



AUGUST 20, 2014

I, CAROL L. TOMASKO, CLERK-TREASURER OF THE VILLAGE OF VALLEY VIEW, OHIO DO HEREBY CERTIFY THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE 2014-8-2 PASSED BY COUNCIL ON AUGUST 19, 2014 AND APPROVED BY THE MAYOR ON AUGUST 19, 2014 AND THAT THE SAME HAD BEEN DULY POSTED BEGINNING AUGUST 20, 2014 FOR A PERIOD OF FIFTEEN (15) DAYS AS REQUIRED BY LAW.

*Carol L. Tomasko*

CLERK-TREASURER

COUNCIL CHAMBER

VILLAGE OF VALLEY VIEW, OHIO

ORDINANCE NO. 2014-8-2

INTRODUCED BY: MAYOR JERRY PIASECKI

AN ORDINANCE ADDING THE DEFINITION OF "PENSION" TO  
CHAPTER 880.02 OF THE CODIFIED ORDINANCES  
ENTITLED "TAXATION; DEFINITIONS"  
IN THE VILLAGE OF VALLEY VIEW, OHIO .

WHEREAS, there have been recent developments in the area of municipal income tax and Supplemental Executive Retirement Plans (SERPs). Because of these developments RITA is strongly recommending an amendment to the municipal income tax ordinance to be consistent with this case law; and

WHEREAS, at issue is whether a SERP, a type of nonqualified deferred compensation plan, is a tax exempt pension or taxable wages/compensation; and

WHEREAS, since Valley View has not specifically exempted nonqualified deferred compensation plan from tax, RITA has recommended adding the following definitions of "Pension" to the local ordinance; and

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF VALLEY VIEW, COUNTY OF CUYAHOGA AND STATE OF OHIO AS FOLLOWS:**

**SECTION 1:** For purposes of Chapter 880 of the Codified Ordinances of the Village of Valley View the following definition is hereby added:

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 the Council of the Village of Valley View concerning and relating to the adoption of this Ordinance were adopted in an open meeting of such body, and that all deliberations of the Council of the Village and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Codified Ordinances of the Village of Valley View  
PART EIGHT - BUSINESS REGULATION AND TAXATION CODE  
TITLE FOUR - Taxation  
CHAPTER 880 Earned Income Tax

CHAPTER 880  
Earned Income Tax

- 880.01 Purpose of tax.
- 880.02 Definitions.
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- 880.50 Right of appeal.
- 880.51 Separability.
- 880.52 Collection of tax after termination of chapter.
- 880.53 Responsibility of officer or employee to file returns and collect tax; liability.
- 880.99 Penalty.

#### CROSS REFERENCES

- Power to levy income tax - see Ohio Const., Art. XVIII, Sec. 3
- Payroll deductions - see Ohio R.C. 9.42
- Municipal income taxes - see Ohio R.C. Ch. 718
- Admissions tax - see B.R. & T. Ch. 884

#### 880.01 PURPOSE OF TAX.

To provide funds for the purpose of carrying out general Municipal functions of the Village, there is hereby levied a tax on all salaries, wages, commissions and other compensation and on net profits as hereinafter provided.  
(Ord. 68-11-5. Passed 11-19-68.)

#### 880.02 DEFINITIONS.

As used in this chapter:

(a) "Administrator" means the individual designated to administer and enforce the provisions of this chapter. The Mayor or his appointee shall serve as Administrator.

(b) "Association" means any partnership, limited partnership or any other form of unincorporated enterprise owned by two or more persons.

(c) "Board of Review" means the Board created by and constituted as provided in Section 880.48.

(d) "Business" means any enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, excluding, however, all nonprofit corporations which are exempt from the payment of Federal income tax.

(e) "Corporation" means a corporation or joint stock association organized under the laws of the United States, this State or any other state, territory or foreign country or dependency.

(f) "Employee" means one who works for wages, salary, commission or other type of compensation in the service of any employer.

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

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

(i) "Gross receipts" means the total income from any source whatever.

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

(k) "Nonresident" means an individual domiciled outside the Village.

(l) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Village.

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

(n) "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.

(o) "Resident" means an individual domiciled in the Village.

(p) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Village.

(q) "Taxable income" means wages, salaries and other compensation paid by an employer before any deduction and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with the provisions of this chapter and also includes any income associated with any lottery winnings in excess of one million dollars (\$1,000,000).

