

Avon, Ohio Code of Ordinances
PART EIGHT - BUSINESS REGULATION AND TAXATION CODE
TITLE FOUR - Taxation
CHAPTER 880 Earned Income Tax

CHAPTER 880
Earned Income Tax

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CROSS REFERENCES

Authority to tax - see Ohio Const., Art. XVIII, § 3
Enactment of Municipal Income Tax ordinances and resolutions - see CHTR. Art. IV, § 17
Payroll deductions - see Ohio R.C. 9.42
Municipal income tax - see Ohio R.C. Ch. 718
Department of Taxation - see ADM. Ch. 236

880.01 PURPOSE.

To provide funds for the purposes of general Municipal operation, maintenance, new equipment, extension and enlargement of Municipal services and facilities and capital improvements of the City, there is hereby levied a tax on salaries, wages, commissions and other compensation, and on net profits, as provided in this chapter.

(Ord. 371-68. Passed 2-28-68.)

880.02 DEFINITIONS.

As used in this chapter, unless the context clearly indicates otherwise:

- (a) "Administrator" means the individual designated by this chapter, appointed by the Mayor with the concurrence of a two-thirds vote of Council, to administer and enforce this chapter.
- (b) "Assignment" means the assignment made by a resident of the City of a claim for refund due from another taxing municipality granting credit to nonresidents thereof.
- (c) "Association" means a partnership, limited partnership or any other form of unincorporated enterprise owned by two or more persons.
- (d) "Board of Review" means the Board created by and constituted as provided in Section 880.27.
- (e) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity.
- (f) "Corporation" means a corporation or joint stock association organized under the laws of the United States, the State or any other state, territory, foreign country or dependency.
- (g) "Employee" means one who works for wages, salary, commission or any other type of compensation in the service of an employer.

(h) "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other compensation basis.

(i) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.

(j) "Fundamental change" means any substantial alteration by an employer, including liquidation, dissolution, bankruptcy and reorganizations such as merger, consolidation, acquisition, transfer or change in identity, form or organization.

(k) "Gross receipts" means the total income from any source whatsoever.

(l) "Manager" means any of the employer's officers, responsible persons, employees having control or supervision and employees charged with the responsibility of filing the return, paying taxes and otherwise complying with this chapter.

(m) "Net profits" means a net gain from the operation of a business, profession, enterprise or other activity, after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, or a system approved by the Administrator, without deduction of taxes imposed by this chapter, Federal, State and other taxes based on income and, in the case of an association, without deduction of salaries paid to partners and other owners, and otherwise adjusted to the requirements of this chapter.

(n) "Nonresident" means an individual domiciled outside of the City.

(o) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business in the City.

(p) "Person" means a natural person, partnership, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, "person," as applied to any unincorporated entity, means the partners or members thereof and, as applied to a corporation, the officers thereof.

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

(r) "Reciprocity credit" means the credit granted by a municipality to its residents and to nonresidents whose municipality of residence grants a similar

credit to nonresidents thereof, based on twenty-five percent of the lesser of the two rates.

(s) "Resident" means an individual domiciled in the City.

(t) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business in the City.

(u) "Taxable income" means wages, salaries and other compensation paid by an employer before any deduction and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with this chapter. Taxable income shall also mean lottery winnings and income derived from gambling, wagering, lotteries or schemes of chance but only when such amounts are equal to or exceed four million dollars (\$4,000,000).

(v) "Taxable year" means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter, and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

(w) "Taxing municipality" means any municipal corporation levying a municipal income tax on salaries, wages, commissions and other compensation earned by individuals and on the net profits earned from the operation of a business, profession or other activity.

(x) "Taxpayer" means a natural person over eighteen years of age, or any other person, required by this chapter to file a return or pay a tax. (Ord. 5-85. Passed 4-22-85; Ord. 57-04. Passed 7-12-04.)

880.03 LEVY OF TAX; RATE; TAXABLE INCOME.

(a) Subject to Section 880.30, an annual tax for the purposes specified in Section 880.01 shall be imposed on and after January 1, 2008, at the rate of one and seventy-five hundredths (1.75%) percent per year upon the following:

(1) On all salaries, wages, commissions and other compensation, lottery winnings and income derived from gaming, wagering, lotteries or schemes of chance but only when such amounts are equal to or exceed four million dollars (\$4,000,000), and on net profits from unincorporated business entities and professions, earned during the effective period of this chapter by residents of the City;

(2) On all salaries, wages, commissions and other compensation earned during the effective period of this chapter by nonresidents for work done or services performed or rendered in the City. On lottery winnings and income derived from gaming, wagering, lotteries or schemes of chance, but only when

such amounts are equal to or exceed four million dollars (\$4,000,000), by nonresidents when the lottery ticket is purchased and/or the gaming, wagering or scheme of chance is conducted, inside the City limits;

