

TITLE FOUR: TAXATION

CHAPTER 880: EARNED INCOME TAX (EFFECTIVE BEGINNING JANUARY 1, 2024)

Section

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§ 880.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.

(A) Authority to levy tax.

(1) The tax on income and the withholding tax established by this chapter are authorized by Art. XVIII, § 3, of the Ohio Constitution. The tax on income and the withholding tax established by this chapter are deemed to be levied in accordance with, and to be consistent with, the provisions and limitations of Ohio R.C. Ch. 718. This chapter is deemed to incorporate the provisions of Ohio R.C. Ch. 718.

(2) The tax is an annual tax levied on the income of every person residing in or earning or receiving income in the municipal corporation, and shall be measured by municipal taxable income. The municipality shall tax income at a uniform rate. The tax is levied on municipal taxable income, as defined herein.

(Prior Code, § 880.011)

(B) Purposes of tax; rate.

(1) A tax at the rate of 2% is hereby levied on gross income as defined in §880.03 of this chapter including salaries, wages, commissions and other compensation, and on net profits, to provide funds for the purposes of general municipal operations, maintenance, new equipment, extensions and enlargements of municipal services and facilities and capital improvements, is hereby levied a tax on gross income including salaries, wages, commissions and other compensation, and on net profits, as herein provided.

(2) Effective 1-1-2014, there is hereby levied on gross income, as defined in §880.03 of this chapter, an additional 0.25% to provide funds for the purpose of providing funds to pay for roadway reconstruction and resurfacing of streets and alleys, to include any debt service on the aforementioned improvements.

(Prior Code, § 880.012)

(C) *Allocation of funds.*

(1) The funds collected under the provisions of division (B)(1) above shall be deposited in a special fund known as the Income Tax Revenue Fund, and said funds shall be disbursed in the following manner:

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

(b) Second, to defray all expenses of the General Fund and other funds as designated in the annual budget adopted by City Council.

(2) The funds collected under the provisions of division (B)(2) above shall be deposited in a special fund known as the Street Capital Improvement Fund for the purpose of street improvements, as defined by Ord. 127-2013.

(Prior Code, § 880.013)

(D) *Statement of procedural history; state mandated changes to municipal income tax.*

(1) Significant and wide-ranging amendments to Ohio R.C. Ch. 718 were enacted by Am. Sub. H.B. 5, passed by the 130th General Assembly, and signed by Governor Kasich on 12-19-2014, and H.B. 5 required municipal corporations to conform to and adopt the provisions of Ohio R.C. Ch. 718 in order to have the authority to impose, enforce, administer and collect a municipal income tax.

(2) As mandated by H.B. 5, municipal income tax Ord. 182-2015, effective 1-1-2016, comprehensively amends previous regulations in accordance with the provisions of Ohio R.C. Ch. 718 to allow the municipality to continue the income tax and withholding tax administration and collection efforts on behalf of the municipality.

(Prior Code, § 880.014)

(Ord. 182-2015, passed 11-23-2015)

§ 880.02 EFFECTIVE DATE.

(A) Ord. 182-2015, effective 1-1-2016, and corresponding changes to Ohio R.C. Ch. 718, apply to municipal taxable years beginning on or after 1-1-2016. All provisions of this chapter apply to taxable years beginning 2016 and succeeding taxable years.

(B) Ord. 182-2015 does not repeal the existing sections of this chapter for any taxable year prior to 2016, but rather amends previous regulations, effective 1-1-2016. For municipal taxable years beginning before 1-1-2016, the municipality shall continue to administer, audit, and enforce the income tax of the municipality under Ohio R.C. Ch. 718 and ordinances and resolutions of the municipality as that chapter and those ordinances and resolutions existed before 1-1-2016.

(Prior Code, § 880.02) (Ord. 182-2015, passed 11-23-2015)

§ 880.03 DEFINITIONS.

(A) Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Ohio Revised Code, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Ohio Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to Federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code.

(B) For purposes of this section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

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

ADJUSTED FEDERAL TAXABLE INCOME. For a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation hereunder, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

1. Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income;

2. Add an amount equal to 5% of intangible income deducted hereunder, but excluding that portion of intangible income directly related to the sale, exchange or other disposition of property described in I.R.C. § 1221;

3. Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange or other disposition of an asset described in I.R.C. §§ 1221 or 1231;

4. a. Except as provided herein, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange or other disposition of an asset described in I.R.C. §§ 1221 or 1231; and

b. Division 4.a. above does not apply to the extent the income or gain is income or gain described in I.R.C. §§ 1245 or 1250.

5. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

6. In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

7. Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under Ohio R.C. 4313.02;

8. a. Except as limited by divisions 8.b., 8.c. and 8.d. below, deduct any net operating loss incurred by the person in a taxable year beginning on or after 1-1-2017. The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

b. No person shall use the deduction allowed by division 8.a. above to offset qualifying wages.

c. i. For taxable years beginning in 2018, 2019, 2020, 2021 or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before 1-1-2016, more than 50% of the amount of the deduction otherwise allowed by division 8.a. above.

ii. For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before 1-1-2016, the full amount allowed by division 8.a. above.

d. Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to this division 8.

e. Nothing in division 8.c.i. above precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division 8.c.i. above. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division 8.c.i. above is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021 or 2022, the limitation described in division 8.c.i. above shall apply to the amount carried forward.

9. Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with § 880.06(C)(5)(c)2. of this chapter.

10. Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with § 880.06(C)(5)(c)2. of this chapter. If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described herein, is not a publicly traded partnership that has made the election described herein and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under I.R.C. § 469 or United States Treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member or former member shall not be allowed as a deduction. Nothing herein shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

ASSESSMENT.

(a) Any of the following:

1. A written finding by the Tax Administrator that a person has underpaid Municipal income tax, or owes penalty and interest, or any combination of tax, penalty or interest, to the municipal corporation;

2. A full or partial denial of a refund request issued under §880.09(F)(2)(b) of this chapter;

3. A Tax Administrator's denial of a taxpayer's request for use of an alternative apportionment method, issued under § 880.06(B)(2)(b) of this chapter;

4. A Tax Administrator's requirement for a taxpayer to use an alternative apportionment method, issued under § 880.06(B)(2)(c) of this chapter; and

5. For purposes of divisions (a)1., 2., 3. and 4. above, an **ASSESSMENT** shall commence the person's time limitation for making an appeal to the Local Board of Tax Review pursuant to § 880.18 of this chapter, and shall have "ASSESSMENT" written in all capital letters at the top of such finding.

(b) **ASSESSMENT** does not include notice(s) denying a request for refund issued under §880.09(F)(2)(c) of this chapter, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed hereby.

AUDIT. The examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax.

BOARD OF REVIEW. The same meaning as "Local Board of Tax Review".

CALENDAR QUARTER. The three-month period ending on the last day of March, June, September or December.

CASINO OPERATOR and **CASINO FACILITY.** The same meanings as in Ohio R.C. 3772.01.

CERTIFIED MAIL, EXPRESS MAIL, UNITED STATES MAIL, POSTAL SERVICE and similar terms. Include any delivery service authorized pursuant to Ohio R.C. 5703.056.

COMPENSATION. Any form of remuneration paid to an employee for personal services.

DISREGARDED ENTITY. A single member limited liability company, a qualifying subchapter S subsidiary or another entity if the company, subsidiary or entity is a disregarded entity for federal income tax purposes.

DOMICILE. The true, fixed and permanent home of the taxpayer to which, whenever absent, the taxpayer intends to return.

