

VILLAGE OF BENTLEYVILLE

ORDINANCE NO. 2006-14

INTRODUCED BY:

AN ORDINANCE AMENDING
SECTION 880.12 OF THE VILLAGE'S CODIFIED
ORDINANCES RELATING TO RECIPROCITY AND THE
IMPOSITION OF A MUNICIPAL INCOME TAX
AND CREATING AN EMERGENCY

WHEREAS, Chapter 880 of the Codified Ordinances of the Village provides for the imposition of a municipal income tax, and more specifically Section 880.12 addresses the imposition of a tax credit for municipal income taxes paid by residents to other municipalities; and

WHEREAS, pursuant to a special meeting of Village Council on December 9, 1996, a resolution was adopted to reinstate the .25 tax credit; and

WHEREAS, it is the desire of Council to amend Section 880.12 to reflect the adoption of such resolution.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Bentleyville, County of Cuyahoga, State of Ohio:

Section 1. That Section 880.12 of the Village's Codified Ordinances is hereby and herein amended to read as set forth below:

880.12 RECIPROCITY.

When the taxable income of a resident of the Village is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall not be allowed any a credit of the amount of income tax paid on such taxable income to such other municipality, up to the rate of .25 percent. For the purpose of this section, taxable income includes the distributive share of net profits of the resident partner or owner of an unincorporated business entity.

Section 2. That the rest and remainder of Chapter 880 not specifically amended herein shall remain in full force and effect.

Section 3. The Clerk of Council is authorized and directed to forward a certified copy of this Ordinance to RITA and to the Codifier of the Village of Bentleyville.

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Section 4. The Village Codifier when directed to reprint this ordinance for insertion in the Codified Ordinance books of the Village, is authorized to renumber or reclassify the sections of that ordinance for consistency.

Section 5. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including the applicable sections of the Ohio Revised Code.

Section 6. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, or safety of the inhabitants of the Village and for the further reason set forth in the preamble hereof, and this Ordinance shall, therefore, take effect and be in full force immediately from and after the date of its passage and approval.

Passed: September 25, 2006.

Mayor Michael Conif

I, the undersigned, Clerk/Treasurer of the Village of Bentleyville, hereby certify that there is no newspaper published or having an office of publication in the same Village and that I published the foregoing Ordinance by posting the same in five (5) of the most public places of said Village, as defined by Ordinance of Council, for a period of fifteen (15) days, beginning the date following passage and signature by the Mayor.

Deemela Rite
Acting Clerk/Treasurer

I, the undersigned, Clerk/Treasurer of the Village of Bentleyville, hereby certify that the foregoing is a true copy of Ordinance 2006- 14 duly enacted by the Council of said Village on September 25, 2006.

Clerk/Treasurer

TITLE FOUR - Taxation
Chap. 880. Income Tax.

CHAPTER 880
Income Tax

880.01	Purpose.	880.13	Disbursement of funds collected.
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880.10	Interest and penalties.	880.22	Personal liability of officers and employees.
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CROSS REFERENCES

Payroll deductions - see Ohio R.C. 9.42

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

State income tax - see Ohio R.C. Ch. 5747

Tax Administrator - see ADM. Ch. 238

880.01 PURPOSE.

To provide funds for the purposes of general Municipal functions there is hereby levied a tax on all salaries, wages, commissions and other compensation, and on net profits, as hereinafter provided.

(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.02 DEFINITIONS.

For purposes of this chapter, the following terms, phrases and words and their derivatives shall have the meanings given herein. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

- (a) "Adjusted federal taxable income" means a "C" corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "Adjusted Federal Taxable Income" as if the pass-through entity was a "C" corporation. This definition does not apply to any taxpayer required to file a return under Ohio Revised Code (ORC) Section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2005.
- (b) "Administrator" means the Village Treasurer of the Municipality, who is designated to administer and enforce the provisions of this chapter.
(Adopting Ordinance)
- (c) "Association" means any partnership, limited partnership or any other form of unincorporated enterprise, owned by two or more persons.
- (d) "Board of Tax Review" means the Board created by and constituted as provided in Section 880.15.
- (e) "Business" means any 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, excluding, however, all nonprofit corporations which are exempt from the payment of Federal income tax.
- (f) "Corporation" means 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.
- (g) "Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.
- (h) "Employer" means an individual, partnership, association, corporation, government 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 basis of compensation.
- (i) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.
- (j) "Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or requests for refunds, which contain all the information required on municipal regular tax return, estimated payment forms, and request for refund forms, and are in a similar format that will allow

processing of the generic forms without altering the municipality's procedures for processing forms.