(3) On the employer's income derived from finance and carrying charges associated with his or her consumer's accounts receivable;

(4) On the portion attributable to the City of the net profits earned during the effective period of this chapter of all resident unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City;

(5) On the portion of the distributive share of the net profits earned during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity, provided, however, that the liability of an individual partner or owner taxable under this chapter on income attributable to another taxing municipality shall be subject to Section 880.29;

(6) On the portion attributable to the City of the net profits earned during the effective period of this chapter of all nonresident unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City, whether or not such unincorporated business entity has an office or place of business in the City;

(7) On the portion of the distributive share of the net profits earned during the effective period of this chapter of a resident partner or owner of a nonresident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity, provided, however, that the liability of an individual partner or owner taxable under this chapter on income attributable to another taxing municipality shall be subject to Section 880.29; and

(8) On the portion attributable to the City, of the net profits earned during the effective period of this chapter of all corporations, derived from sales made, work done, services performed or rendered and business or other activities conducted in the City, whether or not such corporations have an office or place of business in the City.

(b) The portion of the net profits attributable to the City of a taxpayer conducting a business, profession or other activity both within and without the boundaries of the City shall be determined as provided in Ohio R.C. 718.02 and in accordance with the rules and regulations adopted by the Administrator pursuant to this chapter.

(Ord. 5-85. Passed 4-22-85; Ord. 57-04. Passed 7-12-04; Ord. 114-01. Approved by Voters 11-6-01; Res. R-27-07. Approved by Voters 11-6-07.)

880.04 RENTAL INCOME; ROYALTY INCOME.

(a) (1) Rental income received by a taxpayer shall be included in the computation of net profits from business activities only if and to the extent that the rental ownership, management or operation of the real estate from which such rentals are derived (whether so rented, managed or operated by a taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

(2) Where the gross monthly rental of any and all real properties, regardless of the number and value, aggregates in excess of two hundred fifty dollars (\$250.00) per month, it shall be prima-facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax. However, in the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds two hundred fifty dollars (\$250.00) per month. Further, in the case of farm property, the owner shall be considered engaged in a business activity when he or she shares in crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds two hundred fifty dollars (\$250.00) per month. A person who operates a licensed rooming house shall be considered in business whether or not the gross income exceeds two hundred fifty dollars (\$250.00) per month.

(3) A. On or before February 1, 2005, all property owners of rental or leased residential property who rent said premises to tenants, shall file with the Finance Director of Avon, Ohio, a report showing the names, addresses and places of employment of each such tenant who occupies said residential premises within the corporation limits of the City, as of January 1, 2005.

B. Beginning January 1, 2005, and thereafter, within 30 days after a new tenant(s) occupies residential rental or leased property of any kind within the City, the property owner(s) of such rental or leased residential property who rents to the tenant(s), shall file with the Finance Director of the City, a report showing the name(s), address(es) and place(s) of employment of each such tenant who occupies said residential premises within the corporation limits of the City.

C. Beginning January 1, 2005, and thereafter, within 30 days after a tenant vacates a rental or leased residential property located within the City, the property owner of such vacated rental or leased property shall file with the Finance Director of the City, a report showing the date of vacating from the rental or leased residential property and identifying such vacating tenant(s) by name, forwarding address (if available) and place of employment (if available).

(b) Income earned by a taxpayer from a royalty interest in the production of an oil or gas well, whether managed, extracted or operated by the taxpayer

individually or through an agent or other representative, shall be included in the computation of net profits from a business activity to the extent that such royalty interest constitutes a business activity of the taxpayer.

Where the gross income received by a taxpayer from a royalty interest in the production of an oil or gas well in a taxable year exceeds three thousand dollars (\$3,000), it shall be prima-facie evidence that the income was derived from a business activity of such taxpayer and the net income from such royalty interest shall be subject to tax.

(Ord. 5-85. Passed 4-22-85; Ord. 212-04. Passed 12-28-04.)

880.05 OPERATING LOSS CARRY-FORWARD.

(a) The portion of a net operating loss sustained in any taxable year subsequent to April 1, 1968, allocable to the City, may be applied against the portion of the profit of succeeding years 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.

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

(c) The Administrator shall provide, by rules and regulations, the manner in which such net operating loss carry-forward shall be determined.

(Ord. 371-68. Passed 2-28-68.)

880.06 CONSOLIDATED RETURNS.

(a) Filing of consolidated returns may be permitted or required in accordance with the rules and regulations prescribed by the Administrator.

