

CHAPTER 880
Earned Income Tax (Effective for Tax Years Through December 31, 2015)

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CROSS REFERENCES

Earned Income Tax (Effective for Tax Years Beginning January 1, 2016) - See Ch. 885

Power to tax - see Ohio Const., Art. XVIII, Sec. 3

Payroll deductions - see Ohio R.C. 9.42

Municipal income taxes - see Ohio R.C. Ch. 718

Taxation Division - see ADM. 230.08, 234.06

Responsibilities of Superintendent of Taxation - see ADM. 234.06(b)

Income tax bond for circuses and carnivals - see B.R. & T. 808.05

880.01 PURPOSES; LEVY OF TAX.

For the purpose of providing funds for the purposes of general Municipal operations, which includes maintenance, repair and upgrading of existing streets, new equipment, extension and enlargement of Municipal services and facilities and capital improvements of the City, there is hereby levied a tax on salaries, wages, commissions and other compensation, and on net profits, as hereinafter provided.

(Ord. 23-81. Passed 8-31-81.)

880.02 DEFINITIONS.

As used in this chapter, the following words shall have the meaning ascribed to them in this section, except if the context clearly indicates or requires a different meaning:

- (a) "Association" means a partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
- (b) "Board of Adjudication" means the Board created by and constituted as provided in Section 880.16(a).
- (c) "Board of Tax Appeals" means the Board created by and constituted as provided in Section 880.16(b).
- (d) "Business" means an enterprise, profession, undertaking or other activity of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity.
- (e) "Calendar year" means an accounting period of twelve months or less ending on December 31.
- (f) "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.
- (g) "Day" means any part of a twenty-four hour period.
- (h) "Domicile" means a principal residence that an individual intends to use for an indefinite time and to which whenever he or she is absent he or she intends to return. An individual has only one domicile even though he or she may have more than one residence.
- (i) "Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.
- (j) "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, having a place of business or doing business within the City and who or which employs one or more persons on a salary, wage, commission or other compensation basis.
- (k) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.
- (l) "Form 2106" means the Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

- (m) “Gross receipts” means the total income from any source whatsoever required to be included in the return.
- (n) “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.
- (o) “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 chapter.
- (p) “Nonresident” means any individual who is not a resident as herein defined.
- (q) “Nonresident unincorporated business entity” means an unincorporated business entity not having a place of business within the City.
- (r) “Other activity” means any undertaking, not otherwise specifically defined herein, which is normally entered into for profit, including, but not limited to, rental of real and personal property and a business conducted by a trust or guardianship estate.
- (s) “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.
- (t) “Person” means every natural person, partnership, fiduciary, association or corporation. Whenever used in any section prescribing and imposing a penalty, the term “person” includes an officer or employee of a corporation, or a member or employee of an association, who, as such officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.
- (u) “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 the regular employees regularly in attendance.
(Ord. 30-70. Passed 7-13-70.)
- (v) “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.
- (w) “Resident” means:
 - i. An individual who is domiciled in the City;

- ii. An individual who lives in and maintains a permanent place of abode in the City and who does not maintain a permanent place of abode elsewhere, unless such an individual, in the aggregate, lives more than 335 days outside the City.
(Ord. 94-75. Passed 1-5-76.)
- (x) “Resident unincorporated business entity” means an unincorporated business entity having a place of business within the City.
- (y) “Superintendent of Taxation” and “Superintendent” mean the Superintendent of Taxation of the City, or the person executing the duties of the aforesaid Superintendent of Taxation.
- (z) “Taxable income” means qualifying 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. “Taxable income” shall also include income received from gambling winnings as herein defined.
- (aa) “Taxable year” means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made. Unless approved by the Superintendent, the taxable year of a wage earner shall be a calendar year.
- (bb) “Taxpayer” means a person, whether an individual, partnership, association, or any corporation or other entity, required hereunder to file a return or pay a tax.
- (cc) “Qualifying wages” means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code. Qualifying wages include compensation arising from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, and the sale, exchange, or other disposition of stock purchased under a stock option; as well as the compensation attributable to a nonqualified deferred compensation plan or program described in section 3121(v)(2)(C) of the Internal Revenue Code.

