

**THE CITY OF BARBERTON
INCOME TAX ORDINANCE**

ORDINANCE NO. 217-2000

Introduced by: Mr. Bauschlinger

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CROSS REFERENCES

- Power to levy tax – see Ohio Constitution, Art. XVIII, Sec 3
- Department of Finance – see CHTR. Sec. 4.04
- Taxation generally – see CHTR. Sec. 10.01
- Payroll deductions – see Ohio R.C. 9.42
- Municipal income taxes – see Ohio R.C. 718
- Division of taxation – see ADM. 234.01
- Tax incentive Review Board – see ADM. Chapter 285

An ordinance to levy a tax of 2.0% on all salaries, wages, commissions, income and other compensations earned or received by residents of the City of Barberton; on all salaries, wages, commissions, income and other compensations earned or received by nonresidents of the City of Barberton for work done or services performed or rendered in the City of Barberton; on the net profits of all businesses, professions or other activities (including rental property) conducted in the City of Barberton by residents or nonresidents, and on the net profits earned or received by all corporations doing business in the City of Barberton as a result of work done or services performed or rendered in the City of Barberton; Requiring the filing of returns and furnishing of information by employers and all those subject to said tax; Imposed on all employers the duty of collecting the tax at the source and paying the same to the City of Barberton; Providing for the administration, collection and enforcement of said tax; Declaring violation there to be a misdemeanor and imposing penalties therefore, and declaring an emergency.

Now, Therefore, be it ordained by the Council of the City of Barberton, State of Ohio:

880.01 PURPOSE.

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extensions and enlargements of municipal services and facilities and capital improvements, there is levied a tax on gross income including salaries, wages, commissions and other compensation, and on net profits, as herein provided.

880.02 DEFINITIONS.

For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Administrator: The Tax Administrator being the individual appointed by the Director of Finance to administer and enforce the provisions of this ordinance.

Association: A partnership, limited partnership, limited liability Company formed under chapter 1705 of the Ohio revised code or under the laws of another state, or any form of unincorporated enterprise, owned by two or more persons.

Board of Review: The board created and constituted as provided in Section 880.15 of this ordinance.

Business: An enterprise, activity, profession, public utility, public service, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation, or any other entity, including but not limited to the renting or leasing of property, real, personal, or mixed.

City: The City of Barberton, Ohio, County of Summit.

Corporation: A corporation or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory, or foreign country or dependency. A corporation is any corporation that is not a Sub Chapter S Corporation as defined in the federal tax code, 26 U.S.C. 1361.

S-Corporation: A small business corporation, which has made an election to be taxed as a pass-through entity similar to a partnership, as defined in the federal tax code, 26 U.S.C. 1361. All rules and regulations, for tax purposes, pertaining to partnerships, with some exceptions, shall apply to S-Corporations.

Director: The Director of Finance of the City of Barberton, Ohio, County of Summit.

Domicile: The permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

Employee: One who works for wages, salary, commission or other type of compensation in the service of and under the control of an employer.

Employer: An individual, partnership, Limited Liability Company, association, corporation, government body, unit, agency or any other entity, whether or not organized for profit, that provides one or more persons a salary, wage, commission, or any other form of compensation.

Fiscal Year: An accounting period of twelve (12) months or less ending on any day other than December 31st.

Gross Income: Gross income shall include all monies derived from any source whatsoever. It includes the following items and any item not listed in section 880.06 as an exception:

(A) All salaries, wages, commissions, other compensation and income from whatever source received by residents of the City of Barberton, including distributive shares of an unincorporated business entity or association against which Barberton municipal income tax is not already levied.

(B) All salaries, wages, commissions, other compensation and income from whatever source received by nonresidents for work done or services performed or rendered or activities conducted in the City of Barberton.

(C) The portion attributable to the City of Barberton of the net profits of all unincorporated businesses, associations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in the City of Barberton. Such portion shall be determined as provided in 880.04 and in accordance with regulations adopted by the Director of Finance.

(D) Monies derived from gaming, wagering, lotteries (including the Ohio State Lottery or any other State Lottery) without regard to any losses incurred, unless the taxpayer is deemed to be a “professional gambler”, where gambling is the taxpayer’s business activity for federal tax purposes.

(E) Stock options granted in connection with the performance of services rendered and not designated as capital gains

Gross Receipts: Shall mean the total revenue derived from sales, work done, or service rendered, before any deductions, exceptions, or credits are claimed.

Income from a pass-through entity: Means partnership income of partners, distributive shares of shareholders of an S-Corporation, membership interests of members of a Limited Liability Company, or other distributive or proportionate ownership shares of other pass-through entities.

