

VILLAGE OF GRAFTON

ORDINANCE NO. 14-027

INTRODUCED BY:

MOTION BY: D. Vencore

SECONDED BY: Ascher

**AN ORDINANCE TO AMEND INCOME TAX ORDINANCE NO. 781,  
TO ADD A NEW DEFINITION FOR PENSIONS  
AND DECLARING AN EMERGENCY**

WHEREAS, it has been determined by Council that it is necessary to amend the income tax ordinance for the Village of Grafton to add a new definition for pensions;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Grafton, in the County of Lorain, and the State of Ohio, that:

Section 1. Ordinance No. 781, passed on December 8, 1970, and currently codified as Section 808.01 of the Codified Ordinances of the Village of Grafton, is hereby amended to add a new definition for "pensions" to read as follows:

"Pension: For purposes of this chapter, a pension is any amount paid to an employee or former employee that is reported to the recipient on an IRS Form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS Form W-2, Wage and Tax Statement, or successor form."

Section 2. That 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 that resulted in such formal action occurred in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3. That this Ordinance be, and hereby is declared to be an emergency measure, the emergency being the need to amend Codified Ordinance Section 808.01 regarding the definition of "pensions", and for the public health, peace and welfare of the Village of Grafton, Ohio.

[Signature]  
PRESIDENT OF COUNCIL

October 7, 2014  
DATE PASSED

[Signature]  
MAYOR

October 7, 2014  
DATE APPROVED

Linda Biles  
CLERK-TREASURER

October 7, 2014  
DATE ATTESTED

APPROVED AS TO FORM BY:

[Signature]  
THOMAS J. SMITH, DIRECTOR OF LAW

First Reading: September 2, 2014

Second Reading: September 16, 2014

Third Reading: October 7, 2014

**VILLAGE OF GRAFTON**

**ORDINANCE NO. 11076**

INTRODUCED BY:

MOTION BY: *Locke*

SECONDED BY: *in bore*

**AN ORDINANCE AMENDING ORDINANCE NO. 31-001  
TO AMEND THE INCOME TAX CODE OF THE VILLAGE OF GRAFTON  
AND DECLARING AN EMERGENCY**

WHEREAS Council has determined that it is in the best interest of the Village of Grafton to amend portions of the Income Tax Code of the Village of Grafton.

NOW, THEREFORE, BE IT ORDAINED by the Village of Grafton, County of Lorain, and State of Ohio as follows:

Section 1. Section 880.01 (Definitions) of the Codified Ordinances of the Village of Grafton is hereby amended by adding a new Subsection (m), to read as follows:

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

Section 2. Section 880.01(h) of the Codified Ordinances of the Village of Grafton is hereby amended. The Section, which currently reads:

- (h) "Other compensation" means, but is not limited to, vacation pay, sick pay, commissions, bonuses, tips, severance pay, supplemental unemployment pay, lottery winnings, or any other remuneration, that is paid or constructively received by the recipient, whether paid in cash or in property. That portion of gross wages which may be deferred under a Federally recognized plan is subject to taxation and to withholding. (Ord. 00-038. Passed 8-1-00.)

is hereby repealed and, as amended, Section 880.01(h) will read as follows:

- (h) "Other Compensation" means, but is not limited to, vacation pay, sick pay, commissions, bonuses, tips, severance pay, supplemental unemployment pay, lottery gambling and sports winnings, games of chance, and prizes and/or awards in excess of \$600.00, or any other remuneration, that is paid or

constructively received by the recipient, whether paid in cash or in property. That portion of gross wages which may be deferred under a Federally recognized plan is subject to taxation and to withholding.

Section 3. Section 880.13(b) is hereby revised to amend and clarify the penalty to be assessed on unpaid taxes and when such penalty is to be assessed. Section 880.13(b), which currently reads:

(b) In addition to interest as provided in subsection (a) hereof, penalties based on the unpaid tax, other than taxes withheld or required to be withheld from salaries, wages and other compensation by an employer, are hereby imposed as follows:

- (1) For the first notice of unpaid tax, or late filing of a return sent to delinquent taxpayer or employer and additional, twenty-five dollars (\$25.00);
- (2) For the second notice of unpaid tax, or late filing of a return, sent to the delinquent taxpayer and or employer, an additional twenty-five dollars (\$25.00) and the delinquent taxpayer or employer shall be subpoenaed to appear before the Village of Grafton Income Tax Clerk; and
- (3) For the third notice of the unpaid tax or late filing of a return sent to the delinquent taxpayer and or employer, an additional twenty-five dollars (\$25.00) and delinquent taxpayer and or employer may be summoned to the Village of Grafton Mayor's Court for disposition of any and all violations in accordance with Sections 880.14 and 880.99 and/or may be referred for further disposition and collection proceedings.

is hereby repealed and, as amended, Section 880.13(b) will read as follows:

(b) In addition to interest as provided in subsection (a) hereof, penalties based on the unpaid tax, other than taxes withheld or required to be withheld from salaries, wages and other compensation by an employer, are hereby imposed as follows on taxpayer and employers:

- (1) For failure to pay taxes, including estimated payments, when due, other than taxes withheld, one percent (1%) per month or fraction of a month, with a minimum penalty of not less than twenty-five dollars (\$25.00); and
- (2) For failure to file the tax return when due, regardless of any tax due, and if the Taxpayer is not otherwise exempt from the filing requirement, the Clerk-Treasurer may impose a penalty of twenty-five dollars (\$25.00) for each offense, in addition to any other penalties which may otherwise be imposed.

A penalty shall not be assessed on an additional tax assessment made by the Clerk-Treasurer when a return has been filed in good faith and the tax paid thereon within the time prescribed by Clerk-Treasurer; provided further that, in the absence of

fraud, neither penalty nor interest shall be assessed on an additional tax assessment resulting from a Federal audit, providing an amended return is filed, and the additional tax is paid within three (3) months after final determination of the Federal tax liability.

Section 4. Section 880.17(d) of the Codified Ordinances of the Village of Grafton is hereby amended to add the definitions of "Manager" and "Other Compensation" to the list. Section 880.17(d), which currently reads:

- (d) "Taxpayer," "Association," "Business," "Corporation," "Employee," "Employer," "Net profits," "Nonresident," "Other entity", "Person" and "Resident" shall be the same as set forth in Section 880.01.

is hereby repealed and, as amended, Section 880.17(d) will read as follows:

- (d) "Taxpayer", "Association", "Business", "Corporation", "Employee", "Employer", "Net profits", "Nonresident", "Other entity", "Person", "Manager", "Other Compensation" and "Resident" shall be the same as set forth in Section 880.01.

Section 5. Section 880.24 (Status and Liability of Employers) of the Codified Ordinances of the Village of Grafton is hereby amended to add the following paragraphs:

Every Manager is deemed to be a trustee of this Municipality 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 this Municipality for payment of such trust, whether actually collected by such Employer or not. Any tax deducted and withheld is to be considered paid to this Municipality, whether or not the Employer actually remits the tax to this Municipality, for purposes of determining Employee payments or credit.

All Managers shall be personally liable to the extent of the tax, interest and penalty, jointly and severally, for failure to file the Employer's return or to pay the Employer's tax, interest and penalty as required under this Chapter.

No change in structure by an Employer, including a fundamental change, discharges its Managers from liability for the Employees' or Manager's failure to remit funds held in trust, to file a tax return or to pay taxes.

Section 6. It is found and determined that all formal actions of this Council concerning and relating to the adoption of the Ordinance were adopted in an open meeting of this Council and open to the public, in compliance with all legal requirements, including the Ohio Revised Code.

**[Ordinance Continued on Next Page]**

Section 7. That this Ordinance be, and hereby is declared to be an emergency measure, the emergency being the need to amend the Income Tax Code for the Village of Grafton, and for the public health, peace and welfare of the Village of Grafton, Ohio.


  
\_\_\_\_\_  
PRESIDENT OF COUNCIL

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CLERK TREASURER

APPROVED AS TO FORM BY:

  
\_\_\_\_\_  
DATE PASSED

  
\_\_\_\_\_  
DATE APPROVED

  
\_\_\_\_\_  
DATE ATTESTED

  
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THOMAS J. SMITH, DIRECTOR OF LAW

## CHAPTER 880 Earned Income Tax

### I. Earned Income Tax.

880.01	Definitions.
880.02	Imposition of tax.
880.03	Determination of income subject to tax.
880.04	Effective date.
880.05	Powers and duties of the Clerk-Treasurer; Department of Taxation.
880.06	Investigations; confidentiality of information.
880.07	Allocation of funds.
880.08	Board of Review; appeals.
880.09	Applicability of chapter.
880.10	Exemptions.
880.11	Refunds.
880.12	Effective period.
880.13	Interest and penalties.
880.14	Violations.
880.15	Failure to obtain forms.
880.16	Claims for credit for tax paid to another municipality.