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

(Ord. 30-70. Passed 7-13-70; Ord. 5-04. Passed 4-19-04; Ord. 9-04. Passed 7-19-04; Ord. 18-15. Passed 11-16-15.)

880.03 IMPOSITION OF TAX.

(a) Subject to the provisions of Section 880.18, an annual tax for the purposes specified in Section 880.01 shall be imposed for the period beginning October 1, 1981, at the rate of one and three-quarters percent per annum upon the following:

(1) On all salaries, qualifying wages, commissions and other compensation received during the effective period of this chapter by residents of the City.

(2) On all salaries, qualifying wages, commissions and other compensation received during the effective period of this chapter by nonresidents for work done or services performed or rendered in the City.

- (3) On the portion attributable to the City of the net profits earned and accrued or received during the effective period of this chapter of all resident associations, unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City.
- (4) On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to the City upon which the tax was not paid by the entity.
- (5) On the portion attributable to the City of the net profits earned and accrued or received during the effective period of this chapter of all nonresident associations, unincorporated businesses, professions or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in the City, whether or not such association or other unincorporated business entity has an office or place of business in the City.
- (6) On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this chapter of a resident partner or owner of a nonresident association or other incorporated business entity, not attributable to the City, on which the tax was not paid by the entity.
- (7) On the portion attributable to the City of the net profits earned and accrued or received during the effective period of this chapter of all corporations, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City, whether or not such corporations have a place of business in the City.
- (8) On all income received as gambling winnings as reported on IRS Form W-2G, Form 5754 and/or any other form required by the Internal Revenue Service that reports winnings from gambling.
- (9) 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.

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

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

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

- B. Wages, salaries and other compensation paid or accrued during the taxable period to persons employed in the business or profession for services performed in the City to wages, salaries and other compensation paid or accrued during the same period to persons employed in the business or profession, wherever their services are performed.
- C. Gross receipts of the business or profession from sales made and services performed during the taxable period in the City to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

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

- (2) As used in paragraph (b)(1)C. hereof, "sales made in the City" means:
 - A. All sales of tangible personal property which is delivered within the City regardless of where title passes if shipped or delivered from a stock of goods within the City.
 - B. All sales of tangible personal property which is delivered within the City regardless of where title passes, even though transported from a point outside the City, if the taxpayer is regularly engaged, through its own employees, in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.
 - C. All sales of tangible personal property which is shipped from a place within the City to purchasers outside the City regardless of where title passes, if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

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

(Ord. 23-81. Passed 8-31-81; Ord. 5-04. Passed 4-19-04; Ord. 9-04. Passed 7-19-04; Ord. 18-15. Passed 11-16-15.)

880.04 CONSOLIDATED RETURNS.

(a) 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.

(b) For allocation of income and deductions between related taxpayers in the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the City constituting only a portion of its total business, the Superintendent may require such additional information as he or she may deem necessary to ascertain whether net profits are properly allocated to the City. If the Superintendent finds that net profits are not properly allocated to the City by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he or she shall make such allocation as he or she deems appropriate to produce a fair and proper allocation of net profits to the City. (Ord. 30-70. Passed 7-13-70; Ord. 9-04. Passed 7-19-04.)

880.05 NET OPERATING LOSS (NOL) AND BUSINESS EXPENSES.

(a) The portion of a net operating loss sustained in any taxable year subsequent to December 31, 1975, allocable to the City, may not be applied against the portion of the profit of succeeding years allocable to the City. No portion of a net operating loss shall be carried back against net profits of any prior year.

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

(c) If an individual is engaged in two or more taxable business activities to be included on the same return, the net loss of one unincorporated business activity may be used to offset the profits of another (except any portion of a loss or profit separately reportable for municipal tax purposes to another taxing entity) for purposes of arriving at overall net operating profit or net operating loss.

(d) Losses from other sources, including net operating losses and passive activity losses reported for federal income tax purposes, may not be combined with qualifying wages.