EXEMPT INCOME. All of the following:

(a) The military pay or allowances of members of the Armed Forces of the United States or members of their reserve components, including the national guard of any state;

(b) 1. Except as provided in division (b)2. below, intangible income;

2. A municipal corporation that taxed any type of intangible income on 3-29-1988, pursuant to § 3 of S.B. 238 of the 116th General Assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 voted in favor thereof at an election held on 11-8-1988;

3. Social Security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident or liability insurance policies. As used in this division (b)3., "unemployment compensation" does not include supplemental unemployment compensation described in I.R.S. § 3402(o)(2);

4. The income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property or tax-exempt activities;

5. Compensation paid under Ohio R.C. 3501.28 or 3501.36 to a person serving as a precinct election official to the extent that such compensation does not exceed \$1,000 for the taxable year. Such compensation in excess of \$1,000 for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation;

6. Dues, contributions and similar payments received by charitable, religious, educational or literary organizations or labor unions, lodges and similar organizations;

7. Alimony and child support received;

8. Awards for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages;

9. Income of a public utility when that public utility is subject to the tax levied under Ohio R.C. 5727.24 or 5727.30. This division (b)9. does not apply for purposes of Ohio R.C. Ch. 5745;

10. Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business;

11. Compensation or allowances excluded from federal gross income under I.R.C. § 107;

12. Employee compensation that is not qualifying wages, as defined herein;

13. Compensation paid to a person employed within the boundaries of a United States Air Force base under the jurisdiction of the United States Air Force that is used for the housing of members of the United States Air Force and is a center for Air Force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile;

14. An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in I.R.C. § 3121(a) or net earnings from self-employment as defined in I.R.C. § 1402(a);

15. All of the municipal taxable income earned by individuals under 18 years of age;

16. a. Except as provided in divisions (b)16.b., (b)16.c. and (b)16.d. below, qualifying wages described in § 880.05(B)(2)(a) or (B)(5) of this chapter to the extent the qualifying wages are not subject to withholding for the municipality under either of those divisions.

b. The exemption provided in division (b)16.a. above does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

c. The exemption provided in division (b)16.a. above does not apply to qualifying wages that an employer elects to withhold under § 880.05(B)(4)(b) of this chapter.

d. The exemption provided in division (b)16.a. above does not apply to qualifying wages if both of the following conditions apply:

i. For qualifying wages described in §880.05(B)(2)(a) of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in § 880.05(B)(5) of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;

ii. The employee receives a refund of the tax described in division (b)16.d.i. above on the basis of the employee not performing services in that municipal corporation.

17. a. Except as provided in divisions (b)17.b. or (b)17.c. below, compensation that is not qualifying wages paid to a non-resident individual for personal services performed in the municipality on not more than 20 days in a taxable year.

b. The exemption provided in division (b)17.a. above does not apply under either of the following circumstances:

i. The individual's base of operation is located in the municipality; and

ii. The individual is a professional athlete, professional entertainer or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer or public figure. For purposes of division (b)17.b.(c)(11)Q.2.b. of this section, "professional athlete", "professional entertainer" and "public figure" have the same meanings as in § 880.05(B) of this chapter.

c. Compensation to which this division (b)17. applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.

d. For purposes of this division (b)17., "base of operation" means the location where an individual owns or rents an office, storefront or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

18. Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to Ohio R.C. 709.023 on or after 3-27-2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.

19. Income the taxation of which is prohibited by the constitution or laws of the United States. Any item of income that is exempt income of a pass-through entity under this definition is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

FORM 2106. Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

GENERIC FORM. An electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer or other payer, estimated municipal income taxes or annual municipal income tax liability, including a request for refund.

INCOME. The following:

(a) 1. For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in division (d) below.

2. For the purposes of division (a)1. above:

a. Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject hereto;

b. The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.

c. Division (c)(14)A.2. of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (c)(11)N. or division (c)(14)E. of this section.

d. Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.

(b) In the case of non-residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the non-resident for work done, services performed or rendered, or activities conducted in the municipality, including any net profit of the non-resident, but excluding the non-resident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the non-resident.

(c) For taxpayers that are not individuals, net profit of the taxpayer.

(d) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for Federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings. Credit for tax withheld or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in Section 880.081.

INTANGIBLE INCOME. Income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange or other disposition of intangible property including, but not limited to, investments, deposits, money or credits as those terms are defined in Ohio R.C. Ch. 5701, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies and appreciation on deferred compensation. **INTANGIBLE INCOME** does not include prizes, awards or other income associated with any lottery winnings, gambling winnings or other similar games of chance.

INTERNAL REVENUE CODE. The "Internal Revenue Code of 1986", 100 Sta. 2085, 26 U.S.C.A. § 1, as amended.

LIMITED LIABILITY COMPANY. A limited liability company formed under Ohio R.C. Ch. 1705 or under the laws of another state.

LOCAL BOARD OF TAX REVIEW and **BOARD OF TAX REVIEW.** The entity created under § 880.18.

MUNICIPAL CORPORATION. In general terms, a status conferred upon a local government unit, by state law giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic development district or joint economic development zone that levies an income tax under Ohio R.C. 718.691, 715.70, 715.71 or 715.74.

MUNICIPAL TAXABLE INCOME.

(a) The following:

1. For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the municipality under § 880.06(B) of this chapter, and further reduced by any pre-2017 net operating loss carryforward available to the person for the municipality.

2. a. For an individual who is a resident of a municipality other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided herein and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipality.

b. For an individual who is a resident of a qualified municipal corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the qualified municipal corporation from the qualified municipal corporation's tax on or before 12-31-2013. If a qualified municipal corporation, on or before 12-31-2013, exempts income earned by individuals who are not residents of the qualified municipal corporation and net profit of persons that are not wholly located within the qualified municipal corporation, such individual or person shall have no municipal taxable income for the purposes of the tax levied by the qualified municipal corporation and may be exempted by the qualified municipal corporation from the requirements of Ohio R.C. 718.03.

3. For an individual who is a non-resident of the municipality, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the municipality under § 880.06(B) of this

chapter, then reduced as provided herein and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipality.

(b) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided herein, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by I.R.C. § 67. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that non-resident municipal corporation.

MUNICIPALITY. The City of Barberton.

NET OPERATING LOSS. A loss incurred by a person in the operation of a trade or business **NET OPERATING LOSS** does not include unutilized losses resulting from basis limitations, at-risk limitations or passive activity loss limitations.

NET PROFIT.

(a) For a person other than an individual means adjusted Federal taxable income.

(b) For a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E or schedule F reduced by any net operating loss carried forward. For the purposes of division (a) above, the net operating loss carried forward shall be calculated and deducted in the same manner as provided herein.

(c) For the purposes of this chapter, and notwithstanding division (a) above, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

(d) 1. For purposes of this chapter, "publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.

2. For the purposes of this chapter, and notwithstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described herein shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.

3. A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is subject to tax on its net profits in one or more municipal corporations in this State may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election in every municipal corporation in which the partnership is subject to taxation on its net profits. The election shall be made on the annual tax return filed in each such municipal corporation. Once the election is made, the election is binding for a five-year period beginning with the first taxable year of the initial election. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a C corporation for municipal purposes under division (d)(4) below.

4. An election to discontinue filing as a C corporation must be made in the first year following the last year of a five-year election period in effect under division (d)3. above. The election to discontinue filing as a C corporation is binding for a five-year period beginning with the first taxable year of the election and continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a partnership for municipal purposes. An election to discontinue filing as a partnership must be made in the first year following the last year of a five-year election period.

5. The publicly traded partnership shall not be required to file the election with any municipal corporation in which the partnership is not subject to taxation on its net profits, but this division (d) applies to all municipal corporations in which an individual owner of the partnership resides.

6. The individual owners of the partnership not filing as a C corporation shall be required to file with their municipal corporation of residence and report partnership distribution of net profit.

NON-RESIDENT. An individual that is not a resident of the municipality.

OHIO BUSINESS GATEWAY. The online computer network system, created under Ohio R.C. 125.30, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.

OTHER PAYER. Any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual. **OTHER PAYER** includes casino operators and video lottery terminal sales agents.

PASS-THROUGH ENTITY. A partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. **PASS-THROUGH ENTITY** does not include a trust, estate, grantor of a grantor trust or disregarded entity.

PENSION. 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 non-qualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.

PERSON. Includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities and any other entity.

POSTAL SERVICE. The United States postal service, or private delivery service delivering documents and packages within an agreed upon delivery schedule, or any other carrier service delivering the item.

POSTMARK DATE, DATE OF POSTMARK and similar terms. Include the date recorded and marked by a delivery service and recorded electronically to a database kept in the regular course of its business and marked on the cover in which the payment or document is enclosed, the date on which the payment or document was given to the delivery service for delivery.

PRE-2017 NET OPERATING LOSS CARRYFORWARD.

(a) Any net operating loss incurred in a taxable year beginning before 1-1-2017, to the extent such loss was permitted, by a resolution or ordinance of the municipality that was adopted by the municipality before 1-1-2016, to be carried forward and utilized to offset income or net profit generated in such municipality in future taxable years.

(b) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.

QUALIFIED MUNICIPAL CORPORATION. A municipal corporation that, by resolution or ordinance adopted on or before 12-31-2011, adopted Ohio adjusted gross income, as defined by Ohio R.C. 5747.01, as the income subject to tax for the purposes of imposing a municipal income tax.

QUALIFYING WAGES. Wages, as defined in I.R.C. § 3121(a), without regard to any wage limitations, adjusted as follows:

(a) Deduct the following amounts:

1. Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in I.R.C. § 125;
2. Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer or other payer; or
3. Any amount included in wages that is exempt income.