### II. Regulations.

880.17	Definitions.
880.18	Commencement and duration of tax.
880.19	Imposition of tax.
880.20	Return and payment of tax.
880.21	Collection at source.
880.22	Returns of tax withheld; payment.
880.23	Limitation on credit for tax paid at source.
880.24	Status and liability of employers.
880.25	Declarations.
880.26	Payment of tax in installments.
880.27	Records to be kept by employers and taxpayers.
880.28	Collection of deficiencies; allowance of credit for overpayment.
880.29	Collection of unpaid taxes.
880.30	Examination of records; identification of Village personnel required.
880.31	Applicability.
880.32	Split-payrolls.
880.33	Vacation pay.
880.34	Off-sets of profit and loss.
880.35	Separability.
880.99	Penalty.

### CROSS REFERENCES

Power to levy income tax - see Ohio Const., Art. XII, Secs. 3,  
5, Art. XVIII, Sec. 3  
Limitation on taxation - see CHTR. Art. VIII, Secs. 9 et seq.  
Payroll deductions - see Ohio R.C. 9.42  
Municipal income taxes - see Ohio R.C. Ch. 718  
Administration by Clerk-Treasurer - see ADM. 234.01

## **I. EARNED INCOME TAX.**

### **880.02 DEFINITIONS.**

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

- (a) "Association" means a partnership, limited partnership or any other form of unincorporated enterprise owned by two or more persons.
- (b) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, limited partnership, corporation, association or other entity.
- (c) "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.
- (d) "Employee" means an individual whose earnings are subject to the withholding of Federal Income Tax or Social Security Tax.
- (e) "Employer" means an individual, partnership, limited 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.
- (f) "Net profits" means a net gain from the operation of a business, profession or enterprise after provision for all costs and expenses incurred in the conduct thereof, including reasonable allowances for depreciation, depletion and amortization and reasonable additions to reserve for bad debts, either paid or accrued in accordance with recognized principles of accounting applicable to the method of accounting regularly employed and without deduction of Federal taxes based on income and without deducting taxes imposed by this chapter.
- (g) "Nonresident" means an individual, partnership, limited partnership, corporation, association or other entity domiciled outside the Municipality. (Ord. 781. Passed 12-8-70.)
- (h) "Other compensation" means, but is not limited to, vacation pay, sick pay, commissions, bonuses, tips, severance pay, supplemental unemployment pay, lottery winnings, or any other remuneration, that is paid or constructively received by the recipient, whether paid in cash or in property. That portion of gross wages which may be deferred under a Federally recognized plan is subject to taxation and to withholding. (Ord. 00-028. Passed 8-1-00.)
- (i) "Other entity" means any person or unincorporated body not previously named or defined and includes, inter alia, fiduciaries located in the Municipality.
- (j) "Person" means a natural person, partnership, limited partnership, corporation, fiduciary or association. Whenever used in any clause prescribing and imposing a penalty, "person," as applied to an association, means the partners or members thereof, and as applied to a corporation, the officers thereof.
- (k) "Resident" means an individual, partnership, limited partnership, corporation, association or other entity domiciled in the Municipality.

- (l) "Taxpayer" means a person, whether an individual, partnership, limited partnership, corporation, association or other entity, required under this chapter to file a return or to pay a tax.  
(Ord. 781. Passed 12-8-70.)

#### **880.02 IMPOSITION OF TAX.**

(a) To provide funds for the purposes of general Municipal operations, maintenance of equipment, new equipment, extension, enlargement and improvement of Municipal services and facilities and capital improvements of the Municipality, there is hereby levied a tax upon earnings at the rate of one and one-half percent upon the following:

- (1) On all salaries, wages, commissions and other compensation earned on and after July 1, 1991, by resident individuals of the Municipality;
- (2) On all salaries, wages, commissions and other compensation earned on and after July 1, 1991, by nonresident individuals, for work done or services performed or rendered in the Municipality;
- (3) On the net profits attributable to the Municipality earned on and after July 1, 1991, of all resident unincorporated businesses, professions and other activities, derived from work done or services rendered or performed and business or other activities conducted in the Municipality;
- (4) On the portion of the distributive share of the net profits earned on and after July 1, 1991, of a resident individual, partner or owner of a resident unincorporated business entity attributable to the Municipality and not levied against such unincorporated business entity;
- (5) On the net profits attributable to the Municipality earned on and after July 1, 1991, of all nonresident unincorporated businesses, professions or other activities, derived from work done or services rendered or performed and business or other activities conducted in the Municipality;
- (6) On the portion of the distributive share of the net profits earned on and after July 1, 1991, of a resident individual, partner or owner of a nonresident unincorporated business entity not attributable to the Municipality and not levied against such unincorporated business entity; and
- (7) On the net profits earned on and after July 1, 1991, of all corporations, derived from work done or services rendered or performed and business or other activities conducted in the Municipality.

(b) The portion of the net profits attributable to the Municipality of a taxpayer conducting a business, profession or other activity, both within and without the boundaries of the Municipality, shall be determined as provided in Section 880.03 and in accordance with the regulations adopted by Council and codified as Sections 880.17 et seq.

(Ord. 781. Passed 12-8-70; Res. 91-954. Passed 2-19-91.)



**880.03 DETERMINATION OF INCOME SUBJECT TO TAX.**

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

- (1) The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in the Municipality during the taxable period, to the average net book value of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. As used in this paragraph, "real property" includes property rented or leased by the taxpayer. The value for 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; and
- (3) The 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.

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

(b) As used in this section, "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; and
- (3) All sales of tangible personal property which is shipped from a place within the Municipality to purchasers outside 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 place where delivery is made. (Ord. 781. Passed 12-8-70.)

**880.04 EFFECTIVE PERIOD.**

The tax imposed by this chapter shall be levied, collected and paid with respect to salaries, wages, commissions and other compensation earned on and after July 1, 1991, and with respect to the net profit of businesses, professions and other activities earned on and after July 1, 1991, provided, however, that where the fiscal year of the business, profession or other activity differs from the calendar year, the tax shall be applied to that part of the net profit for the fiscal year as is earned on and after July 1, 1991, to the close of the taxpayer's fiscal year. Thereafter, the taxpayer shall report on its fiscal year basis.

(Ord. 781. Passed 12-8-70; Res. 91-954. Passed 2-19-91.)

**880.05 POWERS AND DUTIES OF THE CLERK-TREASURER;  
DEPARTMENT OF TAXATION.**

(a) The Clerk-Treasurer shall receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, keep an accurate record thereof and report all moneys so received. All cashiers handling tax moneys shall be subject directly to the Clerk-Treasurer and shall give daily accountings to the Clerk-Treasurer.

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

(c) The Clerk-Treasurer is hereby charged with the enforcement of this chapter and shall enforce the rules and regulations of Council relating to any matter or thing pertaining to the collection of Municipal income taxes and the administration and enforcement of this chapter, including provisions for the examination and correction of returns and payments.

(d) 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 Clerk-Treasurer may determine the amount of tax appearing to be due to the Municipality from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with the interest and penalties thereon, if any.

(e) Subject to the consent of the Board of Review, or pursuant to regulations approved by Council, the Clerk-Treasurer shall have the power to compromise any interest or penalty, or both, imposed by this chapter.

(f) A Department of Taxation is hereby established within the office of the Clerk-Treasurer. Such Department shall have such deputies, clerks and other employees as may be, from time to time, determined by Council, and shall receive such compensation as may be determined by Council. The Clerk-Treasurer shall recommend all appointments of personnel and shall purchase all equipment, supplies and material for the Department, subject to the approval of Council. The Department shall be charged with the administration and operation of this chapter, under the

direction of the Clerk-Treasurer. The Clerk-Treasurer shall prescribe the form and method of accounts and reports for the Department, as well as the forms for taxpayers' returns and declarations, shall be charged with the internal examination and audit of all such accounts and shall exhibit accurate records showing the amount received from each taxpayer and the date of receipt. The Clerk-Treasurer shall also make an annual written report to Council of all moneys collected under this chapter during the preceding year. (Ord. 781. Passed 12-8-70.)