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

(s) "Taxpayer" means a person, whether an individual, partnership, association, corporation or other entity, required under the provisions of this chapter to file a return or pay a tax.

(Ord. 68-11-5. Passed 11-19-68; Ord. 2004-2-6. Passed 4-6-04.)

#### 880.03 RATE AND INCOME TAXABLE.

An annual tax for the purposes specified in Section 880.01 shall be imposed on and after January 1, 1989, at the rate of two percent per year upon the following:

(a) On all salaries, wages, commissions and other compensation earned on and after January 1, 1989, by residents of the Village;

(b) On all salaries, wages, commissions and other compensation earned on and after January 1, 1989, by nonresidents of the Village for work done or services performed or rendered within the Village;

(c) On the portion attributable to the Village on the net profits earned on and after January 1, 1989, of all resident unincorporated business entities or professions or other activities, derived from sales made, work done, services performed or rendered and business or other activities conducted in the Village;

(d) On the portion of the distributive share of the net profits earned on and after January 1, 1989, of a resident partner or owner of a resident unincorporated business entity not attributable to the Village and not levied against such unincorporated business entity by the Village;

(e) On the portion attributable to the Village of the net profits earned on or after January 1, 1989, of all nonresident unincorporated business entities, professions or other activities, derived from sales made, work done, services performed or rendered and business and other activities conducted in the Village, whether or not such unincorporated business entity has an office or place of business in the Village;

(f) On the portion of the distributive share of the net profits earned on and after January 1, 1989, of a resident partner or owner of a nonresident unincorporated business entity not attributable to the Village and not levied against such unincorporated business entity by the Village;

(g) On the portion attributable to the Village of the net profits earned on and after January 1, 1989, of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in the Village, whether or not such corporation has an office or place of business in the Village.

(Ord. 88-7-7. Passed 7-5-88.)

#### 880.04 EFFECTIVE PERIOD.

The tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation and with respect to the net profits of businesses, professions or other activities earned on and after January 1, 1989.

(Ord. 88-7-7. Passed 7-5-88.)

#### 880.05 METHOD OF DETERMINATION.

In the taxation of income which is subject to Village income taxes, if the books and records of a taxpayer conducting a business or profession both within and without the boundaries of the Village 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 Village, then only such portion shall be considered as having a taxable situs in the Village for the purposes of Municipal income taxation. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the Village, in the absence of actual records thereof, shall be determined as follows:

Multiply the entire net profits by a business allocation percentage to be determined by a three-factor formula of property, payroll and sales, each of which shall be given equal weight, as follows:

(a) 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 Village during the taxable period to the average net book value of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. As used in the preceding paragraph, real property includes property rented or leased by the taxpayer, and the value of such property shall be determined by multiplying the annual rental thereon by eight;

(b) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the Village 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

(c) Gross receipts of the business or profession from sales made and services performed during the taxable period in the Village 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.

(Ord. 68-11-5. Passed 11-19-68.)

#### 880.06 SALES MADE IN THE VILLAGE.

As used in Section 880.05(c), "sales made in the Village" means:

(a) All sales of tangible personal property which is delivered within the Village regardless of where title passes if shipped or delivered from a stock of goods within the Village;

(b) All sales of tangible personal property which is delivered within the Village regardless of where title passes even though transported from a point outside the Village if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village and the sales result from such solicitation or promotion;

(c) All sales of tangible personal property which is shipped from a place within the Village to purchasers outside of the Village 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. 68-11-5. Passed 11-19-68.)

#### 880.07 TOTAL ALLOCATION.

Add together the percentages determined in accordance with Section 880.05 or such of the aforesaid percentages as are applicable to the particular taxpayer and divide the total so obtained by the number of percentages used in deriving such total in order to obtain the business allocation percentage referred to in Section 880.05.

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

(Ord. 68-11-5. Passed 11-19-68.)

#### 880.08 RENTALS.

(a) Rental income received by a taxpayer shall be included in the computation of net profits from business activities under Section 880.03(c) through (g), only if and to the extent that the rental, ownership, management or operations of the real estate from which such rentals are derived (whether so rented, managed or operated by a taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer in whole or in part.