- (k) "Gross receipts" means the total income from any source whatever.
- (l) "Net profits" means for taxable years prior to 2005 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, without deduction of taxes imposed by this chapter or 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. For taxable years 2005 and later, see "adjusted federal taxable income."
- (m) "Nonresident" means an individual domiciled outside the Municipality.
- (n) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Municipality.
- (o) "Qualifying wage " means wages as defined in Section 3121(a) of the Internal Revenue code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. Qualifying wage represents employees' income including non-qualified deferred compensation and stock options from which municipal income tax should be deducted by the employer, and any wages not considered a part of qualifying wage shall not be taxed by the municipality. This definition is effective January 1, 2005, for taxable years 2005 and later.
- (p) "Person" means every 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 corporations, 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 employees regularly in attendance.
- (r) "Resident" means an individual domiciled in the Municipality.
- (s) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Municipality.
- (t) "Taxable income" means qualifying wages, salaries and other compensation paid by an employer or employers before any deduction and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this chapter.
- (u) "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.

- (v) "Taxpayer" means a person, whether an individual, partnership, association, corporation or other entity, required hereunder to file a return or pay a tax. (Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.03 IMPOSITION OF TAX.

(a) Rate and Income Taxable. An annual tax for the purposes specified in Section 880.01 shall be imposed on and after October 1, 1972, at the rate of one percent per year upon the following:

- (1) On all salaries, qualifying wages, commissions and other compensation earned on and after October 1, 1972, by residents of the Municipality.
- (2) On all salaries, qualifying wages, commissions and other compensation earned on and after October 1, 1972, by nonresidents of the Municipality for work done or services performed or rendered within the Municipality.
- (3) A. On the portion attributable to the Municipality on the net profits earned on and after October 1, 1972, of all resident unincorporated business entities or professions or other activities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the Municipality.
B. On the portion of the distributive share of the net profits earned on and after October 1, 1972, of a resident partner or owner of a resident unincorporated business entity not attributable to the Municipality and not levied against such unincorporated business entity by the Municipality.
- (4) A. On the portion attributable to the Municipality of the net profits earned on or after October 1, 1972, of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered and business and other activities conducted in the Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality.
B. On the portion of the distributive share of the net profits earned on or after October 1, 1972, of a resident partner or owner of a nonresident unincorporated business entity not attributable to the Municipality and not levied against such unincorporated business entity by the Municipality.
- (5) On the portion attributable to the Municipality of the net profits earned on and after October 1, 1972, of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the Municipality, whether or not such corporations have an office or place of business in the Municipality.

(b) Occasional Entrant Rule. A non-resident individual who works in the Municipality twelve (12) or fewer days per year shall be considered an occasional entrant, and shall not be subject to the Municipality's municipal income tax for those twelve (12) days. For purposes of the 12-day calculation, any portion of a day worked in the Municipality shall be counted as one day worked in the Municipality. Beginning with the thirteenth (13) day, the employer of said individual shall begin withholding the municipality's income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the Municipality in accordance with the requirements of this chapter. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in the Municipality by the individual for the first twelve (12) days. If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the Municipality. The 12-day occasional entry rule does not apply to entertainers or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events.

(c) Effective Period. Such tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation, and with respect to the net profits of businesses, professions or other activities, earned on and after October 1, 1972.

(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.04 DETERMINATION OF ALLOCATION OF TAX.

(a) Method of Determination. In the taxation of income which is subject to Municipal income taxes, the portion of the entire net profits of a taxpayer to be allocated as having been derived from within the Municipality, shall be determined as follows: Multiply the entire net profits by a business allocation percentage to be determined by a three-factor formula of property, payroll and sales, each of which shall be given equal weight, as follows:

- (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 Municipality during the taxable period to the average net book value of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used herein, 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 Municipality to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed.