(e) The only expenses that can be deducted against qualifying wages are those employee business expenses deductible for federal income tax purposes in determining adjusted gross income, unless otherwise allowed on a uniform and consistent basis by the Tax Administrator. The total of such expenses cannot exceed the employee's related W-2 wage income from the same employer. If a taxpayer's taxable income for a taxable year includes income against which the taxpayer has taken a deduction for federal income tax purposes and reported on Form 2106 as attached to the taxpayer's federal income tax

return filed for the taxable year, the taxpayer shall determine taxable income to the City by deducting the same amount deducted for federal income tax purposes and reported on the taxpayer's Form 2106 for that taxable year. This deduction shall be allowed for City income tax purposes only if the taxpayer attaches to the taxpayer's city income tax return a copy of Form 2106 and Schedule A as filed with the taxpayer's federal income tax return for that taxable year.

(Ord. 94-75. Passed 1-5-76; Ord. 9-04. Passed 7-19-04; Ord. 12-10. Passed 7-19-10.)

880.06 EXCEPTIONS.

The tax provided for herein shall not be levied upon:

- (a) 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.
- (b) 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.
- (c) Proceeds of insurance paid by reason of the death of the insured, pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
- (d) Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by a bona fide charitable, religious or educational organization and association.
- (e) Personal earnings of all persons under eighteen years of age.
- (f) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State from which the City is specifically prohibited from taxing, and income of a decedent's estate during the period of administration, except such income from the operation of a business.
- (g) 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.
- (h) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.
- (i) Any person, firm, corporation or income as to whom or which it is beyond the power of Council to impose the tax herein provided for.

- (j) 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) annually. Such compensation in excess of one thousand dollars (\$1,000) 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 Ohio R.C. Chapter 306 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 Ohio R.C. 5727.24 or 5727.30, except a municipal corporation may tax the following, subject to Ohio R.C. Chapter 5745:
 - (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 Ohio R.C. 5727.01.
- (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. (Ord. 30-70. Passed 7-13-70; Ord. 12-81. Passed 10-5-81; Ord. 9-04. Passed 7-19-04.)

880.07 EFFECTIVE PERIOD.

The tax shall be levied, collected and paid, with respect to the salaries, wages, commissions and other compensation received, and shall be levied with respect to the net profits of businesses, professions or other activities earned and accrued or received, from and after October 1, 1981.

(Ord. 23-81. Passed 8-31-81.)

880.08 RETURN AND PAYMENT OF TAX.

(a) Each person who engages in a business or other activity or whose salary, wage, commission or other compensation is subject to the tax imposed by this chapter shall, whether or not a tax is due thereon, make and file a return on or before April 15 of the year following the effective date of this chapter, and on or before April 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 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 showing the amount of tax deducted by the employer from the salaries, wages, commissions or other compensation of an employee, and paid by him or her to the Superintendent, may be accepted as the return required of an employee whose sole income, subject to tax under this chapter, is such salaries, wages, commissions or other compensation.

(Ord. 12-81. Passed 10-5-81; Ord. 9-04. Passed 7-19-04.)

(b) The return shall be filed with the Superintendent on a form or forms furnished by or obtainable upon request from the Superintendent, setting forth:

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

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

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

- (1) Any portion of the tax so due which has been deducted at the source pursuant to the provisions of Section 880.09;
- (2) Any portion of the tax which has been paid by the taxpayer pursuant to the provisions of Section 880.10; and
- (3) Credit to the extent allowed by Section 880.18 for tax paid to another municipality.

Subject to the limitations contained in Section 880.14, any taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder, or, at his or her election indicated on the return, such overpayment or part thereof shall be refunded.

(e) 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 880.14. Such amended returns shall be on a form obtainable, upon request, from the Superintendent. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return without the approval of the Superintendent.

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

(f) Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns, and the failure to file such information returns, schedules and statements shall be deemed to be a violation of this section. However, the taxpayer shall have ten days after notification by the Superintendent or his or her authorized representative to file the items required by this subsection.
(Ord. 30-70. Passed 7-13-70.)