Joint Economic Development District: Districts created under Ohio Revised Code Sections 715.70 and 715.71, as amended from time to time.

Limited Liability Company: Means the Limited Liability Company formed under chapter 1705 of the Ohio Revised Code or under the laws of another state.

Net Loss: The excess of ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes; and in the case of an unincorporated entity, without deduction of any form of compensation paid to partners, members or other owners, or for taxes imposed by this ordinance and federal, state, or other taxes

based on income, over the gross receipts adjusted for returns and allowances, trade discounts, sales taxes and excise taxes based on sales.

Net Profits: The net gain from the operation of a business, profession, enterprise or other activities after provision for all ordinary and necessary expenses (except the tax imposed by this ordinance and federal and other taxes based on income and in the case of an unincorporated entity, without deduction of salaries or other compensation paid to partners or other owners), either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes, adjusted to the requirements of this ordinance, and rules and regulations promulgated by the Tax Administrator.

Net profits shall include any amount or value received, realized, or recognized in a sale or other disposition of tangible personal property or real property used in business, in excess of book value.

Nonresident: A person domiciled outside the City of Barberton.

Owner: Means a partner of a partnership, a shareholder of a s-corporation, a member of a limited liability company, or other person with an ownership interest in a pass-through entity.

Pass-through entity: Means a partnership, s-corporation, limited liability Company, or any other classes of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.

Person: Every natural person, partnership, fiduciary, association, or corporation. Whenever used in any section, phrase, or clause prescribing a violation and imposing a penalty, the term "Person" as applied to any unincorporated entity, shall mean the owner, partners, or members thereof: as applied to S-Corporations shall mean the stockholders thereof, and as applied to C-Corporations shall mean any of its officers, employees, or trustees charged with the responsibility of filing returns and making payments to the City of Barberton. The dissolution, termination, or bankruptcy of a corporation or business trust shall not discharge responsible officers, employees, or trustees liability for prior failure of the corporation or business trust to file returns or remit taxes due.

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

Resident. A person domiciled in the City of Barberton.

The presumption that one is domiciled in the City of Barberton exists under the following conditions: While living in the City of Barberton, a person has maintained no other residence that qualifies as their domicile. Maintaining another residence means that there is another residential unit ready and waiting for the taxpayer's return. If another person has the right to that unit, which restricts the taxpayer's use (i.e., the unit is rented or leased), the unit does not qualify. If another property is maintained, the domicile is that property which is held out as the "home" address for the following: federal and state income taxes, employment records, banking and credit purposes, automobile registration, automobile insurance, college registration, military records, children's education records and voting registration.

Taxable income: Gross income minus the deductions and credits allowed by this ordinance.

Taxable year: The calendar year or the fiscal year on the basis of which the taxable income is 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.

Taxpayer: A person, whether an individual, partnership, association, or any corporation or other entity required hereunder to file a return or pay a tax. The singular shall include the plural and the masculine shall include the feminine and the neuter.

880.03 IMPOSITION OF TAX.

An annual tax for the purpose specified in 880.01 is imposed on and after January 1, 1954, at the rates indicated, during the years indicated: .50% per year during each of the years 1954 to September 30, 1966, inclusively; 1.00% for the period from October 01, 1966 to June 30, 1977; 1.50% for the period from July 01, 1977 to June 30, 1986; 2.00% from July 01, 1986 to December 31, 1986 and during the calendar year thereafter, per annum, on all taxable income.

880.04 DETERMINATION OF INCOME SUBJECT TO TAX

(A) In the taxation of income which is subject to this municipal income tax, if the books and records of a taxpayer conducting a business or profession both within or without the boundaries of the city disclose with reasonable accuracy what portion of its net profit is attributable to that part of the business or profession conducted within the boundaries of the city, then only such portion shall be considered as having a taxable situs in the city for purposes of this tax. In the absence of such records, net profit from a business or profession conducted both within and without the boundaries of the city shall be considered as having a taxable situs in the city for purposes of this tax in the same proportion as the average ratio of:

- (1) 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 of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period wherever situated. Real property includes property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;
- (2) Wages, salaries, and other compensation paid 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 during the same period to persons employed in the business or profession, wherever the services are performed;
- (3) 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 does not produce an equitable result, another basis may, under uniform regulations, be substituted so as to produce such result.

(B) As used in (A) above, "SALES MADE IN THE CITY," means:

- (1) 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.

(2) 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 at the place where delivery is made.