- (3) Gross receipts of the business or profession from sales made and services performed during the taxable period in the Municipality to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

(b) In the event that the foregoing allocation formula does not produce an equitable result, the Administrator may approve the use of books and records as a substitute method, by applying the following:

- (1) The net profits allocable to the Municipality from business, profession or other activities conducted in the Municipality by corporations or unincorporated entities (whether resident or non-resident) may be determined from the records of the taxpayer only if the taxpayer has bona fide records which disclose with reasonable accuracy what portion of his net profits is attributable to that part of his activities conducted within the Municipality.
- (2) If the net books and record of the taxpayer are used as the basis for apportioning net profits, a statement must accompany the return explaining the manner in which such apportionment is made in sufficient detail to enable the Administrator to determine whether the net profits attributable to the municipality are apportioned with reasonable accuracy.
- (3) In determining the income allocable to the Municipality from the books and record of a taxpayer, an adjustment may be made for the contribution made to the production of such income by headquarters activities of the taxpayer, whether such headquarters is within or without the Municipality.

(c) Sales Made in the Municipality. As used in paragraph (a)(3) hereof, "sales made in the Municipality" means:

- (1) All sales of tangible personal property which is delivered within the Municipality regardless of where title passes if shipped or delivered from a stock of goods within the Municipality.
- (2) All sales of tangible personal property which is delivered within the Municipality regardless of where title passes even though transported from a point outside the Municipality if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Municipality and the sales result from such solicitation or promotion.

- (3) All sales of tangible personal property which is shipped from a place within the Municipality to purchasers outside of the Municipality 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 places where delivery is made.

(d) Total Allocation. In order to obtain the business allocation percentage referred to in subsection (a) hereof, add together the percentages determined in accordance with paragraphs (a)(1) to (3) hereof, or such of the aforesaid percentages as are applicable to the particular taxpayer, and divide the total so obtained by the number of percentages used in deriving such total.

A factor is applicable even though it may be allocable entirely in or outside of the Municipality.

(e) Rentals. Rental income received by a taxpayer shall be included in the computation of net profits from business activities under Section 880.03(a)(3) to (5) only if and to the extent that the rental, ownership, management or operations 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.

Where the gross monthly rental of any and all real properties regardless of number and value, aggregates in excess of two hundred fifty dollars (\$250.00) gross 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, provided that 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, and provided, further, that 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, and provided, further, that the 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.

- (f) Operating Loss-Carry Forward.

- (1) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1973, allocable to the Municipality may be applied against the portion of the profit of succeeding tax years allocable to the Municipality, until exhausted, but in no event for more than five

taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

- (2) The portion of net operating loss sustained shall be allocated to the Municipality in the same manner as provided herein for allocating net profits to the Municipality.
- (3) The Administrator shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined. (Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.05 EXEMPTIONS.

(a) Sources of Income Not Taxed. The tax provided for herein shall not be levied on the following:

- (1) Pay or allowance 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;
- (2) 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;
- (3) Proceeds of insurance paid by reason of the death of the insured; pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived;
- (4) 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;
- (5) Alimony received;
- (6) Personal earnings of any natural person under eighteen years of age;
- (7) Compensation for personal injuries or for damage to property by way of insurance or otherwise;
- (8) Interest, dividends and other revenue from intangible property;
- (9) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State, which items the Municipality 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;

- (10) 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; or
- (11) Salaries, wages, commissions and other compensation 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 Municipality to impose net income taxes.
- (12) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The ordained minister must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, and must have authority to perform all sacraments of the church.
(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.06 RETURNS.

(a) When Return Required to be Made. Each taxpayer shall, whether or not a tax be due thereon, make and file a return on or before April 15th of the year following the effective date of this chapter and on or before April 15th 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.

(b) Form and Content of Return. The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request from such Administrator, or on a generic form setting forth:

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

(c) Extension of Time for Filing Returns. The Administrator may extend the time for filing of the annual return upon the request of the taxpayer for a period of not to exceed six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax return. The 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. The extension request may be made by filing a copy of the taxpayer's request for a federal filing extension, or by filing a written request. The Administrator may deny the extension if the taxpayer's income tax account with the Municipality is delinquent in any way.

(d) Consolidated Returns.

