

## **CHAPTER 880**

### **Earned Income Tax**

**EDITOR'S NOTE:** This chapter, previously a codification of Ordinance 186-1988, passed October 24, 1988, Ordinance 37-1990, passed February 12, 1990, Ordinance 207-1990, passed November 13, 1990, Ordinance 97-1992, passed July 13, 1992, and Ordinance 13-1999, passed January 25, 1999, was repealed and re-enacted in its entirety by Ordinance 217-2000, passed December 11, 2000.

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#### **CROSS REFERENCES**

- Power to levy income tax - see Ohio Const., 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
- Joint Economic Development Districts - see Ohio R.C. 715.70 et seq.
- Municipal income taxes - see Ohio R.C. Ch. 718
- Division of Taxation - see ADM. 234.01
- Tax Incentive Review Board - see ADM. Ch. 285

#### **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 hereby levied a tax on gross income including salaries, wages, commissions and other compensation, and on net profits, as herein provided.

(Ord. 217-2000. Passed 12-11-00.)

## **880.02 DEFINITIONS.**

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

(a) "Administrator." The Tax Administrator, being the individual appointed by the Director of Finance to administer and enforce the provisions of this chapter.

(b) "Association." A partnership, limited partnership, limited liability company formed under Ohio R.C. Chapter 1705 or under the laws of another state, or any form of unincorporated enterprise, owned by two or more persons.

(c) "Board of Review." The board created and constituted as provided in Section 880.15.

(d) "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.

(e) "City." The City of Barberton, Ohio, County of Summit.

(f) "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.

(g) "Director." The Director of Finance of the City.

(h) "Domicile." The permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

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

(j) "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.

(k) "Fiscal year." An accounting period of 12 months or less ending on any day other than December 31st.

(l) "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:

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

(2) 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.

(3) The portion attributable to the City 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. Such portion shall be determined as provided in Section 880.04 and in accordance with regulations adopted by the Director of Finance.

(4) 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.

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

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

(n) "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.

(o) "Joint Economic Development District." Districts created under Ohio R.C. Sections 715.70 and 715.71, as amended from time to time.

(p) "Limited Liability Company." Means a limited liability company formed under Ohio R.C. Chapter 1705 or under the laws of another state.

(q) "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 chapter 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.

(r) "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 chapter 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 chapter, 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.

(s) "Nonresident." A person domiciled outside the City.

(t) "Owner." A partner of a partnership, a shareholder of an S Corporation, a member of a limited liability company, or other person with an ownership interest in a pass-through entity.

(u) "Pass-through Entity." A partnership, S-Corporation, limited liability company, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.

(v) "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 "person" shall mean the stockholders thereof; and as applied to C-Corporations "person" shall mean any of its officers, employees, or trustees charged with the responsibility of filing returns and making payments to the City. 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.

(w) "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 a taxpayer in carrying on any business activity individually or through one or more of the taxpayer's regular employees regularly in attendance.

(x) "Resident." A person domiciled in the City. The presumption that one is domiciled in the City exists under the following conditions:

(1) A person has maintained a residence, whether through ownership or as a tenant, within the City for a total of 183 days or more within any twelve month period.

(2) While living in the City, the 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 person'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.

(y) "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 Internal Revenue Code, 26 U.S.C. 1361. All rules and regulations, for tax purposes, pertaining to partnerships, with some exceptions, shall apply to S-Corporations.

(z) "Taxable income." Gross income minus the deductions and credits allowed by this chapter.

(aa) "Taxable year." The calendar year or the fiscal year on the basis of which the taxable income is 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.

(bb) "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.

(Ord. 217-2000. Passed 12-11-00.)

### **880.03 IMPOSITION OF TAX.**

For the purpose specified in Section 880.01, an annual tax is hereby imposed on and after July 1, 1986, at the rate of 2.00% per annum on all taxable income.

(Ord. 217-2000. Passed 12-11-00.)

### **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 division (a) of this section, "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) The earned income tax provided by this chapter shall be imposed upon all salaries, wages, commissions, other compensation and other income for work 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.

(Ord. 217-2000. Passed 12-11-00.)

### **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, the Tax Administrator shall make such allocation as deemed appropriate to produce a fair and proper allocation of net profits or loss to the City.  
(Ord. 217-2000. Passed 12-11-00.)