(3) 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) In determining income subject to taxation, losses from the operation of a business or profession cannot be used to reduce wages from employment or other employment compensation, or other compensation not business related.

(D) On all salaries, wages, commissions, other compensation and other income earned through employment with the City of Barberton during the effective period of this ordinance.

(E) On all salaries, wages, commissions, other compensation and other income for worked performed on city property when the property is located in a governmental subdivision where there is no municipal income tax levied, subject to the provisions of Section 880.08.

880.05 CONSOLIDATED RETURNS

(A) Filing consolidated returns may be permitted or required in accordance with regulations prescribed by the Tax Administrator.

(B) In the case of a corporation that carried 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 a portion only of its total business, the Tax Administrator may require such additional information as deemed necessary to ascertain whether net profits or losses are properly allocated to the city. If the Tax Administrator finds net profits or losses are not properly allocated to the city by reason of transactions with stockholders or with other corporations related by stock ownership or interlocking directorates, or transactions with such division, branch, factory, office, laboratory or activity, or by some other method, he shall make such allocation as deemed appropriate to produce a fair and proper allocation of net profits or loss to the city.

880.06 EXCEPTIONS AND CREDITS.

(A) The tax provided for herein shall not be levied on:

(1) The military pay or allowances of members of the armed forces of the United States and of members of their reserve components, including the Ohio National Guard;

(2) Intangible income as defined in Chapter 5701 of the Ohio Revised Code;

(3) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax-exempt tangible or intangible property, or tax-exempt activities;

(4) Compensation paid under section 3501.28 or 3501.36 of the Ohio 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 is subject to taxation. The payer of such compensation is not required to withhold city tax on such income.

(5) Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the city unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such tax by reason of residence or domicile in the city, or the headquarters of the authority or commission is located within the city.

(6) Federal and state unemployment insurance benefits, welfare benefits, and pensions paid as a result of retirement and disability benefits received from local, state or federal government or charitable, religious or educational organizations.

(7) Proceeds or insurance paid by reason of death of the insured, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.

(8) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations, items of income 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 or profession).

(9) Salaries, wages and other compensation paid by an employer or employers before deductions (except the net profits from the operation of a business or profession or other enterprise or activity adjusted in accordance with the provisions of this ordinance) of a person 17 years of age or younger for the entire year, who is a full time student in an accredited elementary, middle school, high school, college or trade school.

(10) Rental, housing or automobile allowance (officially designated by the governing body of the employing organization before payment is made) of a duly ordained, licensed or commissioned clergyman up to the amount expended for such purpose. Unused portion of such allowance at the end of the calendar or fiscal year will be taxed as other compensation.

(11) Receipts from seasonal or casual entertainment, amusements, fund raising, sports events, and health and welfare activities when conducted by a bona fide charitable, religious, or educational organization and associations;

(12) Alimony or child support received;

(13) Salaries, wages, commissions, other compensation, other income 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;

(14) Salaries, wages, commissions, other compensation, other income and net profits, 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 city to impose net income taxes;

(15) Expenses deductible on federal form 2106, subject to the 2% limitation as well as the audit and approval by the Tax Administrator;

(16) Any person may claim a credit for tax paid to another municipality or to a Joint Economic Development District as set forth in section 880.17; and

(17) A credit in the amount of the tax liability to a maximum of fifty dollars shall be awarded to disabled or retired resident individuals as per rules and regulations prescribed by the Tax Administrator.

880.07 RETURN AND PAYMENT; REGISTRATION

(A) City Council hereby directs that each person, eighteen years of age or older, who was a resident of Barberton at any time during the taxable year register with the city tax department. Each taxpayer who received any gross income for the taxable year, except as herein provided, shall, whether or not a tax is due thereon, make and file a return or exemption certificate, as appropriate, on or before April 30 of the year following the taxable year. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or period. This method of filing termed "mandatory filing" shall be in effect until such time as Council provides otherwise, subject to the exception set forth in (H), herein. The Tax Administrator is authorized to provide by regulation that the return of an employer showing the amount of tax deducted by such employer from the salaries, wages, commissions, other compensation and other income of a nonresident employee, and paid by him to the City Finance Director, may be accepted as the return required of any nonresident employee whose sole income, subject to tax under this ordinance, is such salary, wages, commissions, other compensation and other income.

(B) Each taxpayer shall file a return with the Tax Administrator on a form or forms furnished by or obtainable upon request from the Administrator or other forms deemed acceptable by the Administrator setting forth:

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

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

(3) Such other pertinent statements, information, returns, or other information as the Administrator may require; including copies of the schedules used for federal income tax or a complete copy of the federal income tax return.