(b) In the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in the case of a person who operates a division, branch, factory, office laboratory or activity in the City constituting only a portion of its total business, the Administrator shall require such additional information as he or she may deem necessary to ascertain whether or not net profits are properly allocated to the City. If the Administrator finds that net profits are not properly allocated to the City by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office laboratory or activity or by some other method, he or she shall make such allocation of net profits to the City.

(Ord. 371-68. Passed 2-28-68.)

880.07 EXCEPTIONS.

The tax provided for in this chapter shall not be levied upon the following:

(a) Pay or allowances of active members of the Armed Forces of the United States, or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities;

(b) Poor relief, unemployment insurance benefits, old age pensions or similar payments, including disability benefits received from local, State or Federal Governments or charitable, religious or educational organizations;

(c) Proceeds of insurance paid by reason of the death of the insured, and pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered, from whatever source derived;

(d) Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations;

(e) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State 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);

(f) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any Act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce; and

(g) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any Act of the Ohio General Assembly limiting the power of the City to impose net income taxes.

(Ord. 371-68. Passed 2-28-68.)

880.08 EFFECTIVE PERIOD.

The tax imposed by this chapter shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits, of persons, businesses, professions or other activities earned from April 1, 1968, to and including the date of revocation of this chapter. As for lottery winnings and income derived from gaming, wagering, lotteries or schemes of chance but only when such amounts are equal to or exceed four million dollars (\$4,000,000), the effective date of this amendment shall be July 12, 2004. (Ord. 371-68. Passed 2-28-68; Ord. 57-04, passed 7-12-04.)

880.09 DATE OF FILING RETURN; EMPLOYEE COVERED BY EMPLOYER'S RETURN.

(a) Any person who has no income need not file an annual return. Any person who has exempt income must file a return and declare to the Tax Administrator the nature of his or her exemption. Any person who has taxable income must file a tax return with the Tax Administrator.

(b) Each taxpayer, except as otherwise provided in this chapter, shall, whether or not a tax is due thereon, make and file a return on or before April 30 of the year following the effective date of this chapter (Ordinance 371-68, passed February 28, 1968) and on or before April 30 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or period. The Administrator may provide by regulation that the return of an employer, showing the amount of tax deducted by such employer from the salary, wage, commission or other compensation of an employee, and paid by him or her to the Administrator, shall be accepted as the return required of any employee whose sole income, subject to tax under this chapter, is such salary, wage, commission or other compensation.

(c) If any employer who is liable for tax obligations imposed by this chapter undergoes a fundamental change, then the employer and the manager shall be liable for taxes due up to the date of the fundamental change. Taxes and final tax returns shall be due immediately after the fundamental change. Any successor employer shall withhold from any purchase price that the successor owes to the predecessor an amount sufficient to pay all unpaid taxes, interest and penalties which the predecessor employer owes pursuant to this chapter. The successor employer shall make such withholding until such time that the predecessor employer has paid such taxes, interest and penalties. If the successor fails to withhold such amount, then the successor and, in a personal manner, the successor's manager shall be jointly and severally liable for the payment of such taxes, interest and penalties.

(Ord. 5-85. Passed 4-22-85.)

880.10 FORM AND CONTENT OF RETURN.

The return shall be filed with the Administrator on a form furnished by, or obtainable upon request from, such Administrator, setting forth:

(a) The aggregate amounts of salaries, wages, commissions and other compensation, lottery winnings and income derived from gaming, wagering, lotteries or schemes of chance but only when such amounts are equal to or exceed four million dollars (\$4,000,000), earned during the preceding year and subject to such tax;

(b) The gross income from a business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income, earned during the preceding year and subject to such tax;

(c) The amount of the tax imposed by this chapter on such earnings and profits;

(d) The amount of tax imposed by this chapter on income reported;

(e) Any credit to which the taxpayer may be entitled under Sections 880.14, 880.15 and 880.29; and

(f) Such other pertinent statements, information returns or other information as the Administrator may require.

(Ord. 371-68. Passed 2-28-68; Ord. 57-04. Passed 7-12-04.)

880.11 EXTENSION OF TIME FOR FILING RETURN.

The 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 one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal Income 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 or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

(Ord. 371-68. Passed 2-28-68.)

880.12 PAYMENT OF TAX ON FILING OF RETURN; OVERPAYMENT.

(a) The taxpayer making a return shall, at the time of filing thereof, pay to the Administrator the balance of tax due, if any, after deducting the following:

(1) The amount of City income tax deducted or withheld at the source pursuant to Section 880.14;

(2) Such portion of the tax as has been paid on declaration by the taxpayer pursuant to Section 880.15; and

(3) Any credit allowable under Section 880.29.