880.09 COLLECTION AT SOURCE.

(a) Each employer shall, at the time of the payment of any salary, wage, commission or other compensation, deduct the tax of one and three-quarters percent, beginning October 1, 1981, from the gross salaries, wages, commissions or other compensation due by the employer to his or her employees who are subject to the provisions of this chapter. In making such deduction at the time of payment, the employer shall compute the tax to the nearest full cent so that mills of five or more shall be dropped. No person shall be entitled to a refund merely because such rounding off of the tax results in an apparent overpayment based on his or her total earnings. Each employer shall, on or before the last day of each month following the calendar quarters ending March 31, June 30, September 30 and December 31, file a return and pay to the Superintendent the tax withheld during the preceding calendar quarter. Such approval for quarterly filings and payments may be withdrawn by the Superintendent when it is in the best interests of the City to do so.
(Ord. 12-96. Passed 12-16-96.)

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

(c) Each employer, in collecting the tax, shall be deemed to hold the same until payment is made by such employer to the City, as a trustee for the benefit of the City, and any such tax collected by such employer from his or her employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer.

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

(e) On or before 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, the amount of tax withheld from his or her employees and such other information as may be required by the rules and regulations adopted by the Superintendent. (Ord. 30-70. Passed 7-13-70; Ord. 9-04. Passed 7-19-04.)

(f) The Superintendent, for good cause, may require monthly or immediate returns and payments to be submitted to his or her 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.

(g) Any person required by the Internal Revenue Code to report, on an Internal Revenue Service Form 1099, payments made by such person to any individual not treated by such person as an employee for services performed by such individual shall also report such payment to the City where such services or any portion thereof were performed in the City, or where such payee is a resident of the City. Such report shall be made on a form prescribed by the Tax Administrator, which form shall include the name, address, federal taxpayer identification number, the amount of the payments made to each payee, and the percentage of such payments attributable to the City. Federal forms 1099 may be submitted in lieu of such report. Such return or forms shall be filed annually on or before February 28 of each year.

(h) Any person who is required herein to withhold City income tax from compensation shall pay all such City income tax to the City in accordance with the provisions of this Chapter. In the event the City income tax required to be withheld from the compensation of employees are not so withheld or are not paid to the city in accordance with the provisions of this section, any person, including but not limited to all shareholders, officers, owners, managers, employees, and trustees, having control or

supervision of or charged with the responsibility of filing the withholding return and making payment of City income tax withheld are jointly and severally personally liable for the City income tax withheld, not returned, or not paid to the City as well as any related interest and penalties, and are also criminally liable under the provisions of Section 880.99. The liquidation, dissolution, termination, death, or bankruptcy of any person does not discharge such person's liability for a failure of such person to file withholding returns or withhold or pay City income taxes required to be withheld.

(Ord. 94-75. Passed 1-5-76; Ord. 9-04. Passed 7-19-04; Ord. 12-10. Passed 7-19-10.)

880.10 DECLARATIONS.

(a) Every person who anticipates the receipt of any taxable income which is not subject to Section 880.09, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 880.03, shall file a declaration setting forth such person's estimated taxable income, together with any estimated tax due thereon, if any, provided, however, that if a person's income is wholly from wages from which the tax will be withheld and remitted to the City in accordance with Section 880.09, such person need not file a declaration.

(b) Such declaration shall be filed on or before April 30 of each year during the life of this chapter, or within four months after the date the taxpayer becomes subject to the provisions of this chapter.

Those taxpayers reporting on a fiscal-year basis shall file a declaration within four months after the beginning of each fiscal year or period.

(Ord. 30-70. Passed 7-13-70.)

(c) Such declaration shall be filed upon a form furnished by or obtainable upon request from the Superintendent, provided, however, that credit shall be taken for the City tax to be withheld from any portion of such income to determine the estimated tax due.

In accordance with the provisions of Section 880.18, credit may be taken for tax to be paid to, or to be withheld and remitted to, another taxing municipality.

The original declaration, or any subsequent amendment thereof, may be amended at any time.

An amended declaration must be filed on or before January 31 of the following year, or, in the case of a taxpayer on a fiscal year basis, on or before the date fixed by regulation of the Superintendent if it appears that the original declaration made for such taxable year underestimated the taxpayer's income by ten percent or more. At such time, a payment which, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability, shall be made. If, upon the filing of the return required by Section 880.08, it appears that the taxpayer did not pay ninety percent of his or her tax liability, as shown on the return, on or before January 31, or the date fixed by regulations, whichever is applicable, the difference between ninety percent of the taxpayer's liability and the amount of estimated tax actually paid on or before January 31, or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Section 880.13.