(4) Any business, profession, association, or corporation reporting a net loss is subject to the filing requirements of this ordinance. The portion of a net operating loss (including rental property) sustained in any taxable year, subsequent to January 1, 1976, and allocable to the city, in the same manner as the allocation of net profits, may be applied against the profit of succeeding year(s) allocable to the city until exhausted, but in no event for more than five taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year or applied against any salaries, wages, commissions, other compensation and other income received as an employee

of an employer(s). A net loss in another municipality may not offset a gain from a business or profession, including rental property, located within the city. However, if more than one business is located in the city, they can offset each other. Failure to allocate an operating loss or failure to file a return on or before the end of the twelfth month following the tax year in which a net operating loss was sustained, nullifies the loss carry-forward privilege

(C) The Tax Administrator may extend the time for filing of the annual return upon the request of the taxpayer for a period not to exceed six months, or three months beyond any extension requested or granted by the Internal Revenue Service for the filing of the Federal Tax Return. The Administrator may require a tentative return accompanied by payment of the amount of tax shown to be due thereon by the date the return is normally due. No penalty shall be assessed in those cases in which the return is filed and the tax paid within the period as extended.

(D) The taxpayer making a return shall at the time of filing thereof, pay to the City Finance Officer the amount of taxes shown as due thereon; provided, however, that where any portion of tax so due has been deducted at the source pursuant to Section 880.08 or where any portion of said tax has been paid by the taxpayer pursuant to the provisions of Section 880.09, or where an income tax has been paid to another municipality, or to a Joint Economic Development District, credit for the amount so paid in accordance with and pursuant to Sections 880.08, 880.09, and 880.17 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.

(E) A taxpayer who has overpaid the amount of tax to which the city is entitled under the provisions of this ordinance may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment or part thereof, to be refunded, provided no additional taxes or refunds of less than \$5.00 shall be collected, refunded, or credited to the next subsequent year. However, such refund request will first satisfy any previous year's delinquent liability, including assessments, in the order in which such taxes and assessments became due, with any balance remaining being refunded.

(F) Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax over paid, subject to the requirements and/or limitations of Sections 880.08 and 880.17. Such amended returns shall be on a form obtainable, on request, from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(G) 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 gross income or gross receipts subject to the city tax based on such final determination of federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment, subject to "E" above.

(H) Retirees or disabled individuals having no taxable income for municipal income tax purposes shall be exempt from these filing requirements and any subsequent penalties upon the filing of an Exemption Certificate with the Administrator in the manner prescribed. Such Exemption Certificate shall be in effect until that time in which the retired or disabled individual receives taxable income for municipal income tax purposes, at which time the retired or disabled individual shall be required to comply with the provisions of this ordinance, including filing requirements.

(I) At the time a deed holder signs for water service in the city, he or she shall be required to complete a form as prescribed by the Administrator, giving all information necessary to determine the income tax status for all persons living or working at that address and file said form with the city tax department.

(J) At the time a contractor or subcontractor applies for a Building Permit, they must obtain and supply a city tax identification number to the Building Department.

880.08 COLLECTION AT SOURCE

(A) Each employer shall, at the time of the payment of any salary, income, wages, commission, or other compensation paid, deduct the tax at its then applicable percentage on salaries, wages, commissions, other compensation and other income due by the employer to his employees who are subject to the provisions of this ordinance. In making such deduction at the time of payment, the employer shall compute the tax to the nearest full cent. Each employer shall, on or before the fifteenth day of each month, make a return in such detail as the Administrator may prescribe, and pay to the City Finance Director the tax withheld during the preceding month. However, if such amount so paid to the Finance Director amounts to less than one hundred dollars per month, the filing of returns and the payment of tax may be made on a quarterly basis. In such case the employer shall, on or before the last day of each month following the quarters ending March 31, June 30, September 30, and December 31, make a return and pay to the Finance Director the tax withheld during the preceding calendar quarter.

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

(C) The employer, in collecting the tax, shall be deemed to hold it until payment is made by the employer to the city, as a trustee for the benefit of the city and any tax collected by the employer from his employees shall, until it is paid to the city, be deemed a trust fund in the hands of the employer.

(D) No person shall be required to withhold the tax on salaries, wages, commissions, other compensation and other income paid domestic workers employed by such person exclusively in or about such person's residence, even though the residence is in the city, but such employee shall be subject to all of the requirements of this ordinance.