(b) Should the return or the records of the Administrator indicate an overpayment of tax to which the City is entitled under this chapter, such overpayment shall first be applied against any existing liability, and the balance, if any, at the election of the taxpayer communicated to the Administrator, shall be refunded or transferred against any subsequent liability. However, overpayments of less than one dollar (\$1.00) shall not be refunded.

(Ord. 371-68. Passed 2-28-68.)

880.13 AMENDED RETURNS.

(a) Where necessary, an amended return shall be filed in order to report additional income and pay any additional tax due, or to claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 880.24 to 880.26 and 880.29. 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.

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

(Ord. 371-68. Passed 2-28-68.)

880.14 COLLECTION AT SOURCE.

(a) Each employer within or doing business within the City who employs one or more persons on a salary, wage, commission or other compensation basis shall, at the time of payment thereof, deduct a tax of one and one-half percent (1.5%) from the gross salaries, wages, commissions or other compensation earned by City residents regardless of where such compensation was earned, and shall deduct a tax of one and one-half percent (1.5%) from the salaries, wages, commissions or other compensation earned in the City by nonresidents.

(b) Notwithstanding the provisions of subsection (a) hereof, where such employer employs a City resident in another taxing municipality requiring such employer to deduct its tax from all employees engaged therein, such employer shall withhold for and remit to the City of Avon only the difference, if any, between the tax imposed by such other taxing municipality and the tax imposed by this chapter.

(c) Each employer shall, on or before the last day of each month, make a return and remit to the City the tax withheld in the previous month. Such return shall be on a form prescribed by, or acceptable to, the Administrator and shall be subject to the rules and regulations prescribed therefor by the Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld. However, if the amount of tax deducted by an employer in any one month is less than one hundred dollars (\$100.00), the employer may defer the filing of a return and payment of the amount deducted until the last day of the month following the end of the calendar quarter in which such month occurred.

(d) On or before January 31 following any calendar year, such employer shall file with the Administrator an information return for each employee from

whom City income tax has been or should have been withheld, showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of City income tax withheld from such employee.

(e) Every manager is deemed to be a trustee of the City in collecting and holding the tax required under this chapter to be withheld, and the funds so collected by such withholding are deemed to be trust funds.

Every manager is liable directly to the City for payment of such trust, whether actually collected by such employer or not. A tax deducted and withheld shall be considered paid to the City, whether or not the employer actually remits the tax to the City, for purposes of determining employee payments or credits.

All managers shall be personally liable to the extent of the tax, interest and penalties, jointly and severally, for failure to file the employer's return or to pay the employer's tax, interest and penalties as required under this chapter.

No change in structure by an employer, including a fundamental change, discharges its managers from liability for the employee's or manager's failure to remit funds held in trust, to file a tax return or to pay taxes.
(Ord. 5-85. Passed 4-22-85.)

(f) An individual, partnership, association, corporation or other entity engaged in the business of construction work in the City shall be required to submit a Regional Income Tax Agency (R.I.T.A.) registration form as provided in Section 1444.08(d) of the Building and Housing Code prior to beginning construction work. The registration shall be filed with the Division of Building Inspection, and a certificate of registration shall be issued. Failure to comply shall be cause for suspension of work by the Division of Building Inspection and/or the Department of Taxation prior to the construction work commencing and/or during the performance of such construction work. Proof of possession of a valid certificate of registration shall be necessary to commence or resume suspended construction work. The certificate of registration may be revoked by the Department of Taxation 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 or for failure to comply with this section.
(Ord. 116-92. Passed 10-26-92; Ord. 47-06. Passed 4-24-06.)

880.15 DECLARATIONS OF INCOME NOT COLLECTED AT SOURCE.

Any person who anticipates any taxable income which is not subject to Section 880.14, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 880.03, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity, together with the estimated tax due thereon. However, no declaration or payment of estimated tax is required if the estimated tax for the

current year amounts to not more than ten dollars (\$10.00) or if a person's income is wholly from wages from which the tax will be withheld and remitted to the City in accordance with Section 880.14.

(Ord. 4-75. Passed 1-15-75.)

880.16 FILING OF DECLARATION.

(a) The declaration required by Section 880.15 shall be filed on or before April 30 of each year during the life of this chapter, or within four months of the date the taxpayer becomes subject to tax for the first time.

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

(Ord. 371-68. Passed 2-28-68.)

880.17 FORM OF DECLARATION.

(a) The declaration required by Section 880.15 shall be filed upon a form furnished by or obtainable from the Administrator. Credit shall be taken for City income tax to be withheld, if any, from any portion of such income. In addition, credit may be taken for tax payable to other taxing municipalities in accordance with Section 880.29.