#### **880.06 EXCEPTIONS AND CREDITS.**

- (a) The tax provided for herein shall not be levied on any of the following:
- (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 Ohio R.C. Chapter 5701;
  - (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 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 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 Ohio R.C. Chapter 306 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, 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 chapter) of a person 17 years of age or younger for the entire year, who is a full time student in an accredited elementary school, 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. The 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; and

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

(b) 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.

(c) 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.

(Ord. 217-2000. Passed 12-11-00.)

#### **880.07 RETURN AND PAYMENT; REGISTRATION.**

(a) Registration; Return Required. Council hereby directs that each person, eighteen years of age or older, who was a resident of the City 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 15 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 division (h) of this section. 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 chapter, is such salary, wages, commissions, other compensation and other income.

(b) Information Required. 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 chapter 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 chapter. 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) Extension of Time for Filing. 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.

(d) Payment of Tax; Deductions. 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) Overpayment. A 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 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) Amended Returns.

(1) Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax 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.

(2) 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 to be due thereon or make claim for refund of any overpayment, subject to division (e) of this section.

(g) Exemptions. 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 chapter, including filing requirements.

(h) Requests for Water Service. 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 the form with the City Tax Department.

(i) Applications for Building Permits. A contractor or subcontractor, upon application for a building permit, must obtain and supply a city tax identification number to the Building Department.

(Ord. 217-2000. Passed 12-11-00; Ord. 200-2004. Passed 12-20-04.)

#### **880.08 COLLECTION AT SOURCE.**

(a) Deduction by Employer. 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 chapter. 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 twentieth 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 twentieth 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) Employer Liability. 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) Employer as Trustee. 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) Domestic Workers. 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 chapter.

(e) Withholding Returns. 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) 1099 MISC Forms. On or before February 28 of each year, each person who files a form 1099 MISC with the Internal Revenue Service must also file a copy of the form with the City Tax Department.

(g) City Contracts. 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) Registration of Persons Engaged in Construction. A person engaged in the business of construction work and who will perform construction work in the City 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.

(i) Registration of Businesses. 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.  
(Ord. 217-2000. Passed 12-11-00; Ord. 200-2004. Passed 12-20-04.)

### **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 15 of each year, 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 least a similar amount shall be paid on or before the last day of the sixth, ninth, 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 eighty percent of their current year's tax liability or 100 percent of their previous year's tax liability paid to the City will be subject to an underpayment penalty as provided in Section 880.12.

(Ord. 217-2000. Passed 12-11-00; Ord. 200-2004. Passed 12-20-04.)

#### **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 chapter, 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, 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 hereby charged with the enforcement of the provisions of this chapter, 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 chapter, including provisions for re-examination 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.

(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 chapter. The Administrator may authorize an extension of time for not more than 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 established. The Department shall have such officers, deputies, clerks and other employees as may be from time to time determined by 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 chapter 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. (Ord. 217-2000. Passed 12-11-00.)

### **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 chapter, 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 chapter. 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 the Director's 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 or her 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 or her, whether as parties or witnesses, whenever he or she 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 chapter, and shall be subject to the penalty provided in Section 880.99.

(e) Any information gained as the result of any returns, investigations, hearings, or verifications required or authorized by this chapter 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 division (f) of this section. Any person divulging such information in violation of this section shall upon conviction thereof is deemed guilty of a misdemeanor, and shall be subject to the penalty provided in Section 880.99.

(f) The Director or the Director's 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) Every person required to file a return should retain all records necessary to compute the person's tax liability or the person's exemption certificate for a period of at least five years from the date the return has been filed, or the withholding taxes paid.  
(Ord. 217-2000. Passed 12-11-00.)

### **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 chapter and remaining unpaid after they have become due shall bear interest at the rate of one and one-half percent per month or fraction thereof.

(b) In addition to interest as provided in division (a) of this section, penalties are hereby imposed as follows:

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

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

A. Penalty is ten percent per month or fraction thereof.

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 minimum penalty of twenty-five dollars is imposed, even if no tax shows due on the return.

(d) An underpayment 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 one and one-half percent per month of the current year's actual tax liability due the City, with the minimum being twenty-five dollars (\$25.00).

(2) If the taxpayer makes estimated tax payments, but the total amount paid is less than eighty percent of the current year's tax liability and less than one hundred percent of the previous year's tax liability paid to the City, the penalty should be based on the difference between eighty percent of the current tax due and the total amount of estimated taxes paid.