(b) Add the following amounts:

1. Any amount not included in wages solely because the employee was employed by the employer before 4-1-1986;
2. Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange or other disposition of stock purchased under a stock option. This division (b) applies only to those amounts constituting ordinary income;
3. Any amount not included in wages if the amount is an amount described in I.R.C. §§ 401(k), 403(b) or 457. This division (b)3. applies only to employee contributions and employee deferrals;
4. Any amount that is supplemental unemployment compensation benefits described in I.R.C. § 3402(o)(2) and not included in wages;
5. Any amount received that is treated as self-employment income for Federal tax purposes in accordance with I.R.S. § 1402(a)(8); and
6. Any amount not included in wages if all of the following apply:
 - a. For the taxable year the amount is employee compensation that is earned outside of the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under I.R.S. § 911;
 - b. For no preceding taxable year did the amount constitute wages as defined in I.R.C. § 3121(a);
 - c. For no succeeding taxable year will the amount constitute wages; and
 - d. For any taxable year the amount has not otherwise been added to wages pursuant to either division (b) above or Ohio R.C. 718.03, as that section existed before the effective date of H.B. 5 of the 130th General Assembly, 3-23-2015.

RELATED ENTITY. Any of the following:

(a) An individual stockholder, or a member of the stockholder's family enumerated in I.R.C. § 318, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock;

(b) A stockholder, or a stockholder's partnership, estate, trust or corporation, if the stockholder and the stockholder's partnerships, estates, trusts or corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock;

(c) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (d) below; provided, the taxpayer owns directly, indirectly, beneficially or constructively, at least 50% of the value of the corporation's outstanding stock;

(d) The attribution rules described in I.R.C. § 318 apply for the purpose of determining whether the ownership requirements in divisions (a) to (c) above have been met.

RELATED MEMBER. A person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in I.R.C. § 1563(b) or a person to or from whom there is attribution of stock ownership in accordance with I.R.C. § 1563(e), except, for purposes of determining whether a person is a related member under this division, "20%" shall be substituted for "5%" wherever "5%" appears in I.R.C. § 1563(e).

RESIDENT. An individual who is domiciled in the municipality as determined under §880.04(B) of this chapter.

S CORPORATION. A person that has made an election under I.R.C. subchapter S of Chapter 1 of Subtitle A for its taxable year.

SCHEDULE C. Internal Revenue Service Schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

SCHEDULE E. Internal Revenue Service Schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

SCHEDULE F. Internal Revenue Service Schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

SINGLE MEMBER LIMITED LIABILITY COMPANY. A limited liability company that has one direct member.

SMALL EMPLOYER. Any employer that had total revenue of less than \$500,000 during the preceding taxable year. For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to: sales receipts; payments; rents; profits; gains, dividends, and other investment income; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. **SMALL EMPLOYER** does not include the Federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.

TAX ADMINISTRATOR. The individual charged with direct responsibility for administration of an income tax levied by a municipal corporation in accordance with this chapter, and also includes the following:

(a) A municipal corporation acting as the agent of another municipal corporation;

(b) A person retained by a municipal corporation to administer a tax levied by the municipal corporation, but only if the municipal corporation does not compensate the person in whole or in part on a contingency basis; and

(c) The Central Collection Agency (CCA) or the Regional Income Tax Agency (RITA) or their successors in interest, or another entity organized to perform functions similar to those performed by the Central Collection Agency and the Regional Income Tax Agency.

TAX RETURN PREPARER. Any individual described in I.R.C. § 7701(a)(36) and 26 C.F.R. § 301.7701-15.

TAXABLE YEAR. The corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

TAXPAYER.

(a) A person subject to a tax levied on income by a municipal corporation in accordance with this chapter.

TAXPAYER does not include a grantor trust or, except as provided in division (B)1. below, a disregarded entity.

(b) 1. A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:

a. The limited liability company's single member is also a limited liability company;

b. The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before 1-1-2004;

c. Not later than 12-31-2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of Ohio R.C. 718.01 as this section existed on 12-31-2004;

d. The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation

income tax liability of the limited liability company or its single member; and

e. The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.

2. For purposes of division (b)1. above, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least \$400,000.

TAXPAYERS' RIGHTS AND RESPONSIBILITIES. The rights provided to taxpayers in Ohio R.C. 718.11, 718.12, 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011 and 5717.03 and any corresponding ordinances of the municipality, and the responsibilities of taxpayers to file, report, withhold, remit and pay municipal income tax and otherwise comply with Ohio R.C. Ch. 718 and resolutions, ordinances and rules adopted by a municipal corporation for the imposition and administration of a municipal income tax.

VIDEO LOTTERY TERMINAL. The same meaning as in Ohio R.C. 3770.21.

VIDEO LOTTERY TERMINAL SALES AGENT. A lottery sales agent licensed under Ohio R.C. Ch. 3770 to conduct video lottery terminals on behalf of the state pursuant to Ohio R.C. 3770.21.

(Prior Code, § 880.03) (Ord. 182-2015, passed 11-23-2015)

§ 880.04 INCOME SUBJECT TO TAX FOR INDIVIDUALS.

(A) *Determining municipal taxable income for individuals.*

(1) Municipal taxable income for a resident of the municipality is calculated as follows: income reduced by exempt income to the extent such exempt income is otherwise included in income, reduced by allowable employee business expense deduction as found in § 880.03 of this chapter, further reduced by any pre-2017 net operating loss carryforward equals municipal taxable income.

(a) "Income" is defined in § 880.03 of this chapter.

1. "Qualifying wages" is defined in § 880.03 of this chapter.

2. "Net profit" is included in "income", and is defined in § 880.03 of this chapter. This section also provides that the net operating loss carryforward shall be calculated and deducted in the same manner as provided in § 880.03 of this chapter. Treatment of net profits received by an individual taxpayer from rental real estate is provided in § 880.06(B)(5) of this chapter.

3. Section 880.03 of this chapter provides the following: offsetting and net operating loss carryforward treatment in § 880.03 of this chapter; resident's distributive share of net profit from pass through entity treatment in § 880.03 of this chapter.; treatment of S corporation distributive share of net profit in the hands of the shareholder in § 880.03 of this chapter; restriction of amount of loss permitted to be carried forward for use by taxpayer in a subsequent taxable year in § 880.03 of this chapter.

4. "Pass through entity" is defined in § 880.03 of this chapter.

(b) "Exempt income" is defined in § 880.03 of this chapter.

(c) Allowable employee business expense deduction is described in § 880.03 of this chapter, and is subject to the limitations provided in that section.

(d) "Pre-2017 net operating loss carryforward" is defined in § 880.03 of this chapter.

(2) "Municipal taxable income" for a non-resident of the municipality is calculated as follows: income reduced by exempt income to the extent such exempt income is otherwise included in income, as applicable, apportioned or sitused to the municipality as provided in § 880.06(B) of this chapter, reduced by allowable employee business expense deduction as found in § 880.03 of this chapter, further reduced by any pre-2017 net operating loss carryforward equals municipal taxable income.

(a) "Income" is defined in § 880.03 of this chapter.

1. "Qualifying wages" is defined in § 880.03 of this chapter.

2. "Net profit" is included in "income", and is defined in § 880.03 of this chapter. This section also provides that the net operating loss carryforward shall be calculated and deducted in the same manner as provided in § 880.03 of this chapter. "Net profit" for a non-resident individual includes any net profit of the non-resident, but excludes the distributive share of net profit or loss of only pass through entity owned directly or indirectly by the non-resident.

3. "Pass through entity" is defined in § 880.03 of this chapter.

(b) "Exempt income" is defined in § 880.03 of this chapter.

(c) "Apportioned or sitused to the municipality as provided in § 880.06(B) of this chapter" includes the apportionment

of net profit income attributable to work done or services performed in the municipality. Treatment of net profits received by an individual taxpayer from rental real estate is provided in § 880.06(B)(5) of this chapter.

(d) "Allowable employee business expense deduction" as described in §880.03 of this chapter, is subject to the limitations provided in that section. For a non-resident of the municipality, the deduction is limited to the extent the expenses are related to the performance of personal services by the non-resident in the municipality.

(e) "Pre-2017 net operating loss carryforward" is defined in §880.03 of this chapter.

(Prior Code, § 880.041)

(B) *Domicile.*

(1) As used in this section, **DOMICILE** means the true, fixed and permanent home of the taxpayer to which whenever absent, the taxpayer intends to return. An individual is presumed to be domiciled in the municipality for all or part of a taxable year if the individual was domiciled in the municipality on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in the municipality for all or part of the taxable year. An individual may rebut the presumption of domicile described in this division (a)(1) if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the municipality for all or part of the taxable year.