(E) On or before January 31 of each year, each employer shall file a withholding return in a form prescribed by and obtainable, upon request, from the Administrator, 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 rules and regulations adopted by the Director of Finance.

(F) On or before February 28 of each year, each individual, business or business entity who files forms 1099 MISC with the Internal Revenue Service must also file a copy of said return with the city tax department.

(G) Every contract on behalf of the City for works or improvements of the City shall contain the following provision:

The contractor further agrees that all city income taxes due or payable under Chapter 880 of the Codified Ordinances of the City of Barberton shall be withheld by the contractor pursuant to Section 880.08 and further agrees that any of its subcontractors shall be required to withhold income taxes as set forth in Chapter 880 of the Codified Ordinances of the City of Barberton.

(H) An individual, association, Corporation or other entity engaged in the business of construction work and who will perform construction work in the City of Barberton shall obtain a tax account number, issued by the Income Tax Department, prior to beginning construction work. The Income Tax Department shall also issue a Certificate of Registration, which the contractor shall file with the city Building Inspection & Permits and Engineering Departments. Failure to possess a valid Certificate shall be cause for suspension of work by the Building Inspection & Permits and the Engineering Department prior to the construction work commencing and/or during the performance of the construction work. Proof of possession of a valid Certificate shall be necessary to commence or resume suspended construction work. The Certificate of Registration may be revoked by the Income Tax Department for failure by the contractor to remain current in the filing of required tax documents, for failure to remain current in the required payment of taxes, and for failure to comply with Section 880.08 of this ordinance.

(I) Any person opening a new or existing business of any type shall obtain a Certificate of Registration from the City Tax Department before obtaining a Certificate of Occupancy from the Building Department.

880.09 DECLARATIONS

(A) Any person who anticipates any taxable income which is not subject to collection at source as provided by Section 880.08, or who engages in any business, profession, enterprise or activity (including rental property) subject to the tax imposed by Section 880.03, and whose tax on said income amounts to one hundred dollars or more, shall file a declaration setting forth such estimated income or net profit or loss from such business activity together with the estimated tax due thereon, if any.

(B) The declaration shall be filed on or before April 30 of each year during the life of this ordinance, or within four months of the date the taxpayer becomes subject to the tax for the first time, whichever time is earlier.

(C) Taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year or period.

(D) Such declaration shall be filed on a form furnished by, or obtainable from the Tax Administrator. However, credit shall be taken for the city tax to be withheld from any portion of that income. In accordance with the provisions of Section 880.17, credit may be taken for tax to be paid to or withheld and remitted to another taxing municipality or a Joint Economic Development District.

(E) The original declaration, or any subsequent amendment thereof, may be increased or decreased on or before any subsequent payment due date as provided herein.

(F) The declaration of estimated tax to be paid the city shall be accompanied by a payment of at least one-fourth of the estimated tax and at leased a similar amount shall be paid on or before the last day of the seventh, tenth, and thirteenth months after the beginning of the taxable year.

(G) If an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment due dates.

(H) On or before the last day of the fourth month of the year following 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 880.07.

(I) Taxpayers who fail to pay to the city an amount equal to ninety percent of their current years tax liability or one hundred percent of their previous years tax liability paid to the city will be subject to an underpayment penalty as provided in Section 880.12.

880.10 DIRECTOR OF FINANCE AND TAX ADMINISTRATOR

(A) It shall be the responsibility of the Director of Finance to collect and receive the tax imposed by this ordinance, in the manner prescribed herein, to keep an accurate record thereof and to report all moneys so received. All cashiers handling city monies shall be subject directly to the Finance Officer and shall give daily accountings to the Finance Officer. It shall be the responsibility of the Director of Finance to oversee the operation of the Tax Department and to delegate its daily operations to the Tax Administrator.

(B) It shall be the duty of the Tax Administrator to enforce payment of all taxes owing the City of Barberton, to 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 to show the dates and amounts of payments thereof.

(C) The Tax Administrator is charged with the enforcement of the provisions of this ordinance, and is empowered, subject to the approval of the Director of Finance 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 ordinance, including provisions for reexamination and correction of returns and payments.

(D) 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 Tax Administrator may determine the amount of tax appearing to be due the city from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any. Such assessment shall be collected in accordance with the rules and regulations as set forth by the Tax Administrator and approved by the Director of Finance. The Director of Finance or the Tax Administrator shall have the power to remove all or any part of any interest and/or penalties imposed under Section 880.12 of this ordinance.