(d) Such declaration of net estimated tax to be paid the City shall be accompanied by a payment of at least one-fourth of the estimated annual tax, less credit, and at least a similar amount shall be paid on or before the last day of the seventh and tenth months after the beginning of the taxable year and the first month of the next tax year.

(e) On or before the fifteenth of the fourth month of the calendar or fiscal year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with the provisions of Section 880.08. If the tax return is filed and paid within forty-five days after the end of the tax year, the fourth quarter estimated tax payment may be eliminated.

(Ord. 12-96. Passed 12-16-96; Ord. 12-10. Passed 7-19-10.)

880.11 DUTIES AND POWERS OF THE SUPERINTENDENT.

(a) The Superintendent shall receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, keep an accurate record thereof and report daily all moneys so received.

The Superintendent shall enforce payment of all taxes owed to the City, keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and show the dates and amounts of payments thereof.

(b) The Superintendent is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of Council by motion, to adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.

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

(1) Provisions affecting taxpayers generally.

A. If the Superintendent determines that any taxpayer subject to the provisions of this chapter has a tax liability for which he or she 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 it to his or her last known address by regular mail.

2. A taxpayer may, within fifteen days after the date the proposed assessment was served or mailed, file a written protest with the Superintendent. Within fifteen days after receipt of the protest, the Superintendent shall give the protestant an opportunity to be heard, although the Superintendent may extend the date of hearing for good cause shown. After the hearing the Superintendent shall withdraw the assessment or he or she shall adjust or reaffirm the assessment, and it shall then become final. If no protest is filed as herein provided, such proposed assessment shall become final fifteen days after being served.
- B. After a proposed assessment becomes final, notice of such final assessment shall be issued and shall be served in the same manner as a proposed assessment.
1. A taxpayer shall have thirty 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 days after receipt thereof, deliver such appeal to the Chairperson of the Board of Tax Appeals, or, if the Chairperson is not available, to the Vice-Chairperson.
 2. The Board of Tax Appeals, upon receipt of a notice of appeal, shall, within fifteen days, notify the Superintendent thereof, who shall forward to the Board, within fifteen days, a certified transcript of all actions taken by him or her with respect to such final assessment. Such transcript shall be open to inspection by the appellant and his or her counsel.
 3. Any taxpayer against whom a final assessment has been issued and who has filed a notice of appeal shall be granted a hearing by the Board of Tax Appeals. At such hearing the appellant and the Superintendent shall be given opportunity to present evidence relating to the final assessment. After the conclusion of such hearing, the Board of Tax Appeals shall affirm, reverse or modify the final assessment and shall furnish a copy of its decision with respect thereto to the appellant and the Superintendent. The appellant's copy of the decision shall be served upon him or her in the same manner as herein provided for the serving of assessments.
- C. When any taxpayer subject to the provisions of this chapter has filed a return indicating the amount of tax due and has failed to pay the tax to the Superintendent as required by this chapter, the Superintendent need not issue an assessment but may proceed under the provisions of Sections 880.14 and 880.15.

(2) Provisions affecting employers.

- A. If the Superintendent determines that an employer subject to the provisions of this chapter has failed to file a return for tax withheld and has failed to pay to the Superintendent the full amount of such taxes, the Superintendent shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon, and the provisions of paragraphs (c)(1)A. and (c)(1)B. hereof shall then apply.
- B. If the Superintendent determines that an employer subject to the provisions of this chapter has failed to withhold tax, the Superintendent shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon, and the provisions of paragraphs (c)(1)A. and (c)(1)B. hereof shall then apply.
- C. When an employer subject to the provisions of this chapter has filed a return indicating the amount of tax withheld and has failed to pay the tax to the Superintendent as required by this chapter, the Superintendent may proceed under the provisions of Sections 880.14 and 880.15 and need not issue an assessment as provided in paragraphs (c)(2)A. and (c)(2)B. hereof.