(2) For the purpose of determining whether an individual is domiciled in the municipality for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:

(a) The individual's domicile in other taxable years;

(b) The location at which the individual is registered to vote;

(c) The address on the individual's driver's license;

(d) The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;

(e) The location and value of abodes owned or leased by the individual;

(f) Declarations, written or oral, made by the individual regarding the individual's residency;

(g) The primary location at which the individual is employed;

(h) The location of educational institutions attended by the individual's dependents as defined in I.R.C. § 152, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation or state where the educational institution is located; and

(i) The number of contact periods the individual has with the municipality. For the purposes of this division (B)(2), an individual has one "contact period" with the municipality if the individual is away overnight from the individual's abode located outside of the municipality and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the municipality. For purposes of this division (B), the state's contact period test or bright-line test and resulting determination have no bearing on municipal residency or domicile.

(3) All applicable factors are provided in Ohio R.C. 718.012.

(Prior Code, § 880.042)

(C) *Exemption for member or employee of general assembly and certain judges.*

(1) Only the municipal corporation of residence shall be permitted to levy a tax on the income of any member or employee of the Ohio General Assembly, including the Lieutenant Governor, whose income is received as a result of services rendered as such member or employee and is paid from appropriated funds of the state.

(2) Only the municipal corporation of residence and the City of Columbus shall levy a tax on the income of the Chief Justice or a Justice of the Supreme Court received as a result of services rendered as the Chief Justice or Justice. Only the municipal corporation of residence shall levy a tax on the income of a judge sitting by assignment of the Chief Justice or on the income of a district court of appeals judge sitting in multiple locations within the district, received as a result of services rendered as a judge.

(Prior Code, § 880.043)

(Ord. 182-2015, passed 11-23-2015)

§ 880.05 COLLECTION AT SOURCE.

(A) *Collection at source; withholding from qualifying wages.*

(1) (a) Each employer, agent of an employer, or other payer located or doing business in the municipality shall withhold from each employee an amount equal to the qualifying wages of the employee earned by the employee in the municipality multiplied by the applicable rate of the municipality's income tax, except for qualifying wages for which withholding is not required under division (B) below or divisions (A)(4) or (A)(6) below. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent or other payer

directly, indirectly or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

(b) In addition to withholding the amounts required under division (A)(1)(a) above, an employer, agent of an employer, or other payer may also deduct and withhold, on the request of an employee, taxes for the municipal corporation in which the employee is a resident.

(2) An employer, agent of an employer, or other payer shall remit to the Tax Administrator of the municipality the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent or other payer, along with any report required by the Tax Administrator to accompany such payment, according to the following schedule:

(a) Any employer, agent of an employer or other payer not required to make payments under division (A)(2)(b) below of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the fifteenth day of the month following the end of each calendar quarter.

(b) Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the municipal corporation in the preceding calendar year exceeded \$2,399, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the municipality in any month of the preceding calendar quarter exceeded \$200. Payment under division (B)(2)(a) above shall be made so that the payment is received by the Tax Administrator not later than 15 days after the last day of each month.

(3) An employer, agent of an employer or other payer shall make and file a return showing the amount of tax withheld by the employer, agent or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent or other payer under this division shall be accepted by the municipality as the return required of an employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer, unless the municipality requires all resident individual taxpayers to file a tax return under § 880.09(A) of this chapter.

(4) An employer, agent of an employer, or other payer is not required to withhold Municipal income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.

(5) (a) An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer or other payer to withhold the tax as required under this chapter or by the employer's, agent's or other payer's exemption from the requirement to withhold the tax.

(b) The failure of an employer, agent of an employer or other payer to remit to the municipality the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent or other payer in connection with the failure to remit the tax withheld.

(6) Compensation deferred before 6-26-2003 is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

(7) Each employer, agent of an employer or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld, and such amount shall be deemed to be held in trust for the municipality until such time as the withheld amount is remitted to the Tax Administrator.

(8) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Tax Administrator listing the names, addresses and Social Security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the municipality during the preceding calendar year, the amount of tax withheld, if any, from each such employee's qualifying wage, the total amount of qualifying wages paid to such employee during the preceding calendar year, the name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year, any other information required for Federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee, and other information as may be required by the Tax Administrator.

(9) The officer or the employee of the employer, agent of an employer or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. The dissolution of an employer, agent of an employer or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of an employer or other payer to file returns or pay any tax due.

(10) An employer is required to deduct and withhold municipal income tax on tips and gratuities received by the employer's employees and constituting qualifying wages only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division (A)(10), a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card or other electronic means.

(11) A Tax Administrator shall consider any tax withheld by an employer at the request of an employee when such tax is not otherwise required to be withheld by this chapter to be tax required to be withheld and remitted for the purposes of this

section.

(Prior Code, § 880.051)

(B) *Collection at source; occasional entrant.*

(1) For the purpose of this division (B), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

EMPLOYER. Includes a person that is a related member to or of an employer.

FIXED LOCATION. A permanent place of doing business in the state, such as an office, warehouse, storefront or similar location owned or controlled by an employer.

PRINCIPAL PLACE OF WORK.

1. The fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, **PRINCIPAL PLACE OF WORK** means the worksite location in the state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, **PRINCIPAL PLACE OF WORK** means the location in the state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

2. If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (B)(2)(a)1. below among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's **PRINCIPAL PLACE OF WORK** with respect to those qualifying wages for the purposes of this section.

3. For the purposes of this division, the location at which an employee spends a particular day shall be deemed in accordance with division (B)(2) below; except that, "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

(2) (a) Subject to divisions (B)(5), (B)(6) and (B)(7) below, an employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in a municipal corporation that imposes such a tax if the employee performed such services in the municipal corporation on 20 or fewer days in a calendar year, unless one of the following conditions applies:

1. The employee's principal place of work is located in the municipality;

2. The employee performed services at one or more presumed worksite locations in the municipality. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in the state at which the employer provides services that can reasonably be expected by the employer to last more than 20 days in a calendar year. Services can "reasonably be expected by the employer to last more than 20 days" if either of the following applies at the time the services commence:

a. The nature of the services are such that it will require more than 20 days of actual services to complete the services;

b. The agreement between the employer and its customer to perform services at a location requires the employer to perform actual services at the location for more than 20 days.

3. The employee is a resident of the municipality and has requested that the employer withhold tax from the employee's qualifying wages as provided in division (A) above; and

4. The employee is a professional athlete, professional entertainer or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer or public figure within the municipality.

(b) For the purposes of division (B)(2)(a) above, an employee shall be considered to have spent a day performing services in a municipal corporation only if the employee spent more time performing services for or on behalf of the employer in that municipal corporation than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:

1. Traveling to the location at which the employee will first perform services for the employer for the day;

2. Traveling from a location at which the employee was performing services for the employer to any other location;

3. Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured

or improved by the employee's employer;

4. Transporting or delivering property described in division (B)(2)(b)3. above; provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used or controlled by a person other than the employee's employer;

5. Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.

(3) If the principal place of work of an employee is located in a municipal corporation that imposes an income tax in accordance with this chapter, the exception from withholding requirements described in division (B)(2)(a) above shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to the municipal corporation in which the employee's principal place of work is located.

(4) (a) Except as provided in division (B)(4)(b) below, if, during a calendar year, the number of days an employee spends performing personal services in a municipal corporation exceeds the twenty-day threshold described in division (B)(2)(a) above, the employer shall withhold and remit tax to that municipal corporation for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in that municipal corporation.

(b) An employer required to begin withholding tax for a municipal corporation under division (B)(4)(a) above may elect to withhold tax for that municipal corporation for the first 20 days on which the employer paid qualifying wages to the employee for personal services performed in that municipal corporation.

(c) If an employer makes the election described in division (B)(4)(a) above, the taxes withheld and paid by such an employer during those first 20 days to the municipal corporation in which the employee's principal place of work is located are refundable to the employee.

(5) Without regard to the number of days in a calendar year on which an employee performs personal services in any municipal corporation, an employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the municipal corporation in which the employer's fixed location is located if the employer qualifies as a small employer as defined in § 880.03 of this chapter. To determine whether an employer qualifies as a small employer for a taxable year, a Tax Administrator may require the employer to provide the Tax Administrator with the employer's federal income tax return for the preceding taxable year.

(6) Divisions (B)(2)(a) and (B)(4) above shall not apply to the extent that a Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of division (A) above.

PROFESSIONAL ATHLETE. An athlete who performs services in a professional athletic event for wages or other remuneration.

PROFESSIONAL ENTERTAINER. A person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.