#### **880.06 INVESTIGATIONS; CONFIDENTIALITY OF INFORMATION.**

(a) The Clerk-Treasurer or his or her authorized agent or employee is hereby authorized to examine the books, papers and records of any employer or of any taxpayer or person subject to, or believed to be subject to, the tax imposed under this chapter, for the purpose of verifying the accuracy of any return made or, if no return was made, to ascertain the tax due. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish to the Clerk-Treasurer or his or her duly authorized agent or employee, within thirty days following a written request by the Clerk-Treasurer or his or her duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(b) The Clerk-Treasurer or his or her duly authorized agent or employee is hereby authorized to examine any person, employer or employee, under oath, concerning any income which was or should have been returned for taxation and, for this purpose, may compel the production of books and Federal Income Tax records, papers and returns and the attendance of all persons before him or her, whether as parties or witnesses, wherever the Clerk-Treasurer believes such persons have knowledge of such income.

(c) 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 the tax, or the failure of any person to comply with this section or with any order or subpoena of the Clerk-Treasurer authorized hereby, shall be deemed a violation of this chapter, pursuant to Section 880.14, and punishable as provided in Section 880.99.

(d) Tax returns, investigations, hearings and all audit papers and information connected therewith are confidential and shall be carefully preserved so that they are not available for inspection by anyone other than the proper agents of the Municipality for official purposes.

(e) Any information gained as a result of the filing of a tax return, or an investigation, hearing or verification required or authorized by this chapter, shall be confidential, except for official purposes and except in accordance with proper judicial order. No person shall divulge such information.  
(Ord. 781. Passed 12-8-70.)

**880.07 ALLOCATION OF FUNDS.**

The funds collected under the provisions of this chapter shall be deposited in the General Fund and Capital Improvement Fund and said funds collected for the tax period of July 1, 1991, and each subsequent year, shall be disbursed in a manner not inconsistent with policies and procedures established by Council and the Codified Ordinances of the Municipality.

(Ord. 00-026. Passed 8-1-00.)

**880.08 BOARD OF REVIEW; APPEALS.**

(a) A Board of Review, consisting of three electors of the Municipality, one to be appointed by the Mayor, one to be appointed by the Clerk-Treasurer and one to be selected by the two so appointed, is hereby established. No member shall be appointed to the Board who holds another public office or appointment. The members of the Board shall serve without pay.

(b) 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.

(c) All hearings of the Board shall be conducted privately and the provisions of Section 880.06, with reference to the confidentiality of information shall apply to such matters as may be heard before the Board on appeal.

(d) Any person dissatisfied with any ruling or decision of the Clerk-Treasurer which is made under the authority conferred by this chapter and the rules and regulations related thereto may appeal therefrom to the Board within thirty days from the announcement of such ruling or decision by the Clerk-Treasurer, and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or a part thereof.

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

(f) The Board, as created, shall serve during the life of this chapter.  
(Ord. 781. Passed 12-8-70.)

**880.09 APPLICABILITY OF CHAPTER.**

This chapter shall not apply to any person or property as to whom or which it is beyond the power of Council to impose the tax herein provided for.

(Ord. 781. Passed 12-8-70.)

**880.10 EXEMPTIONS.**

This chapter shall not be construed as levying a tax upon the following:

- (a) Funds received from the local, State or Federal government because of service in the Armed Forces of the United States by the person rendering such service or as a result of another person rendering such service;

- (b) Poor relief, pensions, social security, unemployment compensation and disability benefits received from a private industry or the local, State or Federal government, or from charitable, religious or educational organizations;
- (c) Dues, contributions and similar payments received by charitable, religious, educational or literary organizations or labor unions, lodges and similar organizations;
- (d) Receipts from casual entertainment, amusements, sports events and health and welfare activities conducted by bona fide charitable, religious and educational organizations and associations;
- (e) Any association, organization, corporation, club or trust that is exempt from Federal Income Tax by reason of its charitable, religious, educational, literary, scientific, etc., purposes;
- (f) Gains from involuntary conversions, cancellation of indebtedness, interest of Federal obligations and income of a decedent's estate during the period of administration (except such income from the operation of a business); and
- (g) Earnings and income of all persons under eighteen years of age, whether residents or nonresidents.  
(Ord. 781. Passed 12-8-70; Ord. 823. Passed 5-1-73.)

#### **880.11 REFUNDS.**

(a) If it appears that a taxpayer has paid more than the amount of the tax to which the Municipality is entitled under this chapter, a refund of the amount so overpaid shall be made, provided that a proper claim for refund of such overpayment has been filed by the taxpayer, or the same may be applied toward the declaration of tax due for the ensuing year. Claims for refunds shall be made on forms prescribed by, and obtainable from, the Clerk-Treasurer.

(b) All applications for refunds shall be made within three years of the due date of a final return.

- (c) No refund shall be made for an amount less than one dollar (\$1.00).  
(Ord. 781. Passed 12-8-70.)

#### **880.12 EFFECTIVE PERIOD.**

Sections 880.01 through 880.16 shall continue effective insofar as the levy of taxes is concerned until further action of Council and/or the vote of the people repealing or amending the same. (Ord. 00-025. Passed 8-1-00.)

#### **880.13 INTEREST AND PENALTIES.**

(a) All taxes imposed by this chapter, including taxes withheld or required to be withheld from wages by an employer and remaining unpaid after they have become due, shall bear interest on the amount of the unpaid tax at the rate of twelve percent per annum or fraction thereof.

(b) In addition to interest as provided in subsection (a) hereof, penalties based on the unpaid tax, other than taxes withheld or required to be withheld from salaries, wages and other compensation by an employer, are hereby imposed as follows:

- (1) For the first notice of unpaid tax, or late-filing of a return, sent to the delinquent taxpayer and or employer, and additional twenty-five dollars (\$25.00);
- (2) For the second notice of unpaid tax, or late-filing of a return, sent to the delinquent taxpayer and or employer, an additional twenty-five dollars (\$25.00) and the delinquent taxpayer or employer shall be subpoenaed to appear before the Village of Grafton Income Tax Clerk; and
- (3) For the third notice of the unpaid tax, or late-filing of a return, sent to the delinquent taxpayer and or employer, an additional twenty-five dollars (\$25.00) and the delinquent taxpayer and or employer may be summoned to the Village of Grafton Mayor's Court for disposition of any and all violations in accordance with Sections 880.14 and 880.99 and/or may be referred for further disposition and collection proceedings.

(c) In addition to the interest and penalties set forth in subsections (a) and (b) hereof, any employer who fails to pay taxes withheld from employees, in accordance with the provisions of Sections 880.21 to 880.24, shall pay as an additional penalty per month or fraction thereof ten percent of the unpaid tax.

(d) Upon recommendation of the Clerk-Treasurer, the Board of Review may abate interest or penalties, or both, and upon appeal from the refusal of the Clerk-Treasurer to so recommend, the Board of Review may nevertheless abate interest or penalty, or both, for good cause shown.

(Ord. 00-029. Passed 8-1-00; Ord. 06-003. Passed 2-21-06; Ord. 07-029. Passed 12-11-07.)

#### **880.14 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, penalty or interest imposed by this chapter;
- (d) Fail, neglect or refuse to withhold the tax from employees or to remit such withholding to the Clerk-Treasurer;
- (e) Refuse to permit the Clerk-Treasurer or any duly authorized agent or employee to examine the books, records, papers and Federal Income Tax returns relating to the income or net profits of a taxpayer;
- (f) Fail to appear before the Clerk-Treasurer and to produce the books, records, papers and Federal Income Tax returns relating to the income or net profits of a taxpayer under order or subpoena of the Clerk-Treasurer;

- (g) Refuse to disclose to the Clerk-Treasurer 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 Clerk-Treasurer authorized hereby; or
- (i) Attempt to do anything to avoid the payment of the whole or any part of the tax, penalty or interest imposed by this chapter.  
(Ord. 781. Passed 12-8-70.)

#### **880.15 FAILURE TO OBTAIN FORMS.**

The failure of an employer, taxpayer or other person to receive or procure a return, declaration or other required form shall not excuse him or her from making any information return or declaration, from filing such form or from paying the tax.  
(Ord. 781. Passed 12-8-70.)