(d) 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 or her shall pay the amount thereof within fifteen days after service of such final assessment. The amount of the final assessment may not be appealed.

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

(e) The Superintendent shall have the authority, when requested by the taxpayer and for good cause shown, to extend the time of making and filing any return whenever he or she deems it necessary to do so, but not to exceed a period of six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income Tax Return.

(f) When an application for deferred payment of tax due is filed by a taxpayer, the Superintendent may authorize partial payments of unpaid taxes when, in his or her judgment, the taxpayer is unable, due to hardship conditions, to pay the full amount of the tax when due, and when, in his or her judgment, such deferred payments are the best means of accomplishing the intent of this chapter. However, the Superintendent shall not authorize an extension of time for the payment of such taxes due for more than twelve months beyond the date of the filing of the application.

(g) The Superintendent shall have the authority to charge a fee for any payment made by check under this Chapter 880, which has been returned “unpaid” due to insufficient funds. Said fee shall be reasonably calculated in an amount necessary to cover the City’s expenses for processing and handling fees assessed to the City and for the check returned “unpaid” for insufficient funds. The Superintendent shall not charge this fee unless and until the amount of said fee is posted in writing and available to the public. (Ord. 30-70. Passed 7-13-70; Ord. 9-04. Passed 7-19-04; Ord. 12-10. Passed 7-19-10.)

**880.12 INVESTIGATIVE POWERS OF THE SUPERINTENDENT;
CONFIDENTIAL INFORMATION.**

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

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

(c) The refusal to produce books, papers, records and copies of Federal Income Tax Returns, the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax, or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Superintendent authorized hereby, shall be deemed a violation of this chapter, punishable as provided in Section 880.99.

(d) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this chapter 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 chapter, 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 months, or both. Each disclosure shall constitute a separate offense. (Ord. 9-04. Passed 7-19-04.)

(e) Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of five years from the date his or her return is filed or the withholding taxes are paid. (Ord. 30-70. Passed 7-13-70.)

(f) The Superintendent is hereby authorized to engage the services of one or more consultants, accountants or outside auditors to assist him or her in carrying out the duties assigned to him or her under this chapter. Any such consultant, accountant or auditor shall be bound by the provisions of this chapter as the same apply to the Superintendent and authorized employees of the City, specifically the provisions of this section. (Ord. 20-94. Passed 11-21-94.)

880.13 INTEREST AND PENALTIES.

(a) All taxes imposed and all moneys withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the Federal short-term rate as defined in Ohio R.C. 5703.47, plus three percent per month or fraction thereof. (Ord. 12-96. Passed 12-16-96.)

(b) In addition to interest as provided in subsection (a) hereof, penalties based on the unpaid tax are hereby imposed as follows:

- (1) For failure to pay taxes due, other than taxes withheld: ten percent during the first six months, and an additional one and one-half percent per month or fraction thereof.
- (2) For failure to remit taxes withheld from employees: three percent per month or fraction thereof, or ten percent, whichever is greater.
- (3) When the taxpayer has failed to file a declaration on which he or she has estimated and paid a tax equal to or greater than the tax paid for the previous year, or has failed to file a declaration on which he or she has estimated and paid tax equal to or greater than ninety percent of the actual tax for the year, or has failed to file a final return and pay the total tax on or before the end of the month following the end of his or her taxable year: ten percent of the difference between ninety percent of the actual tax for the year and the amount paid through withholding or declaration.

Except in the case of fraud, the penalty shall not exceed fifty percent of the unpaid tax.

(c) A penalty shall not be assessed on an additional tax assessment made by the Superintendent when a return has been filed in good faith and the tax paid thereon within

the time prescribed by the Superintendent. Further, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, provided that an amended return is filed and the additional tax is paid within three months after final determination of the Federal tax liability.

(d) Upon recommendation of the Superintendent, the Board of Adjudication may abate penalty or interest, or both.

(e) In no case shall penalty and interest charges be levied when the total of such penalty and interest amounts to less than ten dollars (\$10.00).