(3) No underpayment penalty shall be assessed if the taxpayer made estimated tax payments for the current year's estimate in an amount equal to one hundred percent of the previous year's 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 a penalty or interest, or both. At the request of the Administrator, the Board of Review may abate a 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 a 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 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 those persons have been notified by regular mail of the date of publication within thirty days prior to publication.

(Ord. 217-2000. Passed 12-11-00; Ord. 200-2004. Passed 12-20-04.)

### **880.13 COLLECTION OF UNPAID TAXES; REFUNDS.**

(a) All taxes imposed by this chapter 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 filing the return and making payments for a corporation or association shall be personally liable for failure to file the return or pay the taxes 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.

(Ord. 217-2000. Passed 12-11-00.)

### **880.14 VIOLATIONS.**

- (a) No person shall do any of the following:
- (1) Fail, neglect, or refuse to make any return or declaration required by this chapter;
  - (2) Make any incomplete, false, or fraudulent return;
  - (3) Fail, neglect, or refuse to pay the tax, penalties, or interest imposed by this chapter;

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

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

(6) Fail to appear before the Administrator and to produce the 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;

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

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

(9) Give to an employer false information as to his or her 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;

(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 chapter.

(b) Whoever violates any part of division (a) of this section is guilty of a misdemeanor and subject to the penalties imposed under Section 880.99.

(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 per cent or more of income required to be reported, prosecutions may be commenced within six years from the date the return was due or the date the false or fraudulent return was filed. (Ohio R.C. 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 the person 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 who refuses to answer or produce information in response to a subpoena or request on the basis of the privilege against self-incrimination. "Transactional immunity" means that if the taxpayer would have been privileged to withhold an answer or information in any criminal tax proceeding, and gives an answer or produces any information in response to a subpoena request, the taxpayer 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 the taxpayer gives an answer or produced any information.

(Ord. 217-2000. Passed 12-11-00.)

### **880.15 BOARD OF REVIEW.**

(a) A Board of Review consisting of three electors of the City, 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 established. 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 chapter 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 with reference to the confidential character of the information required to be disclosed by law 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 chapter, 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, have 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.

(Ord. 217-2000. Passed 12-11-00.)

#### **880.16 ALLOCATION OF FUNDS.**

The funds collected under the provisions of this chapter shall be deposited in a special fund known as the Income Tax Revenue Fund, and such funds shall be disbursed in the following manner:

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

(b) Second, such part thereof as shall be necessary to defray all expenses of the General Fund and the balance collected shall be transferred to funds as designated by Council in the current year Budget Ordinance.

(Ord. 217-2000. Passed 12-11-00; Ord. 73-2005. Passed 5-9-05.)

#### **880.17 CREDIT FOR TAXES PAID TO ANOTHER MUNICIPALITY OR JOINT ECONOMIC DEVELOPMENT DISTRICT.**

(a) Where a resident of the City is subject to a municipal income tax in another municipality or a Joint Economic Development District, the resident 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 but receives net profits, salaries, wages, commissions, other compensation, or other income from a resident or nonresident business entity or association or profession of which the taxpayer is a partner, stockholder, member or owner for work done or services performed or rendered outside the City, if it be made to appear that the taxpayer 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 chapter to another municipality or Joint Economic Development District, shall be allowed a credit against the tax imposed by this chapter in the amount so paid by the taxpayer, in the taxpayer's 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, be allowed as a credit hereunder, to 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 chapter 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.

(Ord. 217-2000. Passed 12-11-00.)

### **880.18 REQUIREMENTS FOR JOINT ECONOMIC DEVELOPMENT DISTRICTS.**

Specific provisions of this chapter 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 chapter.

(Ord. 217-2000. Passed 12-11-00.)

### **880.19 COLLECTION OF TAX AFTER TERMINATION OF THIS CHAPTER.**

(a) This chapter 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 chapter are concerned, it shall continue effective until all of the taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of such taxes or the punishment of violations of this chapter are fully terminated, subject to the limitations contained in Sections 880.13 and 880.14.

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

(c) All ordinances or other provisions of this Code, or parts thereof, that are in conflict with this chapter be and the same are hereby repealed.

(Ord. 217-2000. Passed 12-11-00.)

### **880.99 PENALTY.**

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

(b) (1) 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.

(2) In addition to the penalty set forth in division (b)(1) of this section, 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.