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

(c) The taxpayers subject to the provisions of this section shall submit or cause to be submitted to the Tax Administrator a list of names and addresses of all persons, firms, corporations or other entities occupying, leasing, renting or otherwise using any premises belonging to the taxpayer within this Municipality in such a manner as to produce economic benefit to the taxpayer, whether or not such benefit is collected as rent and whether or not such benefit results in a profit



or loss. The required list shall be prepared as of December 31 of each year and submitted on or before January 31 of the following year and at such other times as may be prescribed by the Administrator. (Ord. 72-4-4. Passed 4-4-72.)

#### 880.09 OPERATING LOSS CARRY-FORWARD.

(a) The portion of a net operating loss sustained in any taxable year subsequent to January 1, 1972, allocable to the Village may be applied against the portion of the profit of succeeding tax years allocable to the Village until exhausted but in no event for more than five taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

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

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

(Ord. 68-11-5. Passed 11-19-68.)

#### 880.10 SOURCES OF INCOME NOT TAXED.

The tax provided for herein shall not be levied on the following:

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

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

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

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

(e) Alimony received;

(f) The personal earnings of any natural person under eighteen years of age;

(g) Compensation for personal injuries or for damages to property by way of insurance or otherwise;

(h) The interest, dividends and other revenue from intangible property;

(i) The gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State which the Village is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business);

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

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

(Ord. 68-11-5. Passed 11-19-68.)

#### 880.11 WHEN RETURN REQUIRED TO BE MADE.

Each taxpayer shall, whether or not a tax is due thereon, make and file a return on or before April 30 of the year following the effective date of this chapter and on or before April 30 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or period. (Ord. 71-12-6. Passed 12-7-71.)

#### 880.12 FORM AND CONTENT OF RETURN.

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

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

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

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

(Ord. 68-11-5. Passed 11-19-68.)

#### 880.13 EXTENSION OF TIME FOR FILING RETURNS.

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

(Ord. 68-11-5. Passed 11-19-68.)

#### 880.14 CONSOLIDATED RETURNS.

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

(b) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the Village constituting a portion only of its total business, the Administrator shall require such additional information as he deems necessary to ascertain whether net profits are properly allocated to the Village. If the Administrator finds that net profits are not properly allocated to the Village by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates, or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to the Village.  
(Ord. 68-11-5. Passed 11-19-68.)

#### 880.15 AMENDED RETURNS.

(a) Where necessary an amended return must be filed in order to report additional income and pay any additional tax due or to claim a refund of tax overpaid, subject to the requirements, limitations, or both, contained in Sections 880.31 through 880.34. Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(b) Within three months from the final determination of any Federal tax liability affecting the taxpayer's Village tax liability, such taxpayer shall make and file an amended Village return showing income subject to the Village tax based upon such final determination of Federal tax liability, and pay any additional tax shown due thereon or make claim for refund of any overpayment.  
(Ord. 68-11-5. Passed 11-19-68.)

#### 880.16 PAYMENT OF TAX ON FILING OF RETURNS.

(a) The taxpayer making a return shall, at the time of filing thereof, pay to the Administrator the amount of taxes shown to be due thereon, provided that:

(1) Where any portion of the tax so due has been deducted at the source pursuant to the provisions of Section 880.17; or

(2) Where any portion of such tax has been paid by the taxpayer pursuant to the provisions of Section 880.18; or

(3) Where an income tax has been paid on the same income to another municipality, credit for the amount so deducted or paid, or credit to the extent provided for in Section 880.34 shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return.

(b) A taxpayer who has overpaid the amount of tax to which the Village is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder or, at his election, indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no

additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

(Ord. 71-12-6. Passed 12-7-71.)

#### 880.17 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business within the Village shall deduct, at the time of the payment of such salary, wages, commission or other compensation, the tax of two percent per year of the gross salaries, wages, commissions or other compensation due by the employer to the employee, and shall, on or before the last day of each month, make a return and pay to the Administrator the amount of taxes so deducted during the previous month. However, if the amount of the tax so deducted by any employer in any one month is less than one hundred dollars (\$100.00), the employer may defer the filing of a return and payment of the amount deducted until the last day of the month following the end of the calendar quarter in which such month occurred.

(b) Returns shall be on a form or forms prescribed or acceptable to the Administrator and shall be subject to the rules and regulations prescribed therefor by the Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such taxes have, in fact, been withheld.

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

(d) No person shall be required to withhold the tax on wages or other compensation paid domestic servants employed by him exclusively in or about such person's residence, even though such residence is in the Village, but such employee shall be subject to all of the requirements of this chapter.