(f) Any person required to withhold the tax who knowingly fails to withhold such tax or pay over such tax, or who knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, not withheld or not paid over. No other penalty under this section shall be applied to any offense to which this penalty is applied.

(g) A penalty shall be assessed for the failure to file tax returns, informational reports or any other filing as required by this section. If the required filing is not more than 120 days late, the penalty assessed shall be twenty-five dollars (\$25.00). If the required filing is more than 120 days late, the penalty assessed shall be fifty dollars (\$50.00). Filings shall be deemed timely if postmarked by the due date.

(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.

(Ord. 30-70. Passed 7-13-70; Ord. 1-97. Passed 2-17-97; Ord. 9-04. Passed 7-19-04; Ord. 12-10. Passed 7-19-10.)

880.14 COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENTS.

(a) All taxes imposed by this chapter 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 twenty-five percent of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later. However, 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 additional assessment may be made by the Superintendent shall be one 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 the time specified in Ohio R.C. 718.06.

(c) Additional amounts of less than five dollars (\$5.00) shall not be refunded or assessed unless such assessment results from income which the taxpayer has failed to report.

(Ord. 30-70. Passed 7-13-70; Ord. 12-10. Passed 7-19-10.)

880.15 VIOLATIONS.

(a) No person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (2) Make any incomplete, false or fraudulent return;
- (3) Knowingly fail or refuse to pay the tax, penalties or interest imposed by this chapter;
- (4) Knowingly fail or refuse to withhold the tax from his or her employees and remit such withholding to the Superintendent;
- (5) Refuse to permit the Superintendent or any duly authorized agent or employee to examine his or her or his or her employer's books, records, papers and copies of Federal Income Tax Returns relating to the income or net profits of a taxpayer;
- (6) Fail to appear before the Superintendent and to produce his or her or his or her employer's books, records, papers or copies of Federal Income Tax Returns relating to the income or net profits of a taxpayer upon order or subpoena of the Superintendent;
- (8) Refuse to disclose to the Superintendent any information with respect to the income or net profits of a taxpayer;
- (9) Fail to comply with the provisions of this chapter or any order or subpoena of the Superintendent; or
- (10) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

(b) Any person subject to the provisions of this chapter who has failed to file a return, has filed an incorrect return or has failed to pay the full amount of tax due, shall not be deemed to have committed an offense punishable under the provisions of Section 880.99 until the assessment issued against him or her under the provisions of Section 880.11 has become due and payable.

(c) Any person who has filed a return under the provisions of this chapter, indicating the amount of tax due, and who has failed to pay such tax, together with penalties or interest that may have accrued thereon, shall not be deemed to have committed an offense for having knowingly failed to pay the tax, penalties or interest due as provided in paragraph (a)(3) hereof, until the date of the filing of such return.

(d) The term “person,” as used in this section, shall, in addition to the meaning prescribed in Section 880.02(n), include, in the case of an association or corporation not having any partner, member or officer within the City, any employee or agent of such association or corporation who can be found within the corporate limits of the City.

(e) All prosecutions under this section must be commenced within the time specified by applicable law.

(f) The failure of any employer, taxpayer or other person to receive or procure a return, declaration or other required form shall not excuse him or her from making any information return, return or declaration, from filing such forms, or from paying the tax. (Ord. 30-70. Passed 7-13-70; Ord. 12-10. Passed 7-19-10.)

880.16 BOARD OF ADJUDICATION; BOARD OF TAX APPEALS.

(a) Board of Adjudication.

- (1) A Board of Adjudication, consisting of the Manager, or a person designated by him or her, the Director of Finance, or a person designated by him or her, and the Municipal Attorney, or an Assistant Municipal Attorney designated by him or her, is hereby established. The Board shall select, each year for a one-year term, one of its members to serve as Chairperson and one to serve as Secretary. A majority of the members of the Board shall constitute a quorum.
- (2) The Board shall adopt its own procedural rules and shall keep a record of its proceedings. All hearings of the Board shall be conducted privately and the provisions of Section 880.12, with reference to the confidential character of information required to be disclosed by this chapter, shall apply to such matters as may be presented to the Board of Adjudication.
- (3) The Board shall have the authority, upon request of the Superintendent, to modify, in whole or in part, any assessment of tax, penalty and/or interest required to be made by this chapter. In addition, the Board may authorize the Superintendent to accept partial payments for a period in excess of the time authorized in Section 880.11.
(Ord. 30-70. Passed 7-13-70.)