(E) When an application for deferred payment of tax due is filed by a taxpayer, partial payments of unpaid taxes may be authorized for a period not to exceed six months when the taxpayer is unable, due to hardship conditions, to pay the full amount of the tax when due, and when such deferred payments are the best means of accomplishing the intent of this ordinance. The Administrator may authorize an extension of time for not more then six months in addition to the initial six

months extension for payment. The Tax Administrator shall only grant extensions beyond twelve months with the concurrence of the Director of Finance.

(F) A Department of Taxation is hereby created. The department shall have such officers, deputies, clerks and other employees as may be from time to time determined by the council, and shall receive such salary as may be determined by Council. The Director of Finance will make all appointments of personnel and authorize the purchase of all supplies for the department. The Tax Department shall be charged with the administration or the operation of this ordinance under the direction of the Director of Finance. The Director shall also make a written report to council annually of all monies collected hereunder during the preceding year.

880.11 INVESTIGATIONS AND CONFIDENTIALITY

(A) The Director of Finance, Tax Administrator or any authorized employee, is authorized to examine the books, papers, records, and State and Federal income tax returns of any employer or of any taxpayer or person subject to, or believed to be subject to, the provisions of this ordinance, for the purpose of verifying the accuracy of any return made or, if no return has been made, to ascertain the tax due under this ordinance. Every employer, supposed employer, taxpayer, or supposed taxpayer is directed and required to furnish, within ten days following a written request by the Director or his duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as are authorized.

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

(C) Landlords are required to provide the names and addresses of all current tenants to the Tax Department, semi annually. Forms will be sent to all landlords requesting such information and must be completed and returned within thirty days.

(D) The refusal to produce books, papers, records, and State and Federal income tax returns, or the refusal to submit to examination by any employer or person subject or presumed to be subject to the tax by 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 any order or subpoena of the Administrator authorized shall be deemed a violation of this ordinance, punishable as provided in Section 880.99.

(E) Any information gained as the result of any returns, investigations, hearings, or verifications required or authorized by this ordinance shall be confidential and no person shall divulge such information except for official tax collection purposes, or in accordance with proper judicial order or upon receipt of a waiver signed by the person who submitted the return or offered pertinent information, or in accordance subsection "E" of this section. Any person divulging such information in violation of this section shall upon conviction thereof is deemed guilty of a misdemeanor, punishable as provided in Section 880.99.

(F) The Director or his or her authorized representative, is hereby authorized to enter into agreements with the United States Commissioner of the Internal Revenue Service, or the Internal Revenue Service District Director, the State of Ohio Tax Commissioner, or the heads of other State and local taxing authorities, providing for the disclosure and exchange, for tax collection purposes only, of returns or return information in their respective jurisdictions.

(G) Everyone required to file a return should retain all records necessary to compute his tax liability or his exemption certificate for a period of at least five years from the date his return has been filed, or the withholding taxes paid.

880.12 INTEREST AND PENALTIES

(A) All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this ordinance and remaining unpaid after they have become due shall bear interest at the rate or one percent per month or fraction thereof.

(B) In addition to interest as provided in subsection "A" of this section, penalties are hereby imposed as follows:

(1) For failure to pay taxes due (other than taxes withheld) one percent per month or fraction thereof or twenty-five dollars whichever is greater.

(2) For failure to remit taxes withheld from employees:

(a) If paid during the first month after the same becomes due, the penalty shall be five percent of the unpaid tax or twenty-five dollars whichever is greater.

(b) If paid during the second month after the same becomes due, the penalty shall be ten percent of the unpaid tax or twenty-five dollars per month whichever is greater.

(c) If paid during the third or more months after the same becomes due, the penalty shall be fifteen percent of the unpaid tax or twenty-five dollars per month whichever is greater to a maximum of one hundred fifty percent of the unpaid tax.

(C) For failure to file an annual return by the due date of such return, a penalty of twenty-five dollars is imposed, even if no tax shows due on said return.

(D) A fifteen percent penalty shall be assessed for failure to pay estimated taxes as described in Section 880.09, and will be applied as follows:

(1) If the taxpayer refuses or neglects to make estimated payments as required, the penalty will be fifteen percent of the current years actual tax liability due the city.

(2) If the taxpayer makes estimated tax payments, but the total amount paid is less than ninety percent of the current years tax liability and less than one hundred percent of the previous years tax liability paid to the city, the penalty is fifteen percent of the difference between ninety percent of the current years tax due and the total amount of estimated taxes paid

(3) No under payment penalty shall be assessed if the taxpayer made estimated tax payments for the current years estimate in an amount equal to one hundred percent of the previous years tax liability paid to the city.