(b) The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment date as provided for in this chapter.

(Ord. 371-68. Passed 2-28-68.)

880.18 PAYMENT UPON DECLARATION.

(a) The taxpayer making the declaration shall, at the time of the filing thereof, pay to the Administrator at least one-fourth of the estimated annual tax due after deducting the following:

(1) Any portion of such tax to be deducted or withheld at the source pursuant to Section 880.14;

(2) Any credit allowable under Section 880.29; and

(3) Any overpayment of the previous year's tax liability which the taxpayer had not elected to have refunded.

(b) At least a similar amount shall be paid on or before the last day of the month following the seventh and tenth months after the beginning of a taxpayer's taxable year, and on or before the last day of the first month of the succeeding year following the taxable year.

(Ord. 4-75. Passed 1-15-75.)

880.19 ANNUAL RETURNS.

On or before the last day of the fourth month of the year following that for which a declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due to the City shall be paid therewith in accordance with Sections 880.09 through 880.13. However, any taxpayer may file, on or before the last day of the first month of the year following that for which such declaration or amended declaration was filed, an annual return and pay any balance due at such time in lieu of filing such declaration or amended declaration and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax.

(Ord. 4-75. Passed 1-15-75.)

880.20 POWERS AND DUTIES OF THE ADMINISTRATOR.

The powers and duties of the Administrator are as follows:

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

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

(c) The Administrator shall enforce this chapter, and, subject to the approval of the Board of Review, may 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 this chapter, including provisions for the re-examination and correction of returns.

(d) The Administrator may arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments, when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he or she is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him or her under this chapter. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalties and interest, to become payable on demand and the provisions of Sections 880.24 through 880.26 and 880.35 shall apply.

(e) If any taxpayer fails to file a tax return which is required by this chapter within the time prescribed therefor, but consents to disclose all information necessary to the preparation thereof, then the Tax Administrator may prepare such return which, after being signed by such person, may be received by the Administrator as the return of such person.

If any taxpayer fails to file a tax return which is required by this chapter within the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, then the Administrator shall make, in a reasonable manner, such return from his or her own knowledge and from such information as he or she can obtain through testimony or otherwise.

The Administrator may calculate and assess any taxpayer for the amount of tax, penalty and interest which is imposed by this chapter and which is due and owing. Such assessment shall be made by the Administrator's issuing summary records to the last known address of the taxpayer of the assessment. This summary shall include the identification of the taxpayer, the character of the liability assessed, the taxation period and the amount of the assessment.

Any return executed by or any assessment made by the Administrator pursuant to this chapter shall be prima facie good and sufficient for all legal purposes. The Administrator may execute supplemental tax returns and may issue supplemental assessments whenever the Administrator has knowledge derived from any source, including the taxpayer's financial data, that any executed tax return or assessment is imperfect or incomplete in any material respect.

Neither the Administrator's execution of a return nor the Administrator's assessment of a taxpayer shall start the running of the period of limitations on prosecutions set forth in Section 880.36.

(f) Subject to the consent of the Board of Review or pursuant to regulations approved by such Board, the Administrator may compromise any interest or penalty, or both, imposed under Sections 880.32 and 880.33.

(g) The City, having already entered into an agreement for the establishment of a Regional Council of Governments pursuant to Ordinance 11-74, which Council has organized a municipal tax collection agency known as the Regional Income Tax Agency, hereby authorizes the Board of Trustees of such R.I.T.A. to administer and enforce the provisions of this chapter as the agent of the City in conjunction with the City Administrator, and the duties and authority of the Administrator under this chapter may be performed by the Board of such Agency through the Administrator of such Agency. However, the Administrator of such Agency shall have no authority to abate penalties or interest provided for in Sections 880.32 and 880.33.

(h) The Administrator, or any authorized employee, may examine the books, papers, records and Federal Income Tax Returns of any employer or of any taxpayer or person subject to, or whom the Administrator believes is subject to, this chapter, for the purpose of verifying the accuracy of any return made or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed

and required to furnish, upon written request by the Administrator or his or her duly authorized agent or employee, the means, facilities and opportunity for making such examinations.

(i) The Administrator may order any person presumed to have knowledge of the facts to appear before him or her and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and Federal Income Tax Returns and the attendance of all persons before him or her, whether as parties or witnesses, whenever the Administrator believes such persons have knowledge of such income or information pertinent to such inquiry.
(Ord. 5-85. Passed 4-22-85.)

880.21 REFUSAL TO PRODUCE RECORDS.

The refusal to produce books, papers, records and Federal Income Tax Returns, or the refusal to submit to an examination, by any employer or person subject to, or presumed to be subject to, the tax, or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with Section 880.20 or with an order or subpoena of the Administrator authorized by Section 880.21, shall be deemed to be a violation of this chapter, punishable as provided in Section 880.99.
(Ord. 371-68. Passed 2-28-68.)