#### **880.16 CLAIMS FOR CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.**

(a) It is the intent of this section that a taxpayer, subject to tax in more than one municipality on the same income, who has complied with the provisions hereof shall not be required by this chapter to pay a total municipal income tax on such income greater than the tax imposed at the higher rate.

(b) Accordingly, notwithstanding any other provisions of this chapter, when a resident of the Municipality is subject to and has paid, or has acknowledged liability for, a municipal income tax in another municipality on the same income taxable under this chapter, and such other municipality does not allow a credit to its nonresidents, such Village of Grafton resident may claim a credit of the amount of such tax paid to such other municipality, but not in excess of the tax assessed by this chapter.  
(Ord. 00-044. Passed 12-19-00.)

## **II. REGULATIONS.**

#### **880.17 DEFINITIONS.**

For the purpose of these Regulations, the following terms shall have the definitions hereinafter given:

- (a) "Business allocation percentage" means the average percentage arrived at by applying the formula set forth in Section 880.02(b). The "business allocation percentage" is the percentage which may be applied to determine the portion of the entire net profits of a taxpayer to be allocated as having been made within the Municipality within the meaning of the provisions of said Section 880.02.
- (b) "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 regular employees regularly in attendance.

A taxpayer does not have a regular place of business outside the Municipality solely by consigning goods to an independent factor or contractor outside the Municipality for sale.

- (c) "The Ordinance" means Ordinance 781, enacted by the Council of the Village of Grafton on Dec. 8, 1970, and any amendments or supplements thereto, codified in this chapter as Sections 880.01 through 880.16.
- (d) "Taxpayer," "Association," "Business," "Corporation," "Employee," "Employer," "Net profits," "Nonresident," "Other entity", "Person" and "Resident" shall be the same as set forth in Section 880.01.





- (e) The singular shall include the plural and the masculine shall include the feminine and the neuter. (Res. 580. Passed 12-8-70.)

#### **880.18 COMMENCEMENT AND DURATION OF TAX.**

(a) The tax imposed by the Ordinance is effective as to income and profits earned or accruing on and after July 1, 1991, and payroll deductions must be made against all salaries, wages, commissions, bonuses and other compensation earned or accruing on and after that date. (Adopting Ordinance)

(b) The Ordinance shall continue effective insofar as the levy of taxes is concerned until further action of Council and/or a vote of the people repealing or amending the same. (Ord. 00-025. Passed 8-1-00.)

#### **880.19 IMPOSITION OF TAX.**

(a) Resident Employees. In the case of the residents of the Municipality, an annual tax of one and one-half percent is imposed on all salaries, wages, commissions and other compensation, including employer-paid sick pay, supplemental unemployment benefits, employer-paid life insurance premiums and profit-sharing distributions, which shall also be considered regular earned income on all tax returns in the Municipality, earned or accrued on and after July 1, 1991. For the purpose of determining the tax on the earnings of resident taxpayers, taxed under Section 880.02(a)(1), the source of the earnings and the place or places in or at which the services were rendered are immaterial. All such earnings, wherever earned or paid, are taxable.

The following are items which are subject to the tax:

- (1) Salaries, wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered on and after July 1, 1991:
  - A. As an officer, director or employee of a corporation (including charitable and other non-profit corporations), joint stock association or joint stock company;
  - B. As an employee (as distinguished from a partner or member) of a partnership, limited partnership, or any other form of unincorporated enterprise owned by one or more persons;
  - C. As an employee (as distinguished from the proprietor) of a business, trade or profession conducted by an individual owner;
  - D. As an officer or employee (whether elected, appointed or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit of the State of Ohio or any of the political subdivisions thereof;

- E. As an officer or employee (whether elected, appointed or commissioned) of a governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit of the United States Government or of a corporation created and owned, or controlled by the United States Government or any of its agencies;
  - F. As an employee of any other entity or person.
- (2) Wages, bonuses, or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered on and after July 1, 1991:
    - A. Whether based upon hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece-work rates; and
    - B. Whether paid by an individual, limited partnership, partnership, association, corporation (including charitable and other non-profit corporations), governmental administration, agency, arm, authority, board, body, branch, department, division, subdivision, section or unit, or any other entity.
  - (3) Commissions received by a taxpayer, whether directly or through an agent and whether in cash or in property, for services rendered on and after July 1, 1991, regardless of how computed, by whom or wheresoever paid.

If amounts received as a drawing account exceed the commissions earned, the tax is payable on the gross amounts received.

Amounts received from an employer by way of expenses and not by way of compensation, and used as such by the individual receiving them, are not deemed to be compensation if the employer deducts such expense advances as such from his or her gross income for the purpose of determining his or her net profits taxable under the Ordinance.

If such commissions are included in the net earnings of a trade, business, profession, enterprise or activity regularly carried on by such individual and therefore subject to tax under Section 880.02(a)(3), they shall not again be separately taxed. In such case, such net earnings shall be taxed as provided in subsection (i) hereof.

- (4) The receipt of fees and other compensation for personal services rendered shall be deemed to be subject to taxation under the Ordinance.
- (5) Domestic servants are subject to Municipal tax under the Ordinance, but are not subject to withholding provisions. That is to say, the domestic will report earnings and pay the tax directly to the Grafton Income Tax Department.

(b) Nonresidents. In the case of individuals who are nonresidents of the Municipality, there is imposed under the Ordinance an annual tax of one and one-half percent on all salaries, wages, commissions and other compensation, earned or accruing on and after July 1, 1991, for work done or services performed or rendered within the Municipality, whether such compensation or remuneration is received or earned directly or through an agent and whether paid in cash or in property.

The items subject to tax under this section are the same as those listed and defined in subsection (a) hereof. For methods of computing the extent of such work or services performed within the Municipality, and cases involving compensation for personal services partly within and partly outside the Municipality, see Section 880.21.

(c) Net Business Profits of Residents.

- (1) In the case of trades, businesses, professions, other activities, enterprises or undertakings conducted, operated, engaged in, prosecuted or carried on by residents of the Municipality, there is imposed an annual tax of one and one-half percent on the net profits earned or accruing on and after July 1, 1991.
- (2) For the purpose of construing Section 880.02(a)(3) and (4), the term "resident" will ordinarily be construed to have reference to the business entity itself, as distinguished from the partners, proprietors or other participants in its profits.
- (3) Generally, a partnership, association or other unincorporated enterprise owned by two or more persons will be taxed as an entity. However, in the case of a nonresident partnership, association or unincorporated enterprise which cannot be reached or taxed directly by the Municipality, or if only part of its earnings may be directly taxed, then in either such case, resident partners, co-owners, proprietors or other participants in the profits thereof must include in their declaration and tax return or returns their distributive shares of such profits, or portion thereof not taxed to the business enterprise as an entity, and must pay the tax thereon.
- (4) The tax imposed under Section 880.02(a)(3) is levied upon the entire net profits of the resident trade, business, profession, other activity, enterprise, or undertaking, wherever earned, paid or accrued and regardless of the fact that any part of such business or professional activity may have been conducted at or through a place or places of business located outside the Municipality.

(d) Net Business Profits of Nonresidents.

- (1) In the case of a nonresident individual, partnership, association, fiduciary or other entity (other than a corporation) engaged in the conduct, operation or prosecution of any trade, business, profession, enterprise, undertaking or other activity, there is imposed an annual tax of one and one-half percent on the net profits (earned or accruing on and after July 1, 1991) of such trade, business, profession, enterprise, undertaking, or other activity if, and to the extent, conducted in or derived from activity in the Municipality.
- (2) A nonresident entity, within the meaning of Section 880.02(a)(5) which has a branch or branches, office or offices and/or store or stores, warehouse, or other place or places in which the entity's business is transacted, located in the Municipality, shall be considered to be conducting, operating, prosecuting, or carrying on a trade, business, profession, enterprise, undertaking or other activity to the full extent of the sum total of all transactions originating or consummated in, by or through such Municipal branch, office, store, warehouse or other place of business, including: A. billings made on such transactions, B. services rendered, C. shipments made, D. goods, chattels, merchandise, etc., sold, or E. commissions, fees or other remuneration or payments earned.
- (3) In the case of the partnership, association, or other unincorporated business owned by one or more persons the tax, generally, shall be upon said partnership, association, or business enterprise as an entity and not ordinarily upon the partners or members thereof. However, the provisions of subsection (c) hereof are applicable to render taxable against such resident partners or members their distributive share of any profits of such nonresident entity not taxable under the Ordinance.
- (4) In determining the proportion or amount of the taxable net profits of a nonresident business entity having a place or places of business within and outside the Municipality, such business entity may at its option use and apply the business allocation percentage formula referred to in Section 880.02(b) and as set forth in detail in subsection (f) hereof.