(E) A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator. 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 the final determination of the federal tax liability.

(F) The Administrator with the approval of the Director may abate penalty or interest or both. At the request of the Administrator the Board of Review may abate penalty or interest, or both, in any amount or on an appeal from the refusal of the Administrator to abate penalty and interest, the Board may nevertheless abate penalty or interest, or both.

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

(H) If penalty and interest charges have been assessed according to this section, all payments made will first be applied towards such assessment and then towards the amount of tax due, if any.

(I) Each year during the month of January, the Director of Finance may cause to be published in a newspaper of general circulation within the City of Barberton a list of persons who are delinquent in payment of their city income tax or who have otherwise failed to comply with city income tax regulations; provided that said persons have been notified by regular mail of the date of publication within thirty days prior to publication.

880.13 COLLECTION OF UNPAID TAXES; REFUNDS

(A) All taxes imposed by this ordinance shall be collectable, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of twenty-five percent or more of income subject to this tax, or failure to file a return, an additional assessment shall not be made after four years from the time of payment of any tax due hereunder. 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 Administrator shall be one year from the time of the final determination of the federal tax liability.

(B) Those officers or employees having control or supervision of, or charged with, the responsibility of filling the return and making payments for a corporation or association shall be personally liable for failure to file the return or pay the taxes 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) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made or the return was due, or within three months after final determination of the federal tax liability, whichever is later.

(D) Additional amounts of less than \$5.00 shall not be collected, refunded, or carried forward to the next succeeding year.

880.14 VIOLATIONS

(A) No person shall:

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

(2) Make any incomplete, false, fraudulent return; or

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

(4) Fail, neglect, or refuse to withhold the tax from his employees or remit such withholdings to the Director of Finance; or

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

(6) Fail to appear before the Administrator and to produce his books, records, papers, or State or Federal income tax returns relating to income or net profits of a taxpayer on order or subpoena of the Administrator; or

(7) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or

(8) Fail to comply with the provisions of this ordinance or any order or subpoena of the Administrator authorized hereby; or

(9) Give to an employer false information as to his true name, correct social security number, and residence address, or fail to promptly notify an employer of any change in residence address and date thereof; or

(10) Fail to use ordinary diligence in maintaining proper records of employees residence addresses, total salaries, wages, commissions, other compensation and other income paid and city tax withheld, or knowingly give the Administrator false information; or

(11) Evade or attempt to evade in any manner the payment of the whole or any part of the tax, penalties or interest imposed by this ordinance.

(B) Anyone who violates any part of Section 880.14(A) shall be guilty of a misdemeanor and subject to the penalties imposed under Section 880.99 of this ordinance.

(C) All prosecutions under this section shall be commenced within three years from the time of the offense or the date the return was filed, whichever is later, provided that in the case of fraud, failure to file a return or omission of twenty-five percent or more of income required to be

reported, prosecutions may be commenced within six years after the commission of the offense or the date the false or fraudulent return was filed, whichever is later. (O.R.C. Section 718.13)

(D) The failure of any employer, taxpayer, or person to receive or procure a return, declaration, or other required form shall not excuse him from filing any information return, declaration, or other required form, or from paying any tax.

(E) The Director of Finance or the Administrator is hereby authorized to grant transactional immunity to a taxpayer that refuses to answer or produce information in response to a subpoena or request on the basis of his privilege against self-discrimination. "Transactional Immunity" shall mean if the taxpayer would have been privileged to withhold an answer or information in any criminal tax proceeding and he gives an answer or produces any information in response to a subpoena request, he shall not be prosecuted or subject to any criminal penalty in the courts of this state for or on account of any transaction or matter concerning which he gives an answer or produced any information.

880.15 BOARD OF REVIEW

(A) A Board of Review consisting of three electors of the City of Barberton one to be appointed by the Mayor, one to be appointed by the Finance Officer, and the third member to be selected by the two so appointed is hereby created. No member shall be appointed to the Board of Review who holds other public office or appointment. All rules and regulations and amendments or changes thereto, which are adopted by the Director of Finance under the authority conferred by this ordinance are subject to appeal to the Board of Review. After adoption, such rules and regulations, amendments and changes shall be open to public inspection.

(B) A majority of the members of the Board of Review shall constitute a quorum. The Board of Review shall adopt its own procedural rules and shall keep a record of its transactions.

(C) All hearings by the Board may be conducted privately and the provisions of Section 880.11 of this ordinance with reference to the confidential character of the information required to be disclosed by ordinance shall apply to such matters as may be heard before the Board of Review on appeal.