880.22 CONFIDENTIALITY OF INFORMATION.

Any information gained as the result of any return, investigation, hearing or verification required or authorized by this chapter shall be confidential, except for official purposes, or except in accordance with proper judicial order. No person shall divulge such information, except as provided in this section.
(Ord. 371-68. Passed 2-28-68.)

880.23 RETENTION OF RECORDS BY TAXPAYER.

Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of five years from the date his or her return is filed or the withholding taxes are paid.
(Ord. 371-68. Passed 2-28-68.)

880.24 RECOVERY OF UNPAID TAXES.

All taxes imposed by this chapter shall be collectible, together with any interest and penalty thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to this tax or failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later, provided that in those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an additional assessment may be made by

the Administrator shall be one year from the time of the final determination of the Federal tax liability.

(Ord. 371-68. Passed 2-28-68.)

880.25 TAXES ERRONEOUSLY PAID.

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 the final determination of the Federal tax liability, whichever is later.

(Ord. 371-68. Passed 2-28-68.)

880.26 AMOUNTS LESS THAN ONE DOLLAR.

Amounts of less than one dollar (\$1.00) shall not be collected or refunded.

(Ord. 371-68. Passed 2-28-68.)

880.27 BOARD OF REVIEW.

(a) Members. A Board of Review, consisting of the Mayor, the Finance Director and the Law Director, is hereby established.

The membership of the Board shall elect a Chairperson, who shall preside at all meetings of the Board. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules, with the approval of Council, and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 880.22 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(Ord. 188-97. Passed 10-27-97.)

(b) Approval of Rules and Regulations. All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this chapter, must be approved by the Board before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Administrator and, at the request of the taxpayer or Administrator, is authorized to substitute alternate methods of allocation.

(c) Appeals. Any person dissatisfied with a ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal therefrom to the Board within thirty days from the announcement of such ruling or decision by the Administrator. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof.

(Ord. 371-68. Passed 2-28-68.)

880.28 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be applied for the following purposes:

(a) Such part thereof as is necessary to defray all costs of collecting the taxes levied by this chapter and the cost of administering and enforcing the provisions of this chapter shall first be paid.

(b) After providing for the allocation of funds set forth in subsection (a) hereof, 100 percent of the funds collected after April 1, 1978, shall be set aside and used for the purposes of meeting current expenses and other expenditures of the General Fund, and for such other purposes as may be determined by Council.

(Ord. 9-78. Passed 3-27-78.)

880.29 TAXPAYER RELIEF AND CREDIT PROVISIONS.

(a) Residents. When the taxable income of a resident of the City is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to such other municipality, equal to one hundred percent (100%) of the amount charged by multiplying the lower of the tax rate of such other municipality or of the City by the taxable income earned or attributable to the municipality of employment or business activity. However, such credit shall not exceed one and one-half percent (1.50%) of the taxable income earned in or attributable to the municipality of employment or business activity. For purposes of this section, taxable income shall include the distributive share of net profits of a resident partner or owner of an unincorporated business activity.

(Ord. 22-94. Approved by Voters 5-3-94; Ord. 114-01. Approved by Voters 11-6-01; Res. R-27-07. Approved by Voters 11-6-07.)

(b) Nonresidents. When a nonresident of the City is subject to the tax imposed by this chapter and is also subject to tax on the same income in the municipality of his or her residence, he or she shall not be allowed any credit or claim of refund, nor will the City acknowledge or allow any claim for refund of any portion of such tax so levied.

(c) Filing for Credits. The credits provided for in subsection (a) hereof will not be allowed unless the same are claimed in a timely return or in a form acceptable to, and filed with, the Administrator. If a taxpayer fails, neglects or refuses to file such timely return or form, he or she shall not be entitled to such credit and shall be liable for the full amount of tax assessed by this chapter, together with such interest and penalties, both civil and criminal, as are prescribed in this chapter.

(Ord. 53-82. Passed 8-16-82.)

880.30 SEPARABILITY.

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

(Ord. 371-68. Passed 2-28-68.)

880.31 CONTINUATION OF TAX; COLLECTION AFTER TERMINATION.

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until revoked, and insofar as the collection of taxes levied by this chapter and the actions or proceedings for collecting any tax so levied or for enforcing any provision of this chapter are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter are fully terminated, subject to the limitations contained in Sections 880.24 through 880.26 and 880.35.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 880.09 through 880.14 as though the same were continuing.

(Ord. 371-68. Passed 2-28-68.)