(b) Board of Tax Appeals.

- (1) A Board of Tax Appeals, consisting of three representative residents of the City, not otherwise employed by the City, to be appointed by Council for terms of three years, is hereby established. Initially, members shall be appointed for one, two and three-year terms, respectively. Thereafter, members shall be appointed to and shall serve for three-year terms. (Ord. 6-86. Passed 3-17-86.)
- (2) One of the members of the Board appointed by Council shall be chosen by the members as Chairperson of the Board, and all members may receive per

diem compensation to be fixed by Council. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and keep a record of its proceedings. All hearings by the Board may be conducted privately and the provisions of Section 880.12, with reference to the confidential character of information required to be disclosed by this chapter, shall apply to such matters as may be heard on appeal before the Board.

- (3) The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any assessment, ruling or decision, or any part thereof, made by the Superintendent, from which an appeal has been filed, as provided in Section 880.11. (Ord. 30-70. Passed 7-13-70.)

880.17 ALLOCATION OF FUNDS.

(a) Effective January 1, 2000, from all Municipal income tax receipts received by the City, the following allocation is hereby to be made to the General Fund: 100 percent.

(b) The Director of Finance is hereby authorized and directed to take all necessary action in order to carry out the allocation provided for in subsection (a) hereof. (Res. 68-99. Passed 12-20-99.)

880.18 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

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

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

(c) A claim for refund or credit under this section shall be made in such manner as the Superintendent of Taxation may by regulation provide. (Ord. 30-70. Passed 7-13-70; Ord. 9-04. Passed 7-19-04.)

880.19 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER; 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 such taxes levied hereunder are fully paid and until any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter 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 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. All taxes imposed by this chapter shall be collectible by a collection agency as other debts of like amount are recoverable, together with any interest and penalties, as well as any collection agency fees and expenses incurred by the City.

(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.

(Ord. 30-70. Passed 7-13-70; Ord. 9-04. Passed 7-19-04; Ord. 12-10. Passed 7-19-10.)

880.20 SEPARABILITY.

If any sentence, clause, section or part of this chapter, 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 sentence, clause, section or part of this chapter, or such tax, and shall not affect or impair any of the remaining sentences, clauses, sections or parts of this chapter or the application of the tax to any other person or group. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein. (Ord. 30-70. Passed 7-13-70.)

880.21 REGISTRATION OF TENANTS OF RENTED PROPERTY FOR TAX PURPOSES; RESPONSIBILITY OF PROPERTY OWNERS.

(a) The owner of any real property in the City who rents or leases the same to any other person, firm or corporation shall, within thirty days following the first day of occupancy by said person, firm or corporation, give the Tax Administrator the name and mailing address of said tenant.

(b) The Tax Administrator shall, by regular mail, with a certificate of mailing, mail a copy of this section to all ascertainable owners of property, which property is presently being rented to others from time to time, as the same are ascertained.

(c) All owners of property who rent the same to others shall, within thirty days after the receipt of a copy of this section as provided in subsection (b) hereof, furnish to the Tax Administrator the information required by subsection (a) hereof.

(d) All owners of property, which property is being rented to others, shall, no later than October 30 of each year, furnish to the Tax Administrator a complete list of the names and mailing address of all persons, firms and corporations who or which are tenants of said owners.

(Ord. 4-00. Passed 5-15-00.)

880.99 PENALTY.

(a) Unless otherwise provided, whoever violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(Adopting Ordinance)

(b) In addition to the penalty provided in subsection (a) hereof, any employee of the Municipality who violates Section 880.12, relative to the disclosure of confidential information, is guilty of an offense punishable by immediate dismissal. Each disclosure shall constitute a separate offense. (Ord. 30-70. Passed 7-13-70.)

(c) (EDITOR'S NOTE: Subsection (c) hereof was repealed by Ordinance 4-00, passed May 15, 2000.)