(D) Any person dissatisfied with any ruling or decision of the Administrator, which is made under the authority conferred by this ordinance, may appeal to the Board of Review within thirty days from the announcement of such ruling or decision by the Administrator, and the Board of Review shall, on hearing, having jurisdiction to affirm, reverse or modify any such ruling or decision or any part thereof.

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

880.16 ALLOCATION OF FUNDS

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

(1) First such part thereof as shall be necessary to defray all expense of collecting the tax and administering and enforcing the provisions of this ordinance shall be paid.

(2) Second, such part thereof as shall be necessary to defray all expenses of the General Fund and the balance collected shall be transferred to Gasoline Tax, Sanitation, Police Pension, and Fire Pension and Swimming Pool Funds as provided by Council.

880.17 CREDIT FOR TAXES PAID TO ANOTHER MUNICIPALITY OR JOINT ECONOMIC DEVELOPMENT DISTRICTS

(A) Where a resident of the City of Barberton is subject to a municipal income tax in another municipality or a Joint Economic Development District, he shall not pay a total municipal income tax on the income greater than the tax imposed at the higher rate.

(B) Every taxpayer who resides in the City of Barberton but receives net profits, salaries, wages, commissions, other compensations, or other income from resident or nonresident business entity or association or profession of which he is a partner, stockholder, member or owner for work done or services performed or rendered outside the City of Barberton, if it be made to appear that he or such business entity has paid a municipal income tax or Joint Economic Development District income tax on or with respect to the same income taxable under this ordinance to another municipality or Joint Economic Development District, shall be allowed a credit against the tax imposed by this ordinance in the amount so paid by him, in his behalf or by such business entity to the other municipality or Joint Economic Development District. In no event, however, shall any municipality income tax or any Joint Economic Development District income tax to the extent paid to another municipality or to a Joint Economic Development District and be allowed, as a credit hereunder be deductible in computing the net profit of such taxpayer or such business entity. In addition, the credit shall not exceed the tax assessed by this ordinance on income earned in such municipality or municipalities or Joint Economic Development District where the tax is paid.

(C) A claim for refund or credit under this section shall be made in such manner as the Director or Administrator may, by regulation, provide before the date for filing the taxpayer's final return unless such taxpayer's employer files with the City Finance Director a list showing the tax withheld from such taxpayer's wages, salaries commissions, other compensation or other income for other municipalities.

(D) A tax credit in the amount of the tax liability up to a maximum of fifty dollars shall be awarded to disabled or retired resident individuals as per rules and regulations prescribed by the Director of Finance.

880.18 REQUIREMENTS FOR JOINT ECONOMIC DEVELOPMENT DISTRICTS

(A) Specific provisions of this ordinance may be modified as they apply to Joint Economic Development Districts if Council passes the modifications in an ordinance, which either specifically approves a Joint Economic Development District contract or specifically amends this ordinance.

880.19 COLLECTION OF TAX AFTER TERMINATION OF TAX ORDINANCE AND SEPARABILITY

(A) This ordinance shall continue in effect insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this ordinance are concerned, it shall continue effective until all of said taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of said taxes or the punishment of violations of this ordinance shall have been fully terminated, subject to the limitations contained in Sections 880.13 and 880.14 of this ordinance.

(B) Annual returns due for all or part of the last effective year of this ordinance shall be due on the date provided in Sections 880.07 and 880.08 of this ordinance as though the same were continuing.

(C) If any sentence, clause, section or part of this ordinance or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this ordinance and shall not affect or impair any of the remaining provisions, sentence, clauses, sections or other parts of this ordinance. It is hereby declared to be the intention of the Council of the City of Barberton that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

(D) All ordinances or parts thereof that are in conflict with this ordinance be and the same are hereby repealed.

880.99 PENALTY

(A) Whoever violates any of the provisions of this ordinance for which no penalty is otherwise provided shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both, for each offense.

(B) Whoever violates Section 880.11(D) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both. Each disclosure shall constitute a separate offense.

In addition to the above penalty, any employee of the city who violates the provisions of section 880.11(D) relative to disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(C) EMERGENCY CLAUSE: This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety and it shall go into effect forthwith. The reason for said emergency is the immediate necessity of levying the tax provided for herein, in order to obtain revenue for the operation of the City of Barberton government. For this ordinance, it shall take effect and be in force immediately upon its passage by Council and the approval by the Mayor.

Passed December 11, 2000

Susan Matuch
Clerk of Council

Robert Genet
President of Council

Approved December 11, 2000

Randy Hart
Mayor