PUBLIC FIGURE. A person of prominence who performs services at discrete events, such as speeches, public appearances or similar events, for wages or other remuneration on a per-event basis.

WORKSITE LOCATION. A construction site or other temporary worksite in the state at which the employer provides services for more than 20 days during the calendar year. **WORKSITE LOCATION** does not include the home of an employee.

(Prior Code, § 880.052)

(C) *Collection at source; casino and VLT.*

(1) The municipality shall require a casino facility or a casino operator, as defined in § 6(C)(9) of Art. XV, Ohio Constitution, and Ohio R.C. 3772.01, respectively, or a lottery sales agent conducting video lottery terminals sales on behalf of the state to withhold and remit municipal income tax with respect to amounts other than qualifying wages as provided in this section.

(2) If a person's winnings at a casino facility are an amount for which reporting to the Internal Revenue Service of the amount is required by I.R.C. § 6041, as amended, the casino operator shall deduct and withhold municipal income tax from the person's winnings at the rate of the tax imposed by the municipal corporation in which the casino facility is located.

(3) Amounts deducted and withheld by a casino operator are held in trust for the benefit of the municipal corporation to which the tax is owed.

(a) On or before the tenth day of each month, the casino operator shall file a return electronically with the Tax Administrator of the municipality, providing the name, address and Social Security number of the person from whose winnings amounts were deducted and withheld, the amount of each such deduction and withholding during the preceding calendar month, the amount of the winnings from which each such amount was withheld, the type of casino gaming that resulted in such winnings and any other information required by the Tax Administrator. With this return, the casino operator shall remit electronically to the municipality all amounts deducted and withheld during the preceding month.

(b) Annually, on or before January 31, a casino operator shall file an annual return electronically with the Tax

Administrator of the municipal corporation in which the casino facility is located, indicating the total amount deducted and withheld during the preceding calendar year. The casino operator shall remit electronically with the annual return any amount that was deducted and withheld and that was not previously remitted. If the name, address or Social Security number of a person or the amount deducted and withheld with respect to that person was omitted on a monthly return for that reporting period, that information shall be indicated on the annual return.

(c) Annually, on or before January 31, a casino operator shall issue an information return to each person with respect to whom an amount has been deducted and withheld during the preceding calendar year. The information return shall show the total amount of municipal income tax deducted from the person's winnings during the preceding year. The casino operator shall provide to the Tax Administrator a copy of each information return issued under this division (C)(3). The Administrator may require that such copies be transmitted electronically.

(d) A casino operator that fails to file a return and remit the amounts deducted and withheld shall be personally liable for the amount withheld and not remitted. Such personal liability extends to any penalty and interest imposed for the late filing of a return or the late payment of tax deducted and withheld.

(e) If a casino operator sells the casino facility or otherwise quits the casino business, the amounts deducted and withheld along with any penalties and interest thereon are immediately due and payable. The successor shall withhold an amount of the purchase money that is sufficient to cover the amounts deducted and withheld along with any penalties and interest thereon until the predecessor casino operator produces either of the following:

1. A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid; and

2. A certificate from the Tax Administrator indicating that no amounts are due. If the successor fails to withhold purchase money, the successor is personally liable for the payment of the amounts deducted and withheld and penalties and interest thereon.

(f) The failure of a casino operator to deduct and withhold the required amount from a person's winnings does not relieve that person from liability for the municipal income tax with respect to those winnings.

(4) If a person's prize award from a video lottery terminal is an amount for which reporting to the Internal Revenue Service is required by I.R.C. § 6041, as amended, the video lottery sales agent shall deduct and withhold municipal income tax from the person's prize award at the rate of the tax imposed by the municipal corporation in which the video lottery terminal facility is located.

(5) Amounts deducted and withheld by a video lottery sales agent are held in trust for the benefit of the municipal corporation to which the tax is owed.

(a) The video lottery sales agent shall issue to a person from whose prize award an amount has been deducted and withheld a receipt for the amount deducted and withheld, and shall obtain from the person receiving a prize award the person's name, address and Social Security number in order to facilitate the preparation of returns required by this section.

(b) On or before the tenth day of each month, the video lottery sales agent shall file a return electronically with the Tax Administrator of the municipality providing the names, addresses and Social Security numbers of the persons from whose prize awards amounts were deducted and withheld, the amount of each such deduction and withholding during the preceding calendar month, the amount of the prize award from which each such amount was withheld, and any other information required by the Tax Administrator. With the return, the video lottery sales agent shall remit electronically to the Tax Administrator all amounts deducted and withheld during the preceding month.

(c) A video lottery sales agent shall maintain a record of all receipts issued under this division (C)(5) and shall make those records available to the Tax Administrator upon request. Such records shall be maintained in accordance with Ohio R.C. 5747.17 and any rules adopted pursuant thereto.

(d) Annually, on or before January 31, each video lottery terminal sales agent shall file an annual return electronically with the Tax Administrator of the municipal corporation in which the facility is located indicating the total amount deducted and withheld during the preceding calendar year. The video lottery sales agent shall remit electronically with the annual return any amount that was deducted and withheld and that was not previously remitted. If the name, address or Social Security number of a person or the amount deducted and withheld with respect to that person was omitted on a monthly return for that reporting period, that information shall be indicated on the annual return.

(e) Annually, on or before January 31, a video lottery sales agent shall issue an information return to each person with respect to whom an amount has been deducted and withheld during the preceding calendar year. The information return shall show the total amount of municipal income tax deducted and withheld from the person's prize award by the video lottery sales agent during the preceding year. A video lottery sales agent shall provide to the Tax Administrator of the municipal corporation a copy of each information return issued under this division (C)(5)(e). The Tax Administrator may require that such copies be transmitted electronically.

(f) A video lottery sales agent who fails to file a return and remit the amounts deducted and withheld is personally liable for the amount deducted and withheld and not remitted. Such personal liability extends to any penalty and interest imposed for the late filing of a return or the late payment of tax deducted and withheld.

(6) If a video lottery sales agent ceases to operate video lottery terminals, the amounts deducted and withheld along with any penalties and interest thereon are immediately due and payable. The successor of the video lottery sales agent that

purchases the video lottery terminals from the agent shall withhold an amount from the purchase money that is sufficient to cover the amounts deducted and withheld and any penalties and interest thereon until the predecessor video lottery sales agent operator produces either of the following:

(a) A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid;

(b) A certificate from the Tax Administrator indicating that no amounts are due. If the successor fails to withhold purchase money, the successor is personally liable for the payment of the amounts deducted and withheld and penalties and interest thereon.

(7) The failure of a video lottery sales agent to deduct and withhold the required amount from a person's prize award does not relieve that person from liability for the municipal income tax with respect to that prize award.

(8) If a casino operator or lottery sales agent files a return late, fails to file a return, remits amounts deducted and withheld late, or fails to remit amounts deducted and withheld as required under this section, the Tax Administrator of a municipal corporation may impose the following applicable penalty:

(a) For the late remittance of, or failure to remit, tax deducted and withheld under this section, a penalty equal to 50% of the tax deducted and withheld;

(b) For the failure to file, or the late filing of, a monthly or annual return, a penalty of \$500 for each return not filed or filed late. Interest shall accrue on past due amounts deducted and withheld at the rate prescribed in Ohio R.C. 5703.47.

(9) Amounts deducted and withheld on behalf of a municipal corporation shall be allowed as a credit against payment of the tax imposed by the municipal corporation and shall be treated as taxes paid for purposes of § 880.07 of this chapter. This division (C)(9) applies only to the person for whom the amount is deducted and withheld.

(10) The Tax Administrator shall prescribe the forms of the receipts and returns required under this division (C).

(Prior Code, § 880.053)

(Ord. 182-2015, passed 11-23-2015)

§ 880.06 INCOME SUBJECT TO NET PROFIT TAX.

(A) *Determining municipal taxable income for taxpayers who are not individuals.* Municipal taxable income for a taxpayer who is not an individual for the municipality is calculated as follows: income reduced by exempt income to the extent otherwise included in income, multiplied by apportionment, further reduced by any pre-2017 net operating loss carryforward equals municipal taxable income.

(1) "Income" for a taxpayer that is not an individual means the net profit of the taxpayer.

(a) "Net profit" for a person other than an individual is defined in §880.03 of this chapter.

(b) "Adjusted Federal taxable income" is defined in §880.03 of this chapter.

(2) "Exempt income" is defined in § 880.03 of this chapter.

(3) "Apportionment" means the apportionment as determined by §880.06(B) of this chapter.

(4) "Pre-2017 net operating loss carryforward" is defined in §880.03 of this chapter.

