUTHORITY.

Said Tax Commissioner 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 authorized or required by this Ordinance relating to any matter or thing pertaining to the collection and payment of taxes and the administration and enforcement of the provisions of this Ordinance, including provisions for the re—examination and correction of returns. Taxpayers are hereby required to comply with said rules and regulations.

(C) DETERMINATION OF TAXES.

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 Tax Commissioner may determine the amount of tax appearing to be due the Municipality from the taxpayer and may send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties' thereon, if any. Such assessment shall be collected in accordance with the rules and regulations.

(D) COMPROMISE AUTHORITY.

Subject to the consent of the Board of Review or pursuant to regulation approved by the Board of Review, the Tax Commissioner shall have the power to compromise any liability or establish alternative methods of payment by this Ordinance.

(E) INSTALLMENT PAYMENTS.

The Tax Commissioner 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 Tax Commissioner 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 the taxpayer files proper returns for all amounts owed by

him under this Ordinance. The Tax Commissioner shall determine the duration of each installment payment plan. Denial of an installment payment request by the Tax Commissioner may be appealed to the Board of Review.

SECTION IX. INVESTIGATIVE POWERS OF THE TAX COMMISSIONER PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION

(A) EXAMINATION OF TAXPAYERS RECORDS.

The Tax Commissioner, or any of his authorized agents, is hereby authorized to examine the books, papers, records, federal and State income tax returns of any employer, or taxpayer, or any person subject to, or whom the Tax Commissioner believes subject to, the provisions of this Ordinance, for the purpose of verifying the accuracy of any withholdings due under this Ordinance. Every such employer, supposed employer, taxpayer, or supposed taxpayer, is hereby directed and required to furnish, upon written request of the Tax Commissioner, or his duly authorized agent or employees, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

(B) APPEARANCE ORDERS TO TAXPAYERS.

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

(C) RESULT OF REFUSAL TO SUBMIT INFORMATION.

The refusal to produce books, papers, records, federal, and state 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, employee of such of a person subject to the tax required to withhold tax, or the failure of any person to comply with the provisions of this Ordinance or with an order or subpoena of the Tax Commissioner authorized hereby shall be deemed a violation of this Ordinance punishable as provided in Section XIII hereof.

(D) RETENTION OF RECORDS BY TAXPAYER.

Every taxpayer shall retain all records necessary to compute his tax liability for a period of ~~five years~~ **(5) SIX (6) YEARS** from the date his return is filed or the taxes required to be withheld are paid.

(E) CONFIDENTIAL NATURE OF INFORMATION:

Any information -gained as a result to any returns, investigations, hearings, or verifications required or authorized by this Ordinance shall be confidential, and no disclosure thereof shall be made except to municipal, county, state, or federal taxing agencies, or, except for official purposes, or except in accordance with proper order. Any person divulging such information in violation of this section shall be fined not more than five hundred dollars (500.00) and imprisoned not more than six months (6), or both, for each offense. Each disclosure shall constitute a separate offense. In addition to the above penalty, any employee of the Municipality who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

SECTION X. INTEREST AND PENALTIES.

(A) INTEREST.

All taxes imposed and moneys withheld or required to be withheld by employees under the Provisions of this Ordinance, remaining unpaid balance after they become due shall bear interest at the rate of one half of one percent (1/2) per month.

(B) PENALTIES.

In addition to interest as provided in paragraph A hereof. penalties for failure to file taxes and to withhold and remit taxes

Pursuant to the provisions of this Ordinance are hereby imposed as follows:

1. In the case of taxpayers failing to file a return by the due date or by any granted extension date given by the Tax Commissioner, the penalty shall be twenty five dollars (\$25.00).

2. In the case of employers who fail to withhold and remit to the Tax Commissioner the taxes to be withheld from employees, the penalty shall be fifty dollars (\$50.00).

(C) EXCEPTIONS.

A penalty shall not be assessed or an additional tax assessment made by the Tax Commissioner when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Tax Commissioner; 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) ABATEMENT BY BOARD OF REVIEW.

Upon an appeal from the refusal of the Tax Commissioner to recommend abatement of penalty and interest, the Board of Review may abate such penalty or interest or both.

SECTION XI. COLLECTION OF UNPAID TAXES AND REFUNDS OF OVER-PAYMENTS.

(A) TIME LIMITATION ON SUITS.

All taxes imposed by this Ordinance shall be collectable, together with any interest and penalties thereon, by suit as other debts of like amount are recoverable. No additional assessment shall be made after three (3) years from the time of payment of any tax due hereunder; provided, however, there shall be no period of limitation on an additional assessment in a case of a return that omits gross income in excess of twenty—five (25%) percent of that required to be reported of in the case of filing a false or fraudulent return with intent to evade the tax, or in the case of a failure to file a return. In those cases in which the Commissioner of Internal Revenue and the taxpayer have extended waiver of the federal statute of limitations the period within which an additional assessment may be made by the Tax Commissioner, shall be extended one (1) year from the time of the final determination of the federal tax liability.

(B) RESPONSIBILITY OF OFFICERS AND EMPLOYEES.

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

(C) TIME LIMITATION ON REFUNDS.

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the due date on 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. Taxes or refunds of less than one dollar (\$1.00) shall not be collected of refunded.