- (1) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Administrator. Notwithstanding, any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the Municipality. However, once the affiliated group has elected to file a consolidated return or a separate return with the Municipality, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the Municipality.
- (2) 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 Municipality constituting a portion only of its total business, the Administrator shall require such additional information as he or she may deem necessary to ascertain whether net profits are properly allocated to the Municipality. If the Administrator finds that net profits are not properly allocated to the Municipality by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity, or by some other method, he or she shall make such allocation as he or she deems appropriate to produce a fair and proper allocation of net profits to the Municipality.

(e) 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 overpaid, subject to the requirements or limitations, or both, contained in Sections 880.11 and 880.12. Such amended return 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 Municipal tax liability, such taxpayer shall make and file an amended Municipal return showing income subject to the Municipal tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make a claim for a refund of any overpayment.
(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.07 PAYMENT OF TAX ON FILING OF RETURNS.

(a) The taxpayer making a return shall, at the time of filing thereof, pay to the Administrator the amount of taxes shown as due thereon in the following instances, provided, however, that credit for the amount deducted or paid, or credit to the extent provided for in Section 880.12, 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 the return.

- (1) Where any portion of the tax so due has been deducted at the source pursuant to the provisions of Section 880.08;
- (2) Where any portion of the tax has been paid by the taxpayer pursuant to the provisions of Section 880.09(a); or
- (3) Where an income tax has been paid on the same income to another municipality.

(b) A taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder, or, at his or her election, indicated on the return, such overpayment, or part thereof, shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.
(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.08 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business within the Municipality shall register with the Administrator such registration to show the names and addresses of all employees of such employer, and shall deduct, at the time of the payment of such salary, wages, commission or other compensation, the tax of one percent per year of the gross salaries, wages, commissions or other compensation due by the employer to the employee, and shall, on or before the last day of each month, make a return and pay to the Administrator the amount of taxes so deducted during the previous month. However, if the amount of the tax so deducted by any 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.

(b) Such registration and returns shall be on a form or forms prescribed 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.
(Ord. 1988-41. Passed 8-23-88.)

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

(d) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him or her exclusively in or about such person's residence, even though such residence is in the name of the Municipality, but such employee shall be subject to all of the requirements of this chapter.
(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.09 DECLARATION OF INCOME.

(a) When Required. Except as provided in this section, every person shall file a declaration setting forth taxable income, including distributive shares of net profits of unincorporated business entities estimated to be earned during the current tax year together with the estimated tax due thereon less the amount withheld within the Municipality and less the tax credit allowed in Section 880.12 and less the entire taxable income subject to withholding within the Municipality, pursuant to Section 880.03(a). If the estimated tax for the current year less the tax to be withheld and less such tax credit amounts to not more than ten dollars (\$10.00), no declaration or payment of estimated tax is required. (Ord. 1974-8. Passed 6-12-74.)

(b) Filing of Declaration.

- (1) The declaration required by subsection (a) hereof shall be filed on or before April 15 of each year during the effective period set forth in Section 880.03(b) or within four months of the date the taxpayer becomes subject to tax for the first time.
- (2) Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year or period.

(c) Form of Declaration.

- (1) The declaration required by subsection (a) hereof shall be filed upon a form furnished by or obtainable from the Administrator. As provided in

subsection (a) hereof, credit shall be taken for the Municipal tax to be withheld from any portion of such income and credit shall be taken for tax to be paid or withheld and remitted to another taxing municipality, in accordance with the provisions of Section 880.12.

- (2) The original declaration or any subsequent amendment thereof may be increased or decreased on or before any subsequent quarterly payment date as provided herein.

(Ord. 1972-23. Passed 9-13-72.)

(d) Payment to Accompany Declaration.

- (1) Effective January 1, 2005, the Declaration of Estimated Tax to be paid the Municipality by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth (1/4) of the Declaration amount and at least a similar amount shall be paid on or before July 31st and October 31st of the taxable year, and January 31st of the following year.
- (2) Effective January 1, 2005, such Declaration of Estimated Tax to be paid the Municipality by corporations and associations shall be accompanied by a payment of at least one-fourth (1/4) of the Declaration amount and at least a similar amount shall be paid on or before June 15th, September 15th, and December 15th. In the case of a fiscal year taxpayer the second, third, and fourth quarterly estimated payments shall be due on the fifteenth day of the sixth, ninth, and twelfth months of the taxable year, respectively.

(e) Annual Return. On or before the last day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the Municipality shall be paid therewith in accordance with the provisions of Section 880.07. 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 an amended declaration, and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax.