(Ord. 71-12-6. Passed 12-7-71; Ord. 2006-11-4. Passed 11-7-06.)

#### 880.18 DECLARATIONS OF INCOME NOT COLLECTED AT SOURCE.

Every person shall file a declaration setting forth estimated taxable income, including distributive shares of net profits of unincorporated business entities, estimated to be earned by the taxpayer during the current tax year, together with the estimated tax due thereon, less the tax withheld within the Village and less the tax credit allowed in Section 880.34. If the estimated tax for the current year, less the tax to be withheld and less such tax credit, amounts to not more than ten dollars (\$10.00), no declaration or payment of estimated tax is required.

(Ord. 74-2-5. Passed 2-5-74.)

#### 880.19 FILING OF DECLARATION.

(a) The declaration required by Section 880.18 shall be filed on or before April 30 of each year during the effective period set forth in Section 880.04 or

within four months of the date the taxpayer becomes subject to tax for the first time.

(b) Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year or period.  
(Ord. 68-11-5. Passed 11-19-68.)

#### 880.20 FORM OF DECLARATION.

(a) The declaration required by Section 880.18 shall be filed upon a form furnished by or obtainable from the Administrator. As provided in Section 880.13, credit shall be taken for the Village tax to be withheld from any portion of such income and credit shall be taken for the tax to be paid or withheld and remitted to another taxing municipality, in accordance with the provisions of Section 880.34.

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

(Ord. 71-12-6. Passed 12-7-71.)

#### 880.21 PAYMENT TO ACCOMPANY DECLARATION.

The declaration of the estimated tax to be paid to the Village shall be accompanied by a payment of at least one-fourth of the estimated annual tax, and at least a similar amount shall be paid on or before the last day of the seventh and tenth months after the beginning of the taxable year and on or before the last day of the first month of the succeeding year following the taxable year. However, in case an amended declaration has been filed, the unpaid balance shown to be due thereon shall be paid in equal installments on or before the remaining payment date or dates.

(Ord. 74-2-4. Passed 2-5-74.)

#### 880.22 ANNUAL RETURN.

On or before the last day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the Village shall be paid therewith in accordance with the provisions of Section 880.16. However, any taxpayer may file, on or before the last day of the first month of the year following that for which such declaration or amended declaration was filed, an annual return and pay any balance due at such time in lieu of filing such declaration or an amended declaration and in lieu of paying the final quarterly installment based upon a declaration or amended declaration of estimated tax.

(Ord. 71-12-6. Passed 12-7-71.)

#### 880.23 TIME FOR FILING.

The Administrator may extend the time for filing of any return required, making of any payment or performing any other act required by the provisions of this chapter for a period of not to exceed six months beyond the original required date.

(Ord. 68-11-5. Passed 11-19-68.)

#### 880.24 INTEREST ON UNPAID TAX.

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

(Ord. 71-12-6. Passed 12-7-71.)

#### 880.25 PENALTIES ON UNPAID TAX.

In addition to the interest provided for in Section 880.24, penalties based on the unpaid tax or installments of estimated tax are hereby imposed as follows:

- (a) For failure to pay taxes or estimated taxes due, other than taxes withheld: ten percent per year, but not less than five dollars (\$5.00);
- (b) For failure to remit taxes withheld from employees: ten percent per month or fraction thereof, but the accumulated penalty shall not exceed fifty percent upon any unpaid amount and shall not be less than five dollars (\$5.00).

(Ord. 71-12-6. Passed 12-7-71.)

#### 880.26 EXCEPTIONS.

No penalty shall be assessed on an additional tax assessment made by the Administrator against a taxpayer when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator. Further, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, provided an amended return is filed and the additional tax is paid within three months after a final determination of the Federal tax liability.

(Ord. 68-11-5. Passed 11-19-68.)

#### 880.27 ABATEMENT OF INTEREST AND PENALTY.

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

(Ord. 71-12-6. Passed 12-7-71.)