(Prior Code, § 880.061)

(B) *Net profit; income subject to net profit tax; alternative apportionment.* This section applies to any taxpayer engaged in a business or profession in the municipality unless the taxpayer is an individual who resides in the municipality or the taxpayer is an electric company, combined company or telephone company that is subject to and required to file reports under Ohio R.C. Ch. 5745.

(1) Except as otherwise provided in divisions (B)(2) and (B)(9) of this section, 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 municipal income taxation in the same proportion as the average ratio of the following:

(a) The average original cost of the real property 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 original cost 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 the preceding paragraph, tangible personal or real property shall include 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 individuals employed in the business or profession for services performed in the municipality to wages, salaries and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under § 880.05(B) of this chapter; and

(c) Total gross receipts of the business or profession from sales and rentals made and services performed during the

taxable period in the municipality to total gross receipts of the business or profession during the same period from sales, rentals and services, wherever made or performed.

(2) (a) If the apportionment factors described in division (B)(1) of this section do not fairly represent the extent of a taxpayer's business activity in the municipality, the taxpayer may request, or the Tax Administrator of the municipality may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

1. Separate accounting;
2. The exclusion of one or more of the factors;
3. The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipality; and/or
4. A modification of one or more of the factors.

(b) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by § 880.19(A) of this chapter.

(c) A Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (B)(2)(a) above only by issuing an assessment to the taxpayer within the period prescribed by § 880.19(A) of this chapter.

(d) Nothing in this division (B)(2) nullifies or otherwise affects any alternative apportionment arrangement approved by a Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before 1-1-2016.

(3) As used in division (B)(1)(b) of this section, "wages, salaries and other compensation" includes only wages, salaries or other compensation paid to an employee for services performed at any of the following locations:

- (a) A location that is owned, controlled or used by, rented to or under the possession of one of the following:
 1. The employer;
 2. A vendor, customer, client or patient of the employer, or a related member of such a vendor, customer, client or patient; and
 3. A vendor, customer, client or patient of a person described herein or a related member of such a vendor, customer, client or patient.

(b) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial or similar administrative, judicial or legislative matter or proceeding is being conducted; provided that, the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;

(c) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in divisions (B)(3)(a) or (B)(3)(b) above solely in order to avoid or reduce the employer's municipal income tax liability. If a Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(4) For the purposes of division (B)(1)(c) above, and except as provided in division (B)(9) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

(a) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this division (B)(4), a sale of property originates in a municipal corporation if, regardless of where title passes, the property meets any of the following criteria:

1. The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation;
2. The property is delivered within the municipal corporation from a location outside the municipal corporation, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion; and
3. The property is shipped from a place within the municipal corporation to purchasers outside the municipal corporation; provided that, the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(b) Gross receipts from the sale of services shall be situated to the municipal corporation to the extent that such services are performed in the municipal corporation;

(c) To the extent included in income, gross receipts from the sale of real property located in the municipal corporation shall be situated to the municipal corporation;

(d) To the extent included in income, gross receipts from rents and royalties from real property located in the

municipal corporation shall be situated to the municipal corporation; and

(e) Gross receipts from rents and royalties from tangible personal property shall be situated to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.

(5) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual or by a disregarded entity owned by the individual shall be subject to tax only by the municipal corporation in which the property generating the net profit is located and the municipal corporation in which the individual taxpayer that receives the net profit resides. A municipal corporation shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.

(6) (a) Except as provided in division (B)(6)(b) below, commissions received by a real estate agent or broker relating to the sale, purchase or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to a municipal corporation based upon the ratio of the commissions the agent or broker received from the sale, purchase or lease of real estate located in the municipal corporation to the commissions received from the sale, purchase or lease of real estate everywhere in the taxable year.

(b) An individual who is a resident of a municipal corporation that imposes a municipal income tax shall report the individual's net profit from all real estate activity on the individual's annual tax return for that municipal corporation. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such credit is allowed under § 880.08(A) of this chapter.

(7) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under § 880.03 of this chapter, by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation. This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to a municipal corporation under this section.

(8) When calculating the ratios described in division (B)(1) above for the purposes of that division or division (B)(2) above, the owner of a disregarded entity shall include in the owner's ratios the property, payroll and gross receipts of such disregarded entity.

(9) (a) As used in this division:

1. "Qualifying remote employee or owner" means an individual who is an employee of a taxpayer or who is a partner or member holding an ownership interest in a taxpayer that is treated as a partnership for federal income tax purposes, provided that the individual meets both of the following criteria:

A. The taxpayer has assigned the individual to a qualifying reporting location.

B. The individual is permitted or required to perform services for the taxpayer at a qualifying remote work location.

2. "Qualifying remote work location" means a permanent or temporary location at which an employee or owner chooses or is required to perform services for the taxpayer, other than a reporting location of the taxpayer or any other location owned or controlled by a customer or client of the taxpayer. "Qualifying remote work location" may include the residence of an employee or owner and may be located outside of a municipal corporation that imposes an income tax in accordance with this chapter. An employee or owner may have more than one qualifying remote work location during a taxable year.

3. "Reporting location" means either of the following:

A. A permanent or temporary place of doing business, such as an office, warehouse, storefront, construction site, or similar location, that is owned or controlled directly or indirectly by the taxpayer;

B. Any location in this state owned or controlled by a customer or client of the taxpayer, provided that the taxpayer is required to withhold taxes under § 880.04, on qualifying wages paid to an employee for the performance of personal services at that location.

4. "Qualifying reporting location" means one of the following:

A. The reporting location in this state at which an employee or owner performs services for the taxpayer on a regular or periodic basis during the taxable year;

B. If no reporting location exists in this state for an employee or owner under division (A)(9)4.A. of this section, the reporting location in this state at which the employee's or owner's supervisor regularly or periodically reports during the taxable year;

C. If no reporting location exists in this state for an employee or owner under division (A)(9)4.A. or B. of this section, the location that the taxpayer otherwise assigns as the employee's or owner's qualifying reporting location, provided the assignment is made in good faith and is recorded and maintained in the taxpayer's business records. A taxpayer may change the qualifying reporting location designated for an employee or owner under this division at any time.

(b) For tax years ending on or after December 31, 2023, a taxpayer may elect to apply the provisions of this division to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of division (A)(6) of this section apply to such apportionment except as otherwise provided in this division.

A taxpayer shall make the election allowed under this division in writing on or with the taxpayer's net profit return or, if applicable, a timely filed amended net profit return or a timely filed appeal of an assessment. The election applies to the taxable year for which that return or appeal is filed and for all subsequent taxable years, until the taxpayer revokes the election.

The taxpayer shall make the initial election with the Tax Administrator of each municipal corporation with which, after applying the apportionment provisions authorized in this division, the taxpayer is required to file a net profit tax return for that taxable year. A taxpayer shall not be required to notify the Tax Administrator of a municipal corporation in which a qualifying remote employee's or owner's qualifying remote work location is located, unless the taxpayer is otherwise required to file a net profit return with that municipal corporation due to business operations that are unrelated to the employee's or owner's activity at the qualifying remote work location.

After the taxpayer makes the initial election, the election applies to every municipal corporation in which the taxpayer conducts business. The taxpayer shall not be required to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in such municipal corporation.

Nothing in this division prohibits a taxpayer from making a new election under this division after properly revoking a prior election.

(c) For the purpose of calculating the ratios described in division (B)(1) of this section, all of the following apply to a taxpayer that has made the election described in division (A)(9)(b):

1. For the purpose of division (B)(1) of this section, the average original cost of any tangible personal property used by a qualifying remote employee or owner at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

2. For the purpose of division (B)(2) of this section, any wages, salaries, and other compensation paid during the taxable period to a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

3. For the purpose of division (B)(3) of this section, and notwithstanding division (A)(4) of this section, any gross receipts of the business or profession from services performed during the taxable period by a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(d) Nothing in this division prevents a taxpayer from requesting, or a Tax Administrator from requiring, that the taxpayer use, with respect to all or a portion of the income of the taxpayer, an alternative apportionment method as described in division (A)(2) of this section. However, a Tax Administrator shall not require an alternative apportionment method in such a manner that it would require a taxpayer to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in that municipal corporation.

(e) Except as otherwise provided in this division, nothing in this division is intended to affect the withholding of taxes on qualifying wages pursuant to § 880.04.

(Prior Code, § 880.062)

(C) *Consolidated federal income tax return.*

(1) For the purpose of this division (C), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AFFILIATED GROUP OF CORPORATIONS. An affiliated group as defined in I.R.C. § 1504; except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in the state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

CONSOLIDATED FEDERAL INCOME TAX RETURN. A consolidated return filed for federal income tax purposes pursuant to I.R.C. § 1501.

