

CITY OF CENTERVILLE, OHIO

9-04

SPONSORED BY COUNCILMEMBER Sum W. Lienesch ON THE 9th DAY OF July, 2004
AN ORDINANCE AMENDING CHAPTER 880 OF THE CENTERVILLE MUNICIPAL CODE.

WHEREAS, the Ohio General Assembly has enacted several changes to the Ohio Revised Code relating to municipal income taxes; and

WHEREAS, it is necessary to amend Chapter 880 of the Centerville Municipal Code to bring it into compliance with said changes and to make other changes.

NOW THEREFORE IN CONSIDERATION OF THE ABOVE RECITATIONS:

THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

SECTION 1. That the following section changes to Chapter 880 of the Centerville Municipal Code are hereby adopted with deletions shown by strike through and additions by italics:

§ 880.02 The following definitions are hereby added:

"Calendar Year" means an accounting period of twelve (12) months or less ending on December 31.

"Day" means any part of a twenty-four hour period.

"Domicile" means a principal residence that an individual intends to use for an indefinite time and to which whenever he is absent he intends to return. An individual has only one domicile even though he may have more than one residence.

"Form 2106" means the Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

"Intangible Income" means income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code.

“Pass-Through Entity” means a partnership, subchapter 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.

“Rental Unit” means any physical space, including but not limited to any office, factory, retail store, warehouse, storage facility, residential dwelling, or other space, which is situated in the City and which is rented or leased to any person.

The following definitions are hereby modified:

“Corporation” means a C corporation, subchapter S corporation, or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory or foreign country or dependency.

“Net Profits” means the net gain from the operation and/or the complete or partial sale or disposition of a business, profession, enterprise or other activity excluding capital gains and losses after provision for all ordinary and necessary expenses, paid or accrued in accordance with the accounting method or system used by the taxpayer for Federal income tax purposes, adjusted to the requirements of this Ordinance.

“Taxable income” means gross wages, salaries, commissions, and other compensation paid by an employer or employers before any deductions, other than ordinary and necessary business expenses in the same manner as provided by the Internal Revenue Code, and/or net profits as herein defined.

The codifier for the City is hereby authorized and ordered to cause the definitions to be re-lettered accordingly.

§ 880.03 (a)(8) is hereby added as follows:

On or after January 1, 2003, a pass-through entity residing in or doing business in the City shall be taxed at the entity level.

§ 880.04 (a) is hereby amended by the addition of the following:

Filing of consolidated returns may be permitted or required in accordance with Rules and Regulations prescribed by the Superintendent. On and after January 1, 2003, any municipal corporation that imposes a tax on the income or net profits of corporations shall accept for filing a consolidated income tax return from any affiliated group of corporations subject to the municipal corporation’s tax if that affiliated group filed for the same tax reporting period a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code.

§ 880.05 The section heading is hereby amended to read: OPERATING LOSS
TREATMENT

§ 880.06 (a) is hereby amended as follows:

Pay or allowances of active members of the Armed Forces of the United States *and of members of their reserve components including the Ohio National Guard*, or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.

§ 880.06 (b) is hereby amended as follows:

Poor relief, *proceeds from welfare benefits*, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, State or Federal governments or charitable, religious or educational organizations.

§ 880.06 is further amended by the addition of the following subsections:

- (j) *Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually. Such compensation in excess of one thousand dollars may be subjected to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.*
- (k) *Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306 of the Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation.*
- (l) *The income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Revised code, except a municipal corporation may tax the following, subject to chapter 5745 of the Revised Code:*
 - (1) *Beginning January 1, 2002, the income of an electric company or combined company;*
 - (2) *Beginning January 1, 2004, the income of a telephone company.*

As used in this section, "combined company," "electric company," and "telephone company" have the same meanings as in section 5727.01 of the Revised Code.

- (m) On and after January 1, 2003, items excluded from federal gross income pursuant to section 107 of the Internal Revenue Code.*
- (n) On and after January 1, 2001, compensation paid to a nonresident individual for personal services performed by the individual in the municipal corporation on twelve or fewer days in a calendar year unless one of the following applies:*
 - (1) The individual is an employee of another person; the principal place of business of the individual's employer 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 entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the City of Centerville.*

§ 880.08 (a) is hereby amended as follows:

Each person who engages in business or other activity or whose salary, wage, commission or other compensation is subject to the tax imposed by this Ordinance, shall, whether or not a tax be due thereon, make and file a return on or before April 30 15 of the year following the effective date of the Ordinance, and on or before April 30 15 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 by the~~ *fifteenth day of the fourth month* from the end of such fiscal year ~~or~~ period. The Superintendent is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by said employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by him or them to the Superintendent may be accepted as the return required of an employee whose sole income, subject to tax under this Ordinance, is such salaries, wages, commissions or other compensation.