#### 880.28 VIOLATIONS.

No person shall:

- (a) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (b) Make any incomplete, false or fraudulent return;
- (c) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;
- (d) Fail, neglect or refuse to withhold the tax from his employees or to remit such withholding to the Administrator;
- (e) Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and Federal Income Tax Returns relating to the income or net profits of a taxpayer;

- (f) Fail to appear before the Administrator and to produce his books, records, papers or Federal Income Tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator;
  - (g) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer;
  - (h) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby;
  - (i) Give to any employer false information as to his true name, correct social security number and residence address or fail to promptly notify an employer of any change in residence address or date thereof;
  - (j) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and Village tax withheld or knowingly give the Administrator false information; or
  - (k) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.
- (Ord. 68-11-5. Passed 11-19-68.)

#### 880.29 LIMITATION ON PROSECUTION.

All prosecutions under this section must be commenced within the periods stipulated in Ohio R.C. 718.06.

#### 880.30 FAILURE TO PROCURE FORMS NOT EXCUSE.

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

(Ord. 68-11-5. Passed 11-19-68.)

#### 880.31 UNPAID TAXES RECOVERABLE AS OTHER DEBTS.

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

(Ord. 68-11-5. Passed 11-19-68.)

#### 880.32 REFUNDS OF TAXES ERRONEOUSLY PAID.

Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made or the return was due, or within three months after the final determination of the Federal tax liability, whichever is later.

(Ord. 68-11-5. Passed 11-19-68.)

**880.33 AMOUNTS OF LESS THAN ONE DOLLAR.**

Amounts of less than one dollar (\$1.00) shall not be collected or refunded.  
(Ord. 68-11-5. Passed 11-19-68.)

**880.34 TAX CREDIT.**

(a) When the taxable income of a resident of the Village is subject to a municipal income tax in another municipality on the same income taxable under this chapter, such resident shall be allowed a credit of the amount of income tax paid on such taxable income to such other municipality, equal to 100 percent of the amount obtained by multiplying the lower of the tax rate of such other municipality or of the Village by the taxable income earned in or attributable to the municipality of employment or business activity. For the purposes of this section, taxable income includes the distributive share of net profits of a resident partner or owner of an unincorporated business entity.

(b) A claim for credit or refund under this section shall be made in such manner as the Administrator may provide by regulation. In the event such Village resident fails, neglects or refuses to file an annual return or declaration on the form prescribed by the Administrator, he shall not be entitled to such credit or refund and shall be considered in violation of this chapter for failure to file a return.

(Ord. 72-1-20. Passed 1-18-72.)

**880.35 DISBURSEMENT OF FUNDS COLLECTED.**

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

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

(b) The balance remaining after payment of the expenses referred to in subsection (a) hereof shall be deposited in the General Fund for Municipal purposes.

(Ord. 68-11-5. Passed 11-19-68.)

**880.36 DUTY TO RECEIVE TAX IMPOSED.**

It is the duty of the Administrator to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, to keep an accurate record thereof and to report all moneys so received.

(Ord. 68-11-5. Passed 11-19-68.)

**880.37 DUTY TO ENFORCE COLLECTION.**

It is the duty of the Administrator to enforce payment of all taxes owing to the Village, to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld, and to show the dates and amounts of payments thereof.(Ord. 68-11-5. Passed 11-19-68.)



**880.38 AUTHORITY TO MAKE AND ENFORCE REGULATIONS.**

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

(Ord. 68-11-5. Passed 11-19-68.)

**880.39 AUTHORITY TO ARRANGE INSTALLMENT PAYMENTS.**

The Administrator is hereby authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has proved to the Administrator that, due to certain hardships, he is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him under this chapter.

Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand. The provisions of Sections 880.28 and 880.31 shall apply.

(Ord. 68-11-5. Passed 11-19-68.)

**880.40 AUTHORITY TO DETERMINE AMOUNT OF TAX DUE.**

In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the Village from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined together with interest and penalties thereon, if any.

(Ord. 68-11-5. Passed 11-19-68.)

**880.41 AUTHORITY TO MAKE INVESTIGATIONS.**

The Administrator or any authorized employee is hereby authorized to examine the books, papers, records and Federal Income Tax Returns of any employer or of any taxpayer or person subject to, or whom the Administrator believes is subject to, the provisions of this chapter, for the purpose of verifying the accuracy of any return made or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request by the Administrator or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(Ord. 68-11-5. Passed 11-19-68.)

**880.42 AUTHORITY TO COMPEL PRODUCTION OF RECORDS.**

The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and to examine such person, under

oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and Federal Income Tax Returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.  
(Ord. 68-11-5. Passed 11-19-68.)