(e) Net Business Profits of Corporations.

- (1) In the case of a corporation doing business in the Municipality, whether domestic or foreign, and whether domiciled in the Municipality or elsewhere, there is imposed an annual tax of one and one-half percent on that part of the net profits (earned or accruing on and after July 1, 1991) of such corporation which is earned by such corporation as a result of work done or services performed or rendered and business or other activities conducted in the Municipality.

- (2) The provisions of paragraph (d)(2) hereof are applicable to such corporations.
- (3) A corporation doing business both within and outside the Municipality may, in determining the part of the net profits which are taxable under Sections 880.01 et seq., at its option:
  - A. Use the usual accounting system of the taxpayer corporation, so long as said usual accounting system shall be one acceptable to the Federal Internal Revenue Department as evidenced by acceptance and approval of income tax returns filed therein; or
  - B. Use the business allocation percentage formula set forth in Section 880.02(b).

(f) Business Allocation Percentage.

- (1) Generally. At the option of a corporate taxpayer or of a nonresident business entity, such taxpayers may, but are not obliged to, use the formula set forth in Section 880.02(b) to compute the percentage of their entire net profits (derived from activities both within and outside the Municipality) which is taxable under the Ordinance, and to determine the tax payable to the Municipality hereunder.

If the taxpayer did not have a place of business outside the Municipality during the period covered by any declaration and/or return required under the Ordinance, its business allocation percentage is 100 percent; in other words, the taxpayer is required to pay a tax of one and one-half percent on the entire net profits of the business.

If the taxpayer had a place or places of business outside the Municipality and was doing business in the Municipality during such period, the business allocation percentage shall be computed on the basis as set forth in Section 880.02(b).

The business allocation percentage is computed by determining the percentages A. which Municipal real and tangible personal property bears to all real and tangible personal property (including that situated in the Municipality) of a taxpayer wheresoever situated; B. which Grafton business sales bear to a taxpayer's entire business sales wheresoever derived (including those derived from the Municipality); and C. which payrolls paid by a taxpayer within the Municipality bear to a taxpayer's entire payroll wheresoever paid (including Municipal payrolls); adding together the three percentages so arrived at, and dividing the total by three.

However, if one of the factors (property, sales or payrolls) is missing, the other two percentages are added and the sum is divided by two, and if two of the factors are missing, the remaining percentage is the business allocation percentage.

EXAMPLE 1:

Corporation having places of business in Grafton, Detroit and Cleveland.  
Grafton real and tangible personal property: \$10,000.  
All real and personal property (Grafton, Detroit and Cleveland): \$100,000.  
Percentage: 10%.

Grafton sales: \$15,000. All sales: \$75,000. Percentage: 20%.  
Grafton payroll: \$6,000. All payroll: \$20,000. Percentage: 30%.

Business Allocation Percentage: 10% plus 20% plus 30% divided by 3 equals 20%

EXAMPLE 2:

Same corporation owning no real or tangible personal property anywhere.

Grafton sales: \$15,000. All sales: \$75,000. Percentage: 20%.  
Grafton payroll: \$6,000. All payroll: \$20,000. Percentage: 30%.

Business Allocation Percentage: 20% plus 30% divided by 2 equals 25%.

EXAMPLE 3:

Same corporation owning real and tangible personal property in Grafton valued at \$10,000 and owning no real or tangible personal property outside Grafton. Other factors same as in Examples 1 and 2.

Business Allocation Percentage: 100% plus 20% plus 30% divided by 3 equals 50%.

After determining such business allocation percentage, the tax shall be determined by applying that percentage to the entire net profits of the taxpayer, wherever derived (thus arriving at the taxable net profit), and computing one and one-half percent of the resultant taxable net profit.

In case it shall appear to the Clerk-Treasurer that any income or capital of the taxpayer is improperly or inaccurately reflected, the Clerk-Treasurer may adjust items of income, expenses, deductions and capital, and disregard assets in computing any allocation percentage, provided that any income directly traceable thereto is also excluded from entire net income, so as equitably to determine the tax.

- (2) Explanation of "property factor". The percentage of the taxpayer's real and tangible personal property within the Municipality is determined by dividing the net book value (during the period covered by the report) of such property within the Municipality, without deduction of any encumbrances, by the average net book value similarly computed, of all such property within and without the Municipality. Only property owned by the taxpayer is considered in determining such percentage.

Grafton

(3) Explanation of sales factor. Receipts from the following are allocable to the Municipality:

- A. Work done and performed or services rendered in the Municipality.
- B. Rentals from property situated in the Municipality, where the rental of such property is a usual or normal part of the taxpayer's business activity.
- C. For the purpose of determining business allocation percentage, no account shall be given to receipts, within or without the Municipality, of income derived from intangibles (including stocks, bonds, royalties and the like) the income of which is taxable under the statutes of the State of Ohio.
- D. Compensation and other receipts for work done or services performed within the Municipality are allocable to the Municipality and taxable under the Ordinance. All amounts so received, credited or charged by taxpayer in payment for such work or services are so allocable, irrespective of whether done or performed by employees or agents of the taxpayer or by any other person. It is immaterial where such amounts were payable or where they were received.

Commissions or fees received by the taxpayer are allocated to the Municipality if the services for which the commissions were paid were performed in the Municipality. If the taxpayer's services for which commissions or fees were paid were performed for the taxpayer by salesmen or other agents or employees attached to or working out of a Grafton place of business of the taxpayer, the taxpayer's services will be deemed to have been performed in the Municipality.

Where a lump sum is received by the taxpayer in payment for services within and without the Municipality, the amount attributable to services within Municipality is to be determined on the basis of the relative values of, or amounts of time spent in the performance of, such services within and without the Municipality.

- E. Receipts from the sale of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) are not business receipts. Receipts from the sale of real property held by the taxpayer as a dealer for sale to customers in the regular course of business are business receipts and are allocable to the Municipality if the real property was situated in the Municipality. Receipts from the sale of intangibles included in business capital, held by the taxpayer as a dealer for sale to customers in the regular course of business, are business receipts and are allocable to the Municipality if the sales were made in Municipality or through a regular place of business of the taxpayer in the Municipality.



- (4) Payroll factor. The percentage of the taxpayer's payroll allocable to the Municipality is determined by dividing the wages, salaries and other personal service compensation of the taxpayers' employees within the Municipality during the period covered by the report, by the total amount of compensation of all taxpayer's employees during such period.

Wages, salaries and other compensation are computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.

Employees within the Municipality usually include all employees regularly connected with or working out of a place of business maintained by the taxpayer in the Municipality.

However, where an employee performed services both within and without the Municipality, the amount treated as compensation for services performed within the Municipality shall be deemed to be A. in the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the Municipality; B. in the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation which the value of his services within the Municipality bears to the value of all his services; and C. in the case of an employee compensated on a time basis, the proportion of the total amount received by him which the working time employed in the Municipality bears to the total working time.

- (5) Adjustment of business allocation percentage formula. Generally, the business allocation percentage formula will result in a fair apportionment of the taxpayer's net profits within and without the Municipality. However, due to the peculiar circumstances of certain businesses, the formula may work a hardship in some cases or result in a tax evasion in others, thus not do justice to the taxpayer or the Municipality. Accordingly, in such cases, the Clerk-Treasurer may substitute factors calculated to bring about a fair and proper allocation in any case where the taxpayer has adopted the optional use of the business allocation percentage formula.

(g) Effective Dates.

- (1) The tax referred to in subsections (a) and (b) hereof shall first be levied, collected and paid with respect to the salaries, wages, bonuses, incentive payments, commissions, fees and/or other compensation earned on and after July 1, 1991.

- (2) The tax referred to in subsections (c), (d) and (e) hereof, with respect to net profits of trades, businesses, professions, enterprises, undertakings, and other activities, shall first be levied, collected and paid with respect to such net profits earned or accrued (in accordance with the regular accounting system of a taxpayer as approved by the Director of Internal Revenue) from and after July 1, 1991.
- (3) See subsection (h) hereof for provisions relating to fiscal year returns.