CONSOLIDATED FEDERAL TAXABLE INCOME. The consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. **CONSOLIDATED FEDERAL TAXABLE INCOME** does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under this division (C)(1).

INCUMBENT LOCAL EXCHANGE CARRIER. The same meaning as in Ohio R.C. 4927.01.

LOCAL EXCHANGE TELEPHONE SERVICE. The same meaning as in Ohio R.C. 5727.01.

(2) (a) For taxable years beginning on or after 1-1-2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the municipal income tax in that taxable year and if the affiliated group of

corporations filed a consolidated federal income tax return with respect to that taxable year:

1. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law;
2. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under this division (B)(2)(a) above; or
3. A taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(b) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division (C)(2)(a) above. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.

(c) An election made under divisions (C)(2)(a) or (C)(2)(b) above is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(3) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated municipal income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the municipal corporation. A taxpayer that is required to file a consolidated municipal income tax return for a taxable year shall file a consolidated municipal income tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.

(4) A taxpayer shall prepare a consolidated municipal income tax return in the same manner as is required under the United States Department of Treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(5) (a) Except as otherwise provided in divisions (C)(5)(b), (C)(5)(c) and (C)(5)(d) below, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in § 880.03 of this chapter, by substituting "consolidated Federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(b) No corporation filing a consolidated municipal income tax return shall make any adjustment otherwise required under § 880.03 of this chapter to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.

(c) If the net profit or loss of a pass-through entity having at least 80% of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated municipal income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

1. Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in division (B) above, exclude the property, payroll and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

2. Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in division (B) above, include the property, payroll and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

(d) If the net profit or loss of a pass-through entity having less than eighty percent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply.

1. The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in division (B) above, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation;

2. The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(6) Corporations filing a consolidated municipal income tax return shall make the computations required under division (B) above by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from"

appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(7) Each corporation filing a consolidated municipal income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges or other amounts imposed by a municipal corporation in accordance with this chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year or any one or more members of such an affiliated group.

(8) Corporations and their affiliates that made an election or entered into an agreement with a municipal corporation before 1-1-2016, to file a consolidated or combined tax return with such municipal corporation may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after 1-1-2016.

(Prior Code, § 880.063)

(D) *Tax credit for businesses that foster new jobs in Ohio.* The municipality, by ordinance, may grant a refundable or non-refundable credit against its tax on income to a taxpayer to foster job creation in the municipality. If a credit is granted under this section, it shall be measured as a percentage of the new income tax revenue the municipality derives from new employees of the taxpayer and shall be for a term not exceeding 15 years. Before the municipality passes an ordinance granting a credit, the municipality and the taxpayer shall enter into an agreement specifying all the conditions of the credit.

(Prior Code, § 880.064)

(E) *Tax credits to foster job retention.* The municipality, by ordinance, may grant a refundable or non-refundable credit against its tax on income to a taxpayer for the purpose of fostering job retention in the municipality. If a credit is granted under this section, it shall be measured as a percentage of the income tax revenue the municipality derives from the retained employees of the taxpayer, and shall be for a term not exceeding 15 years. Before the municipality passes an ordinance allowing such a credit, the municipality and the taxpayer shall enter into an agreement specifying all the conditions of the credit.

(Prior Code, § 880.065)

(Ord. 182-2015, passed 11-23-2015; Ord. 147- 2023, passed 11-13-2023)

§ 880.07 DECLARATION OF ESTIMATED TAX.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ESTIMATED TAXES. The amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for a municipal corporation's income tax for the current taxable year.

TAX LIABILITY. The total taxes due to a municipal corporation for the taxable year, after allowing any credit to which the taxpayer is entitled and after applying any estimated tax payment, withholding payment or credit from another taxable year.

(B) (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least \$200. For the purposes of this section:

(a) Taxes withheld from qualifying wages shall be considered as paid to the municipal corporation for which the taxes were withheld in equal amounts on each payment date. If the taxpayer establishes the dates on which all amounts were actually withheld, the amounts withheld shall be considered as paid on the dates on which the amounts were actually withheld;

(b) An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division (B)(1)(b), **DATE OF THE POSTMARK** means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service;

(c) A taxpayer having a taxable year of less than 12 months shall make a declaration under rules prescribed by the Tax Administrator; and

(d) Taxes withheld by a casino operator or by a lottery sales agent under Ohio R.C. 718.031 are deemed to be paid to the municipal corporation for which the taxes were withheld on the date the taxes are withheld from the taxpayer's winnings.

(2) Taxpayers filing joint returns shall file joint declarations of estimated taxes.

(3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of Municipal income tax returns under § 880.09(A)(7) of this chapter or on or before the fifteenth day of the fourth month of the first taxable year after the taxpayer becomes subject to tax for the first time.

(4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.

(5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.

(C) (1) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the municipality or Tax Administrator, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:

(a) On or before the fifteenth day of the fourth month after the beginning of the taxable year, 22.5% of the tax liability for the taxable year;

(b) On or before the fifteenth day of the sixth month after the beginning of the taxable year, 45% of the tax liability for the taxable year;

(c) On or before the fifteenth day of the ninth month after the beginning of the taxable year, 67.5% of the tax liability for the taxable year;

(d) On or before the fifteenth day of the twelfth month of the taxable year, 90% of the tax liability for the taxable year.

(2) A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates. The amended declaration must be filed on the next applicable due date as outlined in divisions (C)(1)(a) through (C)(1)(d) above.

(3) On or before the fifteenth day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with § 880.09(A) of this chapter.

(a) For taxpayers who are individuals, or who are not individuals and are reporting and filing on a calendar year basis, the annual tax return is due on the same date as the filing of the federal tax return, unless extended pursuant to division (G) of Ohio R.C. 5747.08.

(b) For taxpayers who are not individuals, and are reporting and filing on a fiscal year basis or any period other than a calendar year, the annual return is due on the fifteenth day of the fourth month following the end of the taxable year or period.

(4) An amended declaration is required whenever the taxpayer's estimated tax liability changes during the taxable year. A change in estimated tax liability may either increase or decrease the estimated tax liability for the taxable year.

(D) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to § 880.10 of this chapter upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) below. The amount of the underpayment shall be determined as follows:

(a) For the first payment of estimated taxes each year, 22.5% of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(b) For the second payment of estimated taxes each year, 45% of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(c) For the third payment of estimated taxes each year, 67.5% of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(d) For the fourth payment of estimated taxes each year, 90% of the tax liability, less the amount of taxes paid by the date prescribed for that payment.

(2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.

(E) An underpayment of any portion of tax liability determined under division (D) above shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:

(1) The amount of estimated taxes that were paid equals at least 90% of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due;

(2) The amount of estimated taxes that were paid equals at least 100% of the tax liability shown on the return of the taxpayer for the preceding taxable year; provided that, the immediately preceding taxable year reflected a period of 12 months and the taxpayer filed a return with the municipal corporation under § 880.09(A) of this chapter for that year.

(3) The taxpayer is an individual who resides in the municipality but was not domiciled there on January 1 of the calendar year that includes the first day of the taxable year.

(F) A Tax Administrator may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors.

(Prior Code, § 880.07) (Ord. 182-2015, passed 11-23-2015)

§ 880.08 CREDIT FOR TAX PAID.

(A) *Credit for tax paid to another municipality.* When a resident of the city is subject to a municipal income tax of another municipality or joint economic development district, he or she shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate. The credit shall not exceed the tax assessed by this chapter on the earned income in such other municipality or municipalities or joint economic development districts where the tax is paid.

(Prior Code, § 880.081)

(B) *Refundable credit for qualifying loss.*

(1) For the purpose of this division (B), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NON-QUALIFIED DEFERRED COMPENSATION PLAN. A compensation plan described in I.R.C. § 3121(v)(2)(C).

QUALIFYING LOSS.

1. Except as provided in division 2. below, **QUALIFYING LOSS** means the excess, if any, of the total amount of compensation the payment of which is deferred pursuant to a non-qualified deferred compensation plan over the total amount of income the taxpayer has recognized for federal income tax purposes for all taxable years on a cumulative basis as compensation with respect to the taxpayer's receipt of money and property attributable to distributions in connection with the non-qualified deferred compensation plan.

2. If, for one or more taxable years, the taxpayer has not paid to one or more municipal corporations income tax imposed on the entire amount of compensation the payment of which is deferred pursuant to a non-qualified deferred compensation plan, then the "qualifying loss" is the product of the amount resulting from the calculation described in division 1. above computed without regard to this division 2. and a fraction the numerator of which is the portion of such compensation on which the taxpayer has paid income tax to one or more municipal corporations and the denominator of which is the total amount of compensation the payment of which is deferred pursuant to a non-qualified deferred compensation plan.