§ 880.09 (e) is hereby amended as follows:

On or before ~~January 31~~ *February 28* of each year beginning with the year 1971, each employer shall file a withholding return on a form prescribed by and obtainable upon request from the Superintendent, setting forth the names and addresses of all employees from whose compensation the tax was withheld during the preceding calendar year and the amount of tax

withheld from his employees and such other information as may be required by the Rules and Regulations adopted by the Superintendent.

§ 880.09 (f) is hereby amended as follows:

The Superintendent for good cause may require monthly or immediate returns and payments to be submitted to his office, or may grant requests for monthly returns and payments to be submitted. *Any employer that withholds tax of more than five hundred dollars (\$500.00) on a monthly basis is required to file a return and remit payment on a monthly basis. For those employers required to file monthly withholding returns, the due date of the return shall be the fifteenth day of the month following the month in which the tax is withheld.*

§ 880.11 (c)(1)A.1. is hereby amended as follows:

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

1. General Provisions

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

(1) Such proposed assessment shall be served upon the taxpayer in person or by mailing to his last known address *by regular mail*. ~~Proof of mailing furnished by the U.S. Postal Service shall be presumptive proof of receipt thereof by the addressee.~~

§ 880.11 (c)(1)B.1. is hereby amended as follows:

(B) After a proposed assessment becomes final, notice of such final assessment shall be issued and shall be served in the same manner as a proposed assessment.

(1) A taxpayer shall have ~~fifteen (15)~~ *thirty (30)* days after the date the final assessment was served or mailed within which to file written notice of appeal with the Board of Tax Appeals. Such written notice of appeal shall be filed in a sealed envelope plainly marked "Appeal to Board of Tax Appeals" and mailed or delivered to the

Superintendent who shall within five (5) days after receipt thereof, deliver such appeal to the Chairman of the Board of Tax Appeals, or, if the Chairman is not available, to the Vice-Chairman.

§ 880.11 (c)(2) D is hereby amended as follows:

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

§ 880.12 (d) is hereby amended as follows:

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

Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this Ordinance is confidential, and no person shall disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the City or as authorized by this chapter or the charter or ordinance authorizing the levy. The Superintendent may furnish copies of returns filed under this chapter to the internal revenue service and to the tax commissioner. 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.

§ 880.13 is hereby amended by the addition of the following:

- (h) *Penalty and interest will not be assessed for failure to pay estimated tax against an individual who resides in the City but was not domiciled here on the first day of January of the current year.*

§ 880.18 (b) is hereby amended by the addition of the following:

Every individual taxpayer who resides in the City of Centerville who receives net profits, salaries, wages, commissions or other

personal service compensation for work done or services performed or rendered outside the City of Centerville, if it be made to appear that he has paid a municipal income tax on the same income taxable under this Ordinance to another municipality, shall be allowed a credit against the tax imposed by this Ordinance of the amount so paid by him or in his behalf to such other municipality. The credit shall not exceed the tax assessed by this Ordinance on such income earned in such other municipality or municipalities where such tax is paid. *No credit shall be granted for county or school district taxes paid.*

§ 880.19 is hereby amended as follows:

**COLLECTION OF TAX AFTER TERMINATION OF ORDINANCE;
AUTHORIZATION FOR COLLECTION AGENCY AND RECOVERY OF
COLLECTION EXPENSES.**

(a) This chapter 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 chapter are concerned, it shall continue effective until all of said taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Sections 880.14 and 880.15.

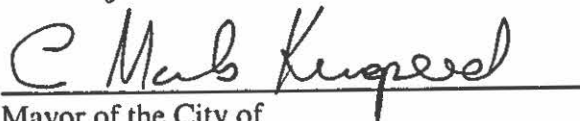
(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 880.08 and 880.09 of this Ordinance as though the same were continuing.

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

(d) All taxes imposed by this chapter shall be collectible by civil suit as other debts of like amount are recoverable, together with any interest and penalties, collection expenses and reasonable attorney's fees incurred by the City with regard to that collection or litigation.

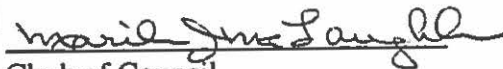
SECTION 2. This ordinance shall be effective from and after the earliest date allowed by law.

PASSED THIS 19th day of July, 2004.



Mayor of the City of
Centerville, Ohio

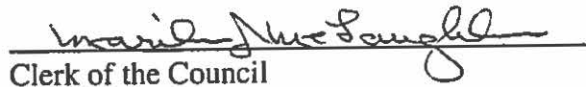
ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 9-04, passed by the Council of the City of Centerville, Ohio on the 19th day of July, 2004.



Clerk of the Council

Approved as to form, consistency with the
Charter and Constitutional Provisions.
Department of Law
Robert N. Farquhar
Municipal Attorney