(h) Fiscal Years. Where the fiscal year of a trade, business, profession, enterprise, undertaking and/or other activity differs from the calendar year, the tax shall be applicable to the net profits of the fiscal year, but for the first fiscal year with respect only to such portion thereof as was earned on and after July 1, 1991.

A fiscal year will be recognized only if it has been or may be recognized as such by the Director of Internal Revenue for the purpose of Federal Income Tax.

(i) Net Business Profits Generally. In amplification of the definition of the term "net profits," as set forth in Section 880.01, but not in limitation thereof, the following additional information and requirements respecting net business profits are furnished:

- (1) Where necessary to properly reflect income, inventories must be used. The basis of pricing used for the purpose of the Federal Income Tax must in each instance be used.
- (2) Where the books and records are kept on an "accrual basis", "long-term contract basis", or "installment basis", and said basis is used in the filing of Federal Income Tax Returns, the same basis must be used for the purpose of this tax.
- (3) If the return is made on a "cash basis", gross profit shall include A. commissions, fees and interest earned, plus B. the gross profit or loss from sales of merchandise, chattels, goods, wares, securities, notes, choses-in-action and services, except as hereinafter provided.
- (4) If the return is made on an "accrual basis", gross profit shall include A. commissions, fees and interest earned, plus B. the gross profit or loss from sales of merchandise, chattels, goods, wares, securities, notes, choses-in-action and services, except as hereinafter provided.
- (5) From gross profit there shall be subtracted allowable expenses to arrive at the net profits subject to the tax.
- (6) All ordinary and necessary expenses of doing business, including reasonable compensation paid to employees, shall be allowed (but no deduction may be claimed for "salary" or withdrawals of a proprietor or of the partners, members or other co-owners of an unincorporated business or enterprise).

- (7) If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft or casualty not compensated for by insurance or otherwise; of property used in the trade or business, but the amount may not exceed that recognized for the purpose of the Federal Income Tax.
- (8) Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off, but in no event shall the amount allowed exceed the amount recognized as a deduction for the purpose of the Federal Income Tax.
- (9) Only taxes directly connected with the taxpayer's business may be claimed as a deduction. If for any reason the income from property is not subject to tax, then the tax on any other expenses of said property are not deductible. In any event, the following taxes are not deductible from income:
  - A. The tax under the Ordinance;
  - B. Any Federal taxes based upon income;
  - C. Gifts, estate or inheritance taxes; and
  - D. Taxes and/or special assessments for local benefits or improvements to property which tend to appreciate the value thereof.
- (10) Capital gains and losses (including gains or losses from the sale, exchange, or other disposition of depreciable business property, and real property used in the taxpayer's trade or business) shall not be taken into consideration in arriving at net profits earned.
- (11) If the taxpayer is a non-resident, only the amount of net profits applicable to the activities of the business in the Municipality shall be subjected to tax. If the nonresident taxpayer's records do not disclose the actual net profits for the Municipal branch, office, store, or activity, separately, then the basis of allocation shall be disclosed in the return. If such basis of allocation is not deemed correct, in view of all the known circumstances, the Clerk-Treasurer will make a reallocation based upon gross receipts or any other basis which shall, under the circumstances of the case, more accurately reflect the net profits.
- (12) In general, all business expenses recognized and to the extent allowed as such for the purpose of determining Federal Income Tax will be recognized and allowed for determining the Municipal income tax under the provisions of this chapter. However, all expenses connected with the acquisition or carrying of securities, the income from which is not recognized as taxable under this chapter, may not be deducted in determining taxable net profits hereunder.

- (13) In general, unearned income is not to be included in computing the tax levied hereunder. Income from intangibles by way of dividends, interest and the like, should not be included if the property from which such income is derived is subject to taxation under the Intangible Personal Property Tax Laws of the State of Ohio, or is specifically exempted from taxation under said laws.
- (14) Rentals received by the taxpayer are to be included 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 the taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

Following are the circumstances under which, in any instance, the rental of any real property shall or shall not be deemed to be a "business activity":

- A. Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates in excess of one hundred dollars (\$100) 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 one hundred dollars (\$100) per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the 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 one hundred dollars (\$100) per month; and provided further that the person who operates a rooming house shall be considered in business whether or not the gross income exceeds one hundred dollars (\$100) per month.
- B. In determining the amount of gross monthly rental of any real property, periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.
- C. Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
- D. Real property, as the term is used in these Regulations, shall include commercial property, residential property, farm property, and any and all other types of real estate.
- E. In determining the taxable net income from rentals, the

deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Department for Federal Income Tax purposes.

- F. Residents of the Municipality are subject to taxation upon net income from rentals (to the extent above specified) on all properties located in the Municipality, and on all properties located outside the Municipality, the net income of which is not subject to municipal income tax in said other community. In the case of residents of the Municipality, if the net income of properties located outside the Municipality is subject to municipal income tax in another community, then said net income will not be subject to the Municipal income tax in Grafton.

Nonresidents of the Municipality are subject to such taxation only if the real property is situated within the Municipality. Nonresidents, in determining whether gross monthly rentals exceed one hundred dollars (\$100), shall take into consideration only real estate situated within the Municipality.

- (15) Income from royalties or copyrights is not to be included.

(j) Reconciliation With Federal Return. In a form satisfactory to the Clerk-Treasurer, there shall be submitted with each return filed by a taxpayer subject to the Federal Income Tax, a reconciliation between the amount shown in the return filed with the Clerk-Treasurer and the business income reported to the Federal Internal Revenue Department.

If, as a result of a change made in business income by the Federal Internal Revenue Department, or by a judicial decision, an additional amount will result as owing to the Municipality, a report of such change shall be filed by the taxpayer within thirty days after receipt of the final notice of such change from the Federal authorities or after final decision of a court adjudicating any such Federal Income Tax liability. (Res. 580. Passed 12-8-70; Ord. 86-081. Passed 11-18-86; Ord. 00-024. Passed 8-1-00; Ord. 00-025. Passed 8-1-00.)

## **880.20 RETURN AND PAYMENT OF TAX.**

(a) On or before April 15 of each calendar year, for taxable years beginning after 2003, every taxpayer engaged in any business, the net profits of which are subject in whole or in part to the tax imposed by this chapter, shall make and file with the Clerk-Treasurer a final return on a form furnished by or obtainable from the Clerk-Treasurer. All resident taxpayers, eighteen years of age or older, that are required to file a Federal Income Tax Return must file a return with the Clerk-Treasurer on a form furnished by or obtainable from the Clerk-Treasurer. Failure to file shall be punishable as provided in this chapter. Senior citizen residents of the Municipality who are not required to file a Federal Income Tax Return are exempt from filing a tax return with the Municipality unless and until said resident experiences a change of

income status. However, where a nonresident employee's entire earnings for the year are paid by an employer and the Municipal tax thereon has in each instance been withheld and deducted by the employer from the gross amount of the entire earnings of such employee-taxpayer, and where the employer of such nonresident employee has filed a report or return in which such employee's entire and only earnings are reported to the Clerk-Treasurer, and where such nonresident employee has no taxable income other than such earnings, it shall not be necessary for such nonresident employee to file a return for any taxable year in which such conditions have prevailed.

Any person who receives both compensation for services performed for an employer, in whatsoever form, and in addition receives income from any business activity or occupation not subject to withholding under this chapter, must file a declaration and a final return.

(b) In all returns filed hereunder there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation received and/or net profits earned (all as hereinbefore defined) by and during the preceding year and subject to said tax, together with such pertinent information as the Clerk-Treasurer may require.

(c) If the return is made for a fiscal year or for any period other than a calendar year, the said return shall be made within four months from the end of said fiscal year.

(d) The return shall also show the amount of the tax imposed by this chapter on such earnings, or net profits, or both.

(e) The taxpayer making the return shall, at the time of filing thereof, pay the Clerk-Treasurer the amount of tax shown to be due and unpaid by the return. If, pursuant to the provisions of Section 880.26, the taxpayer has at the time of making such final return overpaid his tax, such taxpayer shall show the amount of overpayment and may in said return either (1) request a refund therefor, or (2) request that the amount thereof be credited against the amount which will be required to be paid by taxpayer on the next succeeding installment of tax which may become due.

(f) Where any portion of the tax otherwise due shall have been paid by the taxpayer pursuant to the provisions of Sections 880.21 and 880.25, or where an income tax has been paid to another municipality, pursuant to Section 880.16, credit for the amount so paid 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 said final return.