(f) Extensions. The Administrator may extend the time of filing any return required, of making any payment or of performing any other act required by Sections 880.07 to 880.09 for a period not to exceed six months beyond the original required date.

(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.10 INTEREST AND PENALTIES.

(a) Interest on Unpaid Tax. All taxes imposed, all moneys withheld or required to be withheld by employers and all installments of estimated taxes required to be paid under the provisions of this chapter and remaining unpaid after they become due, shall bear interest at the rate of six percent per year. However, no interest shall be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period, or if 90% of the actual liability has been received.

(b) Penalties on Unpaid Tax. In addition to interest as provided in subsection (a) hereof, penalties based on the unpaid tax or installments of estimated tax are hereby imposed as follows:

- (1) For failure to pay taxes or estimated taxes due, other than taxes withheld: ten percent per year, but not less than five dollars (\$5.00).
- (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 amount and shall not be less than five dollars (\$5.00).
- (3) Notwithstanding the above, no penalties shall be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period, or if 90% of the actual liability has been received.

(c) Exceptions. A penalty shall not be assessed on an additional tax assessment made against a taxpayer by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator. Further, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, provided that an amended return is filed and the additional tax is paid within three months after a final determination of the Federal tax liability.

(d) Abatement of Interest and Penalty. Either the Administrator hereunder or the Board of Review may abate penalty or interest, or both, for good cause shown. (Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.11 COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENTS.

(a) Unpaid Taxes Recoverable as Other Debts. All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, of omission of a

substantial portion of income subject to this tax, or of 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, however, that in those cases in which a 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.

(b) Refunds of 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.

(c) Amounts of Less Than One Dollar. Amounts of less than one dollar (\$1.00) shall not be collected or refunded.
(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.12 RECIPROCITY.

When the taxable income of a resident of the Village is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall not be allowed any credit of the amount of income tax paid on such taxable income to such other municipality. For the purpose of this section, taxable income includes the distributive share of net profits of the resident partner or owner of an unincorporated business entity.
(Ord. 1995-41. Passed 11-15-95; Ord. 2005-10. Passed 5-24-05.)

880.13 DISBURSEMENT OF FUNDS COLLECTED.

The funds collected under the provisions of this chapter shall be disbursed in the following manner:

- (a) First, such part thereof as shall be necessary to defray all expenses of collecting the tax and of administering and enforcing the provisions of this chapter shall be paid.
- (b) The balance remaining after payment of the expenses referred to in subsection (a) hereof shall be deposited in the General Fund for Municipal purposes.
(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.14 DUTIES AND AUTHORITY OF THE ADMINISTRATOR.

(a) Duty to Receive Tax Imposed. It shall be the duty of the Administrator to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; to keep an accurate record thereof; and to report all moneys so received.

(b) Duty to Enforce Collection. It shall be the duty of the Administrator to enforce payment of all taxes owing to the Municipality, to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld, and to show the dates and amounts of payments thereof.

(c) Authority to Make and Enforce Regulations. The Administrator is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the Board of Tax Review, to adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.

(d) Authority to Arrange Installment Payments. The Administrator is authorized to 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 penalty and interest, to become payable on demand and the provisions of Sections 880.11(a) and 880.99 shall apply.

(e) Authority to Determine Amount of Tax Due. In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the Municipality 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.

(f) Authority to Make Investigations. The Administrator, or any authorized employee, is hereby authorized to 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, the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request by the Administrator or his or her duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(g) Authority to Compel Production of Records. 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 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 he or she believes such persons have knowledge of such income or information pertinent to such inquiry.

(h) Refusal to Produce Records. The refusal to produce books, papers, records and Federal income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Administrator authorized hereby, shall be deemed a violation of this section, punishable as provided in Section 880.99.

(i) Confidential Nature of Information Obtained. Any information gained as the result of any returns, investigations, hearings or verifications 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 contrary to this subsection.

(j) Taxpayer Required to Retain Records. 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.