880.32 INTEREST ON UNPAID TAXES.

All taxes imposed and all moneys withheld or required to be withheld by employers under this chapter and remaining unpaid after they become due shall bear interest at the rate of eight percent per year.

(Ord. 78-80. Passed 11-24-80.)

880.33 PENALTIES ON UNPAID TAXES; EXCEPTIONS.

(a) In addition to interest as provided in Section 880.32, penalties based on the unpaid tax are hereby imposed as follows:

(1) For failure to pay taxes due, other than taxes withheld, ten percent per year, but not less than twenty-five dollars (\$25.00);

(2) For failure to remit taxes withheld from employees, ten percent per month or fraction thereof, but the accumulated penalty shall not exceed fifty percent upon any unpaid balance and shall not be less than twenty-five dollars (\$25.00).

(Ord. 78-80. Passed 11-24-80.)

(b) A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return was 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 final determination of the Federal tax liability.

(Ord. 371-68. Passed 2-28-68.)

880.34 ABATEMENT OF PENALTIES AND INTEREST.

Either the Administrator hereunder or the Board of Review may abate any penalty or interest, or both, for good cause shown.

(Ord. 56-94. Passed 4-25-94.)

880.35 VIOLATIONS.

No person shall:

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

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

(c) Intentionally or willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;

(d) Fail, neglect or refuse to withhold the tax from his or her employees or to remit such withholding to the Administrator;

(e) Refuse to permit the Administrator or any duly authorized agent or employee of the Administrator to examine his or her books, records, papers and Federal Income Tax Returns relating to the income or net profits of a taxpayer;

(f) Fail to appear before the Administrator and to produce his or her books, records, papers or Federal Income Tax Returns relating to the income or net profits of a taxpayer, upon order or subpoena of the Administrator;

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

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

(i) Give 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 his or her residence address and the date thereof;

(j) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and tax withheld, or knowingly give the Administrator false information; or

(k) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.
(Ord. 5-85. Passed 4-22-85.)

880.36 LIMITATION ON PROSECUTION.

All prosecution under Section 880.35 must be commenced within three years from the time of the offense complained of, except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which case the limitation of time within which prosecution must be commenced shall be six years from the date the return was due or the date the false or fraudulent return was filed.

(Ord. 4-75. Passed 1-15-75.)

880.37 FAILURE TO PROCURE FORMS.

The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him or her from making any information return, return or declaration, from filing such form or from paying the tax.

(Ord. 371-68. Passed 2-28-68.)

880.38 TAXPAYERS' RIGHTS.

The following rights and considerations apply to every taxpayer or potential taxpayer in the City of Avon:

(a) **Courtesy and Consideration.** As a taxpayer or potential taxpayer, you are entitled to courteous, considerate, and fair treatment from Avon Department employees at all times. If you ever feel that you are not being offered such treatment, you should inform the City Tax Administrator. If your complaint is about the Tax Administrator, you should contact the Mayor or the President of Council

(b) **Payment of Only the Required Tax.** You are liable only for the correct amount of tax which is due and payable. Equal standards of payment are required to be consistently and fairly applied to all taxpayers.

(c) **Your Return May Be Questioned.** The Regional Income Tax Agency (R.I.T.A.) reviews all tax returns for correctness. If it inquires about your return or selects it for further examination, it does not suggest that you are dishonest or that something is wrong. It only indicates that something needs to be clarified. The examination may or may not result in more taxes being assessed. We may close your case without change to your return or you may receive a refund.

(d) Examination and Inquiries by Mail. The Regional Income Tax Agency handles most examinations and inquiries by mail. If necessary, it will send you a letter with either a request for more information or a reason why it believes a change needs to be made in your return. If you provide the requested information or a suitable explanation, a personal interview will probably not be needed. However, you may request a personal interview if you wish or R.I.T.A. may schedule a personal interview to review your records.

(e) Examination by Interview. If the Regional Income Tax Agency requests a personal interview to review your records, you may bring your records to the R.I.T.A. office and leave them or you may stay while the Agency reviews and/or copies your records. The amount of time involved will depend upon the volume and orderliness of the records. R.I.T.A. will try to schedule your examination at a reasonable time that is convenient for you. However, if the parties are unable to agree, the City of Avon has the authority to make the final determination of how, when and where the examination will take place.

(f) Representation. Throughout your dealings with the Taxation Department and its employees, you can represent yourself, or your tax preparer or attorney may represent you. Most differences can be settled by presenting additional facts or information. It is not required to have a tax preparer or attorney appear for you. However, if at any time during a tax review you want to consult an attorney or your tax preparer or any other person you wish to represent you, the Regional Income Tax Agency will stop and reschedule the interview. However, the Agency cannot suspend the interview if you are there because of an administrative summons. In such cases, provision for representation must be made prior to the start of the interview.