(g) Upon written request of the taxpayer, the Clerk-Treasurer may extend the time for filing the annual return for a period of not more than six months or not

more than thirty days beyond any extension requested of and granted by the Federal Internal Revenue Department for the filing of the Federal Income Tax Return.

(h) For payments in installments, see Section 880.26.

(Res. 580. Passed 12-8-70; Ord. 825. Passed 8-7-73; Ord. 90-191. Passed 12-27-90; Ord. 94-024. Passed 11-15-94; Ord. 03-026. Passed 11-4-03.)

#### **880.21 COLLECTION AT SOURCE.**

(a) It is the duty of each employer (as hereinbefore defined) who employs one or more persons on a salary, wage, commission, or other compensation basis, to deduct from compensation paid to any employee subject to the Ordinance, the tax of one and one-half percent of such salary, wage, bonus, incentive payment, commission or other compensation due by said employer to said employee. The tax shall be deducted by the employer from:

- (1) All compensation paid to employees who are nonresidents of the Municipality for services rendered, work performed, or other activities engaged in to earn such compensation, within the Municipality; and
- (2) From the gross amount of all salaries, wages, bonuses, incentive payments, commissions or other form of compensation paid to employees who are residents of the Municipality, regardless of the place where the services are rendered.

(b) All employers who or which maintain an office or other place of business in the Municipality are required to make the collections and deductions specified in this section, regardless of the fact that the services on account of which any particular deduction is required as to residents of the Municipality were performed at a place of business of any such employer situated outside the Municipality.

(c) The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the tax on the compensation received.

(d) Commissions and fees paid to professional persons, brokers, and others who are independent contractors and not employees of the payer, are not subject to withholding or collection of the tax at the source. Such taxpayers must in all instances file returns and pay the tax pursuant to the provisions of Section 880.02. (See also Section 880.19(c) and (d).)

(e) In the case of employees who are nonresidents of the Municipality, the amount to be deducted is one and one-half percent of the compensation paid with respect to personal services rendered in the Municipality.

Where a nonresident receives compensation for personal services rendered or performed partly within and partly outside the Municipality, the withholding employer

shall deduct, withhold and remit that portion of the compensation which is earned within the Municipality in accordance with the following rules of apportionment:

- (1) If the nonresident is a salesperson, agent, or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him or her, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the Municipality bears to the volume of business transacted by him or her within and outside the Municipality.
- (2) The deducting and withholding of personal service compensation of all other employees (including officers of corporations) shall attach to the portion of the personal service compensation of such employee which the total number of working days employed within the Municipality bears to the total number of working days employed within and outside the Municipality.
- (3) If it is impossible to apportion the earnings as provided above, because A. the peculiar nature of the service of the employee, or B. the unusual basis of compensation, apportionment shall be made in accordance with the facts and the tax deducted and withheld accordingly.
- (4) The occasional entry into the Municipality of a nonresident employee who performs the duties for which he or she is employed entirely outside the Municipality, but enters the Municipality for the purpose of reporting, receiving instructions, accounting, etc., incidental to his or her duties outside the Municipality, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the Municipality.

(f) An employer shall withhold the tax on the full amount of any advances made to an employee on account of commissions (whether by way of drawing account or otherwise, but see subsection (g) hereof) where such advances are in excess of commissions earned.

(g) An employer required to withhold the tax on compensation paid to an employee shall, in determining the amount on which the tax is to be withheld, ignore any amount allowed and paid by the employer to the employee for expenses necessarily and actually incurred by the employee in the actual performance of his or her services, provided that such expenses must be of the kind and in the amount recognized and allowed as a deductible expense for Federal Income Tax purposes.

(Res. 580. Passed 12-8-70; Ord. 00-024. Passed 8-1-00.)

#### **880.22 RETURNS OF TAX WITHHELD; PAYMENT.**

The deduction from salaries, wages and other compensation required to be made by employers are to begin with compensation earned on and after July 1, 1991. The



first return and payment required to be made on account of such deductions shall be made, filed and paid to the Clerk-Treasurer between October 1, 1991, and October 31, 1991.

Each employer within the Municipality who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct monthly, or more often than monthly, and at the time of the payment of such salary, wage, commission, or other compensation, the tax of one and one-half percent of salaries, wages, commissions or other compensation due by the said employer to the said employee and shall make a return and pay to the Clerk-Treasurer the amount of taxes so deducted as follows:

For the three months ending March 31, on or before April 30;

For the three months ending June 30, on or before July 31;

For the three months ending September 30, on or before October 31;

For the three months ending December 31, on or before the following January 31.

The reporting periods referred to in the preceding paragraphs are elastic to this extent: The employer will use the same quarterly accounting period for reporting taxes withheld under the Grafton Income Tax Ordinance as is used in reporting quarterly taxes withheld to the Federal Government.

Notwithstanding the preceding paragraphs, and beginning October 1, 2000, employers who deduct the above outlined taxes from salaries, wages and other compensation in the amount of one hundred dollars (\$100.00) or more per month shall pay to the Clerk-Treasurer, before the last day of the following month, the amount of taxes so deducted on a monthly basis beginning with the first month the employer exceeds one hundred dollars (\$100.00) in taxes withheld and continuing on a monthly basis thereafter.

Taxes not paid in accordance with this section shall be charged interest and penalties as provided for in Section 880.13.

Said return shall be on a form prescribed by and obtainable from the Clerk-Treasurer and shall be subject to the rules and regulations prescribed therefor by the Clerk-Treasurer.

For adjustment of errors in returns of tax withheld by employers see Section 880.28.

(Res. 580. Passed 12-8-70; Ord. 00-024. Passed 8-1-00; Ord. 00-030. Passed 8-1-00.)

### **880.23 LIMITATION ON CREDIT FOR TAX PAID AT SOURCE.**

The failure of any employer, residing either within or outside the Municipality, to collect the tax and to make any return prescribed herein, shall not relieve the employee from the payment of such tax in compliance with these Regulations respecting the making of returns and the payment of taxes.

(Res. 580. Passed 12-8-70.)

### **880.24 STATUS AND LIABILITY OF EMPLOYERS.**

Every employer is deemed to be a trustee of the Municipality in collecting and

holding the tax required under the Ordinance to be withheld, and the funds so collected by such withholding are deemed to be trust funds until the same is paid to the Municipality.

Every such employer required to deduct and withhold the tax at the source is liable directly to the Municipality for the payment of such tax, whether actually collected by such employer or not.

(Res. 580. Passed 12-8-70.)

#### **880.25 DECLARATIONS.**

(a) An employee whose entire wages, salaries, or other compensation for any taxable year will be subjected to the withholding provisions under Section 880.21, whose tax will accordingly be withheld as to his or her entire earnings for such year by his or her employer, and who during such taxable year expects to derive no other compensation or other income which is subject to tax under the Ordinance, need not file a declaration as provided in this section.

(Res. 580. Passed 12-8-70.)

(b) All other taxpayers (as defined in this chapter) subject to the taxes imposed in Section 880.02, who anticipate any income or net profits not subject to total withholding as provided in the preceding paragraph, and the anticipated amount of taxes owed is at least \$100.00, shall file with the Clerk-Treasurer a declaration of his or her estimated tax as follows:

- (1) On or before April 30 of every calendar year, file a declaration of his or her estimated tax for the taxable period.
- (2) Each such declaration shall contain a statement of the taxpayer's estimated tax for the full taxable year in which such declaration is filed.

(c) Taxpayers who or which are permitted, pursuant to the provisions of Section 880.19(h), to return and pay their tax upon a fiscal year basis, shall file their first declaration by the fifteenth day of the fourth month after the beginning of the first fiscal year and the subsequent declaration for each year thereafter on or before the fifteenth day of the fourth month following the beginning of each such fiscal year. Those taxpayers on a fiscal year basis shall make estimated payments on or before the fifteenth day of the fourth month and on or before the fifteenth day of the sixth, ninth and twelfth month following the beginning of such fiscal year. The first installment, equal to at least 22 ½% of the estimated tax, must accompany the declaration. At least 90% of the estimated tax due must be paid by the fifteenth day of the twelfth month.

(d) The estimated tax for a calendar year taxpayer may be paid in full with the filing of the declaration, or in equal installments on or before April 30, July 31, October 31, and January 31. At least 90% of the estimated tax due can be paid by January 31. (Ord. 00-025. Passed 8-1-00; Ord. 07-008. Passed 6-5-07.)