SECTION XII. VIOLATIONS - PENALTIES

(A) ENUMERATION OF AND PENALTIES.

Any person who shall:

1. Fail, neglect, or refuse to make any return or declaration required by this Ordinance: or
2. Make an incomplete, false, or fraudulent return or:
3. Fail, neglect, or refuse or interest imposed by this Ordinance: or

4. Fail, neglect, or refuse to withhold the tax from his employees and remit such withholding tax to the Tax Commissioner: or
5. Refuse to permit the Tax Commissioner or duly authorized agent or employees - to examine his or his employer's books, records, papers, and federal income tax returns: or
6. Fail to appear before the Tax Commissioner and to produce his or his employer's books, records, papers, or any federal income tax returns upon or subpoena of the Tax Commissioner: or
7. Refuse to disclose to the Tax Commissioner any information with respect to such persons or such persons employer's income or net profits : or
8. Fail, neglect, or refuse to make any payment on the estimated tax for any year as required by Section VIII ; or
9. Fail to comply with the provisions of this Ordinance or any order or subpoena of the Tax Commissioner ; or
10. Fail, as president or treasurer of a corporation, to cause the tax withheld from the wages of the employees of such corporation pursuant to this Ordinance to be paid to the Municipality in accordance with the provisions of. Section VI hereof; or
11. Attempt to do anything whatever to avoid the payment of The whole or any part of the tax, penalties or interest be guilty of a misdemeanor and shall be fined not more than five hundred dollars(\$500.00) or imprisoned not more than six months(6) or both for each offense.

(B) TIME LIMITATIONS ON PROSECUTIONS.

All criminal prosecutions under this section must be commenced within three years (3), and all civil actions within five years (5), following the date on which the final return for a taxable year was due, or five years from (%) the time of any other offense complained of.

(C) FAILURE TO OBTAIN FORMS NOT A DEFENSE.

The failure to any employer, taxpayer, or person to receive or procedure 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.

(D) RESPONSIBILITY OF CORPORATION EMPLOYEES.

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

SECTION XIII. BOARD OF REVIEW.

(A) COMPOSITION.

A Board of Review consisting of three (3) persons, appointed by the Mayor, with the consent of Council, is hereby created. Board members shall receive such compensation as Council may determine.

(B) PROCEDURE.

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. All hearings by the Board shall be conducted privately unless the taxpayers request a public hearing, and the provisions of Section IX 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.

(C) APPEALS.

1. Any person dissatisfied with any ruling or decision of the Tax Commissioner which is made under the authority conferred by this Ordinance may appeal there from to the Board of Review within thirty (30) days from the announcement of such

ruling or decision by the Tax Commissioner, provided the taxpayer making the appeal has filed with the municipality the required return or other documents concerning the obligation at issue. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse, or modify any such ruling or decision, or any part thereof. Such hearing shall be scheduled within 45 days from the date of appeal. The Board's ruling must be made within 30 days from the date of the closing of the record, shall be in writing and filed with the Tax administrator, and within 15 days of its decision shall send notice of its decision by ordinary mail to the taxpayer making the appeal.

2. Any person dissatisfied with any ruling or decision of the Board of Review may appeal there from to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

SECTIONS XIV. ALLOCATION OF FUNDS.

The funds collected under the provisions of this Ordinance shall be deposited in the General fund and shall be appropriated and disbursed in the order established from time to time, by separate Resolution of the Village Council.

SECTION XV. CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

LIMITATION ON AMOUNT PAID. Every individual taxpayer who resides in the Municipality and who receives income, qualifying wages, commissions, or other compensation or net profits from sales made, work done, or services performed or rendered outside of the Municipality, if it be made to appear that he has paid a municipal income tax on such income, taxable under this Ordinance, to another municipality, shall be allowed a credit for such tax paid to the other municipality, against the tax imposed by this Ordinance in an amount not to exceed fifty percent (50%) of the tax due under this Ordinance.

CREDITS AND LIMITATION THEREOF. Notwithstanding the provisions contained in Section XI hereof, or any other provisions inconsistent herewith, a claim for refund or credit under this section shall be made in such manner as the Tax Commissioner may by regulation provide. No such claim for refund or credit shall be allowed unless made on or before the date of filing the taxpayer's final return unless such taxpayer's employer files with the Tax Commissioner a list showing the tax withheld from such taxpayer's wages, salaries, or commissions for other municipalities.

SECTION XVI. SAVING CLAUSE

This ordinance shall not apply to any person, firm, or corporation, or to any property as to whom or which it is beyond the power of Council to impose the tax herein provided for. Any sentence, clause, or section, or part of this Ordinance or any tax against or exception granted any individual or any of the several groups of persons, or forms of income specified herein if found to be unconstitutional or 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, sentence, clauses, sections, or any other part of this Ordinance. It is hereby declared to be the intention of Council of the Municipality that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentences, or part thereof, not been included therein.

SECTION XVII. REPEAL OF ORDINANCE 2004-16

Ordinance 2004-16 of the Village of South Lebanon is hereby repealed, a copy of which is attached hereto and incorporated herein by reference.

PASSED: December 21, 2006

James D. Smith, MAYOR

Attest:

Sharon Louallen Fiscal Officer