(g) Explanation of Additional Tax Liability. If the Regional Income Tax Agency suggests or requests any changes to your return or tax liability, it will explain the reasons for the changes or the levy of additional taxes. You should not hesitate to request information or to ask about anything that is unclear to you. Whenever you owe additional taxes, R.I.T.A. will send you a bill stating the reason for the invoice as well as any amounts you may owe, including interest and penalties, if applicable. You have the right to have your bill adjusted if it is incorrect. Please let R.I.T.A. know immediately if you believe it has sent you an incorrect bill. If you believe that you are entitled to a refund, file the request with the Tax Administrator at the earliest possible date.

(h) Interest. You are liable for interest on additional taxes that you owe, if such taxes were not paid by the appropriate due date. Interest is calculated from the original due date of the payment.

(i) An Appeal of the Examination Findings. If you don't agree with the review or examination findings, you have the right to appeal them. If, within thirty days from the date of the findings, you wish to appeal, you must state your

reasons for such appeal in writing and mail or present such appeal to the Tax Administrator who will schedule a hearing before the Avon Income Tax Board of Review as soon as possible. Most differences can be settled through this appeals system without expensive and time-consuming court trials. If the matter cannot be settled to your satisfaction by the Tax Board of Review, you may pursue your case through the court system.

(j) Cancellation of Penalties. You have the right to ask that certain penalties or interest be cancelled (abated) by the Tax Administrator if you can demonstrate reasonable cause for the filing or payment failure that led to the penalty. Interest and penalties are assessed as defined in Section 880.32 and 880.33. The appeal process described in subsection (i) hereof also applies to the assessment of penalties and interest.

(k) Payment Arrangements. You are required by law to make every effort to pay your taxes in full when they are due. If you can't, you should pay as much as you can and contact the Regional Income Tax Agency immediately to attempt to arrange a payment plan. The Agency may ask you for a complete financial statement to determine your ability to pay the amount due. Based on your financial condition, you may qualify for an installment agreement.

If a payment agreement is approved, it will be prepared in writing for the protection of all concerned. The Regional Income Tax Agency will provide you with copies of all agreements you make with the Taxation Department. If we approve a payment agreement, the agreement will stay in effect only if:

- (1) You give correct and complete financial information;
- (2) You pay each installment on time;
- (3) You satisfy other Avon tax liabilities on time; and
- (4) You provide current financial information when asked.

(l) Enforcement. The Regional Income Tax Agency ordinarily does not initiate any enforcement action until after it has tried to contact you and offered you the opportunity to voluntarily pay any taxes due. It is very important for you to respond immediately to its attempts to contact you. If you do not respond, the Agency has no choice but to begin formal enforcement proceedings by civil suit or criminal charges. The penalties for violations of this chapter are set forth in Section 880.99.

(m) Privacy and Confidentiality. You have the right to have your personal and financial information kept confidential. According to both State and local law, all such records are required to be kept confidential and may be used only for official purposes. Confidentiality of information is defined in Section 880.22.

(n) Taxpayer Assistance. All R.I.T.A. forms are designed to be self-explanatory. Except for the more complicated tax situations, most taxpayers will not need the assistance of an accountant or attorney to file a tax return. The City tax office attempts to provide limited free assistance in preparing tax returns. However, the City is not able to offer unlimited professional advice, and can guarantee help only to the extent that the Department staff is available to do so.

(o) Requests for Information and Documents. Most general information requested from the tax office by a taxpayer will be made available free of charge. Multiple copies of forms and/or copies of the entire City Income Tax Chapter, however, are subject to a nominal fee.

(p) Conflicting Provisions. This section is intended only to clarify and generally delineate taxpayers' rights. The actual application of any provision of this chapter shall be as specifically defined in each section of this chapter. In the event of a conflict between this section and any other section or provision of this chapter, such other section or provision shall take precedence over this section. (Ord. 27-91. Passed 4-8-91.)

880.39 LOTTERY TAX ACCOUNT.

There is hereby created a special fund by the Finance Director, referred to as the lottery tax account, into which any funds obtained as a result of the tax imposed upon income derived from income gaming, wagering, lotteries and/or schemes of chance shall be deposited. Only City Council may authorize an expenditure from this account and only with a three-fifths majority of the members of Council.

(Ord. 57-04. Passed 7-12-04.)

880.99 PENALTY.

Whoever violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than six months, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

In addition, any employee of the Municipality who violates Section 880.22, relative to the disclosure of confidential information, shall be subject to immediate dismissal. In the case of such a violation, each disclosure shall constitute a separate offense.