(k) Authority to Contract for Central Collection Facilities. The Municipality, having already entered into an agreement for the establishment of a Regional Council of Governments pursuant to Ordinance 1971-18, passed September 8, 1971, in which Council has organized a municipal tax collection agency known as the "Regional Income Tax Agency," hereby authorizes the Board of Trustees of the Regional Income Tax Agency to administer and enforce the provisions of this chapter as the agent of the Municipality, and the duties and authority of the Administrator hereunder may be performed by the Board of Trustees of such Agency through the Administrator of the Agency. However, the Administrator of such Agency shall have no authority to abate penalties or interest provided for in Section 880.10(a) and (b).
(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.15 BOARD OF TAX REVIEW.

(a) Board of Tax Review Established. A Board of Tax Review, consisting of the Mayor, or a person or employee designated by him or her, the Solicitor, or a person designated by him or her, and a member of Council or a person to be elected by that body, is hereby established. The Board shall select, each year for a one-year term, one of its members to serve as Chairperson and one to serve as Secretary. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 880.14(i), 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.

(b) Duty to Approve Regulations and to Hear Appeals. 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 of Tax Review 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 empowered to substitute alternative methods of allocation.

(c) Right of Appeal. Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal therefrom to the Board of Tax Review within thirty days from the announcement of such ruling or decision by the Administrator, provided the taxpayer making the appeal has filed with the Municipality the required return or other documents concerning the obligation at issue. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. Such hearing shall be scheduled within forty-five (45) days from the date of appeal. The Board's ruling must be made within thirty (30) days from the date of the closing of the record, shall be in writing and filed with the Administrator, and within fifteen (15) days of its decision shall send notice of its decision by ordinary mail to the taxpayer making the appeal. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Tax Review may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.
(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.16 BOND REQUIREMENTS.

Any person, firm, corporation or association who or which is not an owner resident shall, as a condition to the issuance of a building permit for repair, remodeling or any construction work whatsoever, deposit with the Municipality a bond in the amount of one thousand dollars (\$1,000) with a surety company authorized to write surety bonds in the State as surety. The condition of the bond shall be that the person, firm,

corporation or association will indemnify the Municipality for any and all loss that may be occasioned by the Municipality for nonpayment of Municipal income tax due the Municipality for work done or services performed or rendered within the Municipality by the person, firm, corporation or association or employees thereof.

(Ord 1978-21. Passed 6-14-78; Ord. 2005-10. Passed 5-24-05.)

880.17 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder, actions and 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 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 have been fully terminated, subject to the limitations contained in Sections 880.09(a), 880.11(a) and 880.99.

(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 880.06(a) and 880.08 as though the same were continuing.

(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.18 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) 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 remit such withholding to the Administrator;
- (e) Refuse to permit the Administrator, or any duly authorized agent or employee, to examine his or her books, records, papers and Federal income tax returns relating to the income or net profits of the 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 the provisions of this section or any order or subpoena of the Administrator authorized hereby;
- (i) Give to an employer false information as to his or her true name, correct Social Security number and residence address or fail to notify promptly an employer of any change in residence address and the date thereof;

- (j) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and Municipal 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. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.19 LIMITATION ON PROSECUTIONS.

All prosecutions under this chapter must be commenced within the periods specified in Ohio R.C. 718.06.
(Ord. 2005-10. Passed 5-24-05)

880.20 FAILURE TO PROCURE FORMS.

The failure of any 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. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.21 SEVERABILITY.

If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.
(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

880.22 PERSONAL LIABILITY OF OFFICERS AND EMPLOYEES.

The officer or employee having control or supervision of, or charged with the responsibility of filing any return or declaration required by this chapter, and making payment pursuant to any such return or declaration, or any officer of the corporation who is responsible for execution of the corporation's fiscal responsibilities, shall be personally liable for failure to file any return or declaration or pay any tax or employer withholding due by the provisions of this chapter. The dissolution, termination or bankruptcy of a corporation does not discharge a responsible officer's or employee's liability for a failure of the corporation to file returns or declarations or pay tax or employer withholding due. The personal liability created under this section applies to payment of taxes due, plus interest, and penalty applicable by this chapter.
(Ord. 2000-28. Passed 10-18-00; Ord. 2005-10. Passed 5-24-05.)

880.99 PENALTY.

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

(b) Whoever violates Section 880.14(i) shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than six months, or both. Each disclosure shall constitute a separated offense. In addition, any employee of the Municipality who violates Section 880.14(i) shall be guilty of an offense punishable by immediate dismissal.

(Ord. 1972-23. Passed 9-13-72; Ord. 2005-10. Passed 5-24-05.)