(e) The declarations so required shall be filed upon a form furnished by or obtainable from the Clerk-Treasurer. Any taxpayer who has filed an estimate for Federal Income Tax purposes may, in making the declaration required hereunder, simply state therein that the figures therein contained are the same figures used by the taxpayer in making the declaration of his or her estimate for the Federal Income Tax. However, in addition to such statement, any such taxpayer may, in such declaration, modify and adjust such declared income so as to exclude therefrom income which is not subject to tax under this chapter.

(f) Any estimate filed hereunder may be amended by the filing of an amended estimate at the time prescribed for the payment of any installment of tax paid in accordance with Section 880.27. (Res. 580. Passed 12-8-70; Ord. 07-008. Passed 6-5-07.)

#### **880.26 PAYMENT OF TAX IN INSTALLMENTS.**

(a) Payment.

- (1) Individual calendar year taxpayers. Individual taxpayers who return and pay taxes on a calendar year basis, shall, at the time of filing each declaration as required by Section 880.25, and continuing each year during the life of this chapter, each taxpayer shall pay to the Clerk-Treasurer equal installments of his or her estimated annual tax (on or before April 30, July 31, October 31, and January 31) so long as at least 90% of the balance of the estimated tax shall be fully paid on or before January 31 of the year following the taxable year involved. However, if such taxpayer shall, on or before any such payment date, file an amended declaration showing an increase or decrease of the estimated tax, the installments then and thereafter due shall be increased or diminished (as the case may be) in such manner so that at least 90% of the balance of the estimated tax shall be fully paid on or before January 31 of the year following the taxable year involved and thereafter, payment of installments in equal amounts shall be required (on or before April 30, July 31, October 31 and January 31) from and after the filing of any such amended declaration and shall continue during the life of this chapter.
- (2) For non-individual calendar year taxpayers. Non-individual taxpayers who return and pay taxes on a calendar year basis, shall, at the time of filing each declaration as required by Section 880.25, and continuing each year during the life of this chapter, shall pay to the Clerk-Treasurer installments of the estimated annual tax liability as follows: on or before the taxpayer's federal return filing date; on or before June 15, September 15, and December 15.
- (3) For fiscal year taxpayers. Non-individual taxpayers, who or which are permitted to make returns and pay their tax on a fiscal year basis shall, pay their first installment on the fifteenth day of the fourth month after the beginning of the first fiscal year, shall pay their

second installment on the fifteenth day of the sixth month of the taxpayer's taxable year, shall pay their third installment on the fifteenth day of the ninth month of the taxpayer's taxable year, and shall pay their fourth installment on the fifteenth day of the twelfth month of the taxpayer's taxable year.

- (b) For final returns and final adjustment of tax due, see Section 880.20.  
(Res. 580. Passed 12-8-70; Ord. 07-008. Passed 6-5-07.)

#### **880.27 RECORDS TO BE KEPT BY EMPLOYERS AND TAXPAYERS.**

Employers and others subject to the tax under the Ordinance are required to keep such records as will enable the filing of true and accurate returns, whether of taxes withheld at source or of taxes payable upon earnings or net profits, or both, and such records are to be preserved to enable the Clerk-Treasurer, or any agent or employee of the Clerk-Treasurer, to verify the correctness of the returns filed.

(Res. 580. Passed 12-8-70.)

#### **880.28 COLLECTION OF DEFICIENCIES; ALLOWANCE OF CREDIT FOR OVERPAYMENT.**

If, as a result of an investigation conducted by the Clerk-Treasurer, a return is found to be incorrect, the Clerk-Treasurer is authorized to assess and collect any underpayment of tax withheld at source or any underpayment of tax owing by any taxpayer with respect to earnings or net profits, or both. If no return has been filed and a tax is found to be owing, tax actually owing may be assessed and collected with or without the formality of obtaining a delinquent return from the employer or taxpayer.

Should it be disclosed, either as a result of an investigation by the Clerk-Treasurer or through the medium of the filing of a claim or petition for refund or credit, that an overpayment has been made, the Clerk-Treasurer will refund such overpayment.

The employer will in every instance be required to pay the full tax which should have been withheld, even though he may fail to withhold from the employee. If too much has been withheld the excess shall be refunded by the employer to the employee. While the withholding agent (employer) will be expected to maintain complete records of such adjustments with the employees, any such adjustment made during any month will not need to be reflected in the withholding return or disclosed by schedules or statements thereto attached.

In those cases in which too much has been withheld by an employer from an employee and remitted to the Clerk-Treasurer and there has been a termination of the employees-employer relationship, the taxpayer (employee) may obtain an adjustment by application to the Clerk-Treasurer. (Res. 580. Passed 12-8-70.)

#### **880.29 COLLECTION OF UNPAID TAXES.**

All taxes imposed by the Ordinance remaining unpaid when the same have become due, together with all interest and penalties thereon, become a debt due the Municipality from the taxpayer, and are recoverable as other debts by suit instituted by the Village Solicitor.

Employers who or which, although obliged under the Ordinance to withhold and remit to the Clerk-Treasurer the taxes required to be withheld at the source (see Section 880.21), shall fail to so withhold and/or remit, become liable to the Municipality in a civil action to enforce the payment of the debt created by such failure.

When a final return is filed as prescribed in Section 880.20, and a deficiency is determined to be due the Municipality, action to collect the same must be brought within three years after the tax was due or the return was filed, whichever is later. However, in the case of fraud, failure to file a return, or the omission of twenty-five percent or more of income required to be reported, prosecution may be commenced within six years after the commission of the offense.

(Res. 580. Passed 12-8-70.)

#### **880.30 EXAMINATION OF RECORDS; IDENTIFICATION OF VILLAGE PERSONNEL REQUIRED.**

Agents and employees charged with the duty of inspection or auditing of records of employers and taxpayers will carry proper identification, which shall be subject to examination by any person whose records are sought to be examined.

(Res. 580. Passed 12-8-70.)

#### **880.31 APPLICABILITY.**

These Regulations (Sections 880.17 et seq.) are inapplicable to any person or corporation upon whom or which it is beyond the legal power of Council to impose the tax; they are likewise inapplicable as to any property, income or profits (or part thereof) as to which it is beyond the legal power of Council to levy the tax.

(Res. 580. Passed 12-8-70.)

#### **880.32 SPLIT-PAYROLLS.**

In the case of hourly employees, where a payroll continues past December 31, 1970, and said payroll does not end until a period in January, 1971, said payroll shall be considered a split-payroll, and as such said payroll will not be subject to withholding tax under the Grafton Village Income Tax Ordinance effective January 1, 1971. That is to say, only the first full pay for hourly employees earned after January 1, 1971, and all payrolls thereafter, will become subject to withholding under the Grafton Village Income Tax Ordinance.

All salaried employees paid on a calendar month will be subject to withholding under the Grafton Village Income Tax Ordinance as of January 1, 1971.

(Res. 580. Passed 12-8-70.)

#### **880.33 VACATION PAY.**

Vacation pay paid in 1971 will not be subject to withholding deductions under the Ordinance. Vacation pay paid in 1972, and in all subsequent years, will be subject to withholding deductions under the Ordinance. (Res. 580. Passed 12-8-70.)

**880.34 OFF-SETS OF PROFIT AND LOSS.**

In the case of an individual having salary or wages subject to withholding under the Village Income Tax, if said individual has a business, including farm and rental property, which reflects a loss for the same accounting period, said individual may not off-set the business loss against income earned on salary or wages for the purpose of securing a cash refund from the Income Tax Department.

If an individual operated more than one business, the profits of which were subject to the Grafton Village Income Tax, said individual may off-set profits from one business with the net loss from another business, and report the resulting net profit or loss for Village Income Tax purposes.

In any event, the net loss on a business used to off-set net income from another business must exactly agree with the net loss as reported on Federal Income Tax return Form 1040 as filed with the Federal Government.

Any rental loss or business loss, based on income taxable under the Village Income Tax, sustained in any year, may not be applied against rental profits or business profits of a succeeding year or years, allocable to the Municipality.

No carry back against profits in prior years will be permitted on any Income Tax Return.

(Res. 580. Passed 12-8-70; Ord. 86-081. Passed 11-18-86.)

**880.35 SEPARABILITY.**

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

**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, is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(b) In addition to the penalty provided in subsection (a) hereof, whoever violates Section 880.06(e) shall be immediately dismissed from the service of the Municipality. Each disclosure shall constitute a separate offense.

(Ord. 781. Passed 12-8-70.)