#### 880.43 REFUSAL TO PRODUCE RECORDS.

The refusal to produce books, papers, records and Federal Income Tax Returns, the refusal to submit to such examination by any employer or person subject to or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this chapter or with an order or subpoena of the Administrator authorized hereby, shall be deemed a violation of this chapter, punishable as provided in Section 880.99. (Ord. 68-11-5. Passed 11-19-68.)

#### 880.44 CONFIDENTIAL NATURE OF INFORMATION OBTAINED.

Any information gained as the result of any returns, investigations, hearings or verifications required or otherwise authorized by this chapter shall be confidential, except for official purposes or in accordance with proper judicial order. No person shall divulge such information.  
(Ord. 68-11-5. Passed 11-19-68.)

#### 880.45 TAXPAYER REQUIRED TO RETAIN RECORDS.

Every taxpayer shall retain all records necessary to compute his tax liability for a period of five years from the date his return is filed or the withholding taxes are paid.  
(Ord. 68-11-5. Passed 11-19-68.)

#### 880.46 AUTHORITY TO CONTRACT FOR CENTRAL COLLECTION FACILITIES.

Because the Village has entered into an agreement for the establishment of a Regional Council of Governments pursuant to Ordinance 71-6-2, which Council has organized a municipal tax collection agency known as the Regional Income Tax Agency, the Board of Trustees of the Regional Income Tax Agency is hereby authorized to administer and enforce the provisions of this chapter as the agent of the Village, and the duties and authority of the Administrator hereunder may be performed by the Board of Trustees of such Agency through the Administrator of such Agency. However, the Administrator of such Agency shall have no authority to abate penalties or interest provided for in Sections 880.24 and 880.25.  
(Ord. 71-12-6. Passed 12-7-71.)

**880.47 ASSIGNMENT OF DUTIES AND AUTHORITY OF THE ADMINISTRATOR.**

In the event that the Mayor, on behalf of the Village, enters into an agreement with any other municipal corporation, firm or private corporation, to act as agent for the Village for the purpose of administering the income tax laws of the Village and of providing a central facility for the collection of the income tax, as provided in Section 880.46, then all or a part of the duties and authority of the Administrator may be assigned by such agreement to such other municipal corporation, firm or private corporation. Such agreement shall be approved by Council.

(Ord. 68-11-5. Passed 11-19-68.)

**880.48 BOARD OF REVIEW ESTABLISHED.**

A Board of Review, consisting of the Treasurer or a person designated by him, the Director of Law or an Assistant Director of Law designated by him, and a resident elector appointed by Council, is hereby created. The Board shall select, each year for a one-year term, one of its members to serve as Chairman and one to serve as Secretary. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board shall be conducted privately and the provisions of Section 880.44 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

(Ord. 68-11-5. Passed 11-19-68.)

**880.49 DUTY TO APPROVE REGULATIONS AND TO HEAR APPEALS.**

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

(Ord. 68-11-5. Passed 11-19-68.)

**880.50 RIGHT OF APPEAL.**

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

(Ord. 68-11-5. Passed 11-19-68.)

**880.51 SEPARABILITY.**

If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity

shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.  
(Ord. 68-11-5. Passed 11-19-68.)

#### 880.52 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions and proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Sections 880.28 through 880.33.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 880.11 and 880.17 as though the same were continuing.  
(Ord. 68-11-5. Passed 11-19-68.)

#### 880.53 RESPONSIBILITY OF OFFICER OR EMPLOYEE TO FILE RETURNS AND COLLECT TAX; LIABILITY.

The officer or employee having control or supervision, or charged with the responsibility, of filing any return or declaration required by this chapter and making payment, or any officer of a corporation who is responsible for execution of the corporation's fiscal responsibilities, shall be personally liable for failure to file any return or declaration or pay the tax or employer withholding due by the provisions of this chapter. The dissolution, termination or bankruptcy of a corporation does not discharge a responsible officer's or employee's liability for a failure of the corporation to file returns or declarations or pay tax or employer withholding due.

(Ord. 2000-9-5. Passed 9-5-00.)

#### 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.

(Adopting Ordinance)

(b) Whoever violates any of the provisions of Section 880.44 is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than six months, or both. Each disclosure shall constitute a separate offense. In addition, any employee of the Village who violates Section 880.44 is guilty of an offense punishable by immediate dismissal (Ord. 68-11-5. Passed 11-19-68.)