3. With respect to a non-qualified deferred compensation plan, the taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that non-qualified deferred compensation plan.

QUALIFYING TAX RATE. The applicable tax rate for the taxable year for which the taxpayer paid income tax to a municipal corporation with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a non-qualified deferred compensation plan. If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the municipal corporation each year with respect to the non-qualified deferred compensation plan.

(2) (a) Except as provided in division (B)(4) below, a refundable credit shall be allowed against the income tax imposed by a municipal corporation for each qualifying loss sustained by a taxpayer during the taxable year. The amount of the credit shall be equal to the product of the qualifying loss and the qualifying tax rate.

(b) A taxpayer shall claim the credit allowed under this section from each municipal corporation to which the taxpayer paid municipal income tax with respect to the non-qualified deferred compensation plan in one or more taxable years.

(c) If a taxpayer has paid tax to more than one municipal corporation with respect to the non-qualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the non-qualified deferred compensation plan.

(d) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to a municipal corporation for all taxable years with respect to the non-qualified deferred compensation plan.

(3) (a) For purposes of this section, municipal corporation income tax that has been withheld with respect to a non-qualified deferred compensation plan shall be considered to have been paid by the taxpayer with respect to the non-qualified deferred compensation plan.

(b) Any municipal income tax that has been refunded or otherwise credited for the benefit of the taxpayer with respect to a non-qualified deferred compensation plan shall not be considered to have been paid to the municipal corporation by the taxpayer.

(4) The credit allowed under this division (B) is allowed only to the extent the taxpayer's qualifying loss is attributable to:

(a) The insolvency or bankruptcy of the employer who had established the non-qualified deferred compensation plan;
or

(b) The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the non-qualified deferred compensation.

(Prior Code, § 880.082)

(C) *Credit for person working in joint economic development district or zone.* A municipality shall grant a credit against its tax on income to a resident of the municipality who works in a joint economic development zone created under Ohio R.C. 715.691 or a joint economic development district created under Ohio R.C. 715.70, 715.71 or 715.72 to the same extent that it grants a credit against its tax on income to its residents who are employed in another municipal corporation, pursuant to division (A) above.

(Prior Code, § 880.083)

(D) *Credit for tax beyond statute for obtaining refund.*

(1) Income tax that has been deposited or paid to the municipality, but should have been deposited or paid to another municipal corporation, is allowable by the municipality as a refund, but is subject to the three-year limitation on refunds as provided in § 880.09(F) of this chapter.

(2) Income tax that should have been deposited or paid to the municipality, but was deposited or paid to another municipal corporation, shall be subject to collection and recovery by the municipality. To the extent a refund of such tax or withholding is barred by the limitation on refunds as provided in § 880.09(F) of this chapter, the municipality will allow a non-refundable credit equal to the tax or withholding paid to the other municipality against the income tax the municipality claims is due. If the municipality's tax rate is higher, the tax representing the net difference of the tax rates is also subject to collection by the municipality, along with any penalty and interest accruing during the period of non-payment.

(3) No carryforward of credit will be permitted when the overpayment is beyond the three-year limitation for refunding of same as provided in § 880.09(F) of this chapter.

(4) Nothing in this section requires a municipality to allow credit for tax paid to another municipal corporation if the municipality has reduced credit for tax paid to another municipal corporation. Division (A) above regarding any limitation on credit shall prevail.

(Prior Code, § 880.084)

(E) *Credit for disabled or retired resident.* A credit in the amount of the tax liability to a maximum of \$50 shall be awarded to disabled or retired resident individuals as per rules and regulations prescribed by the Tax Administrator.

(Prior Code, § 880.085)

(Ord. 182-2015, passed 11-23-2015)

§ 880.09 ANNUAL RETURN.

(A) *Return and payment of tax.*

(1) (a) An annual municipal income tax return shall be completed and filed by every taxpayer for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

(b) The Tax Administrator shall accept on behalf of all non-resident individual taxpayers a return filed by an employer, agent of an employer or other payer located in the municipality under § 880.05(A)(3) of this chapter when the non-resident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due to the municipality.

(c) All resident individual taxpayers, 18 years of age and older, shall file an annual municipal income tax return with the municipality, regardless of income or liability.

(2) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator or other person charged with the property of that decedent.

(3) If an individual is unable to complete and file a return or notice required by the municipality in accordance with this chapter, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary or other person charged with the care of the person or property of that individual. Such duly authorized agent, guardian, conservator, fiduciary or other person charged with the care of the person or property of that individual shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address and phone number of the duly authorized agent, guardian, conservator, fiduciary or other person.

(4) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust. Such fiduciary shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations and contact information including name, address and phone number of the fiduciary.

(5) No municipal corporation shall deny spouses the ability to file a joint return.

(6) (a) Each return required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's Social

Security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.

(b) A taxpayer who is an individual is required to include, with each annual return, amended return or request for refund required under this section, copies of only the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements", including all information reported on the taxpayer's Federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040 or, in the case of a return or request required by a qualified municipal corporation, Ohio IT 1040; and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.

(c) A taxpayer that is not an individual is required to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.

(d) A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio Business Gateway or in some other manner shall either mail the documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio Business Gateway or a portal provided by the municipality. The Department of Taxation shall publish a method of electronically submitting the documents required under this division through the Ohio Business Gateway on or before 1-1-2016. The Department shall transmit all documents submitted electronically under this division (A)(6) to the appropriate Tax Administrator.

(e) After a taxpayer files a tax return, the Tax Administrator shall request, and the taxpayer shall provide, any information, statements or documents required by the municipality to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under this division (A)(6) apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.

(f) Any other documentation, including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses or other pertinent factors on the return shall also be included to avoid delay in processing, or disallowance by the Tax Administrator of undocumented credits or losses.

(7) (a) 1. Except as otherwise provided in this chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under division (G) of Ohio R.C. 5747.08. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the municipality or Tax Administrator.

2. Except as otherwise provided in this chapter, each annual net profit income tax return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year or period. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the municipality or Tax Administrator.

3. In the case of individual income tax return required to be filed by an individual, and net profit income tax return required to be filed by a taxpayer who is not an individual, no remittance is required if the amount shown to be due is \$10 or less.

(b) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the municipality in accordance with this chapter, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.

(c) With respect to taxpayers to whom Section 880.092 applies, to the extent that any provision in this division (A)(7) conflicts with any provision in division (B) below, the provision in division (B) below prevails.

(8) (a) For taxable years beginning after 2015, the municipality shall not require a taxpayer to remit tax with respect to net profits if the amount due is \$10 or less.

(b) Any taxpayer not required to remit tax to the municipality for a taxable year pursuant to division (A)(8)(a) above shall file with the municipality an annual net profit return under divisions (B)(6)(c) and (B)(6)(d) above.

(9) This division (A)(9) shall not apply to payments required to be made under §880.05(A)(2)(a)2. or (A)(2)(a)3. of this chapter.

(a) If any report, claim, statement or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under this chapter is delivered after that period or that to the Tax Administrator or other municipal official with which the report, claim, statement, or other document is required to be filed, or to which the payment is required to be made, the date of the postmark stamped on the cover in which the report, claim, statement or other document, or payment is mailed shall be deemed to be the date of delivery or the date of payment. The "date of postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(b) If a payment is required to be made by electronic funds transfer, the payment is considered to be made when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments; except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. For purposes of this division (A)(9)(b), **SUBMITTED THE PAYMENT** means the date which the taxpayer has designated for the delivery of payment, which may or may not be the same date as the date the payment was initiated by the taxpayer.

(10) The amounts withheld for the municipality by an employer, the agent of an employer, or other payer as described in § 880.05(A) of this chapter shall be allowed to the recipient of the compensation as credits against payment of the tax imposed on the recipient unless the amounts withheld were not remitted to the municipality and the recipient colluded with the employer, agent or other payer in connection with the failure to remit the amounts withheld.

(11) Each return required by the municipality to be filed in accordance with this section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the Tax Administrator to contact the preparer or other person concerning questions that arise during the examination or other review of the return and authorizes the preparer or other person only to provide the Tax Administrator with information that is missing from the return, to contact the Tax Administrator for information about the examination or other review of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the Tax Administrator and has shown to the preparer or other person. Authorization by the taxpayer of another person to communicate with the Tax Administrator about matters pertaining to the return does not preclude the Tax Administrator from contacting the taxpayer regarding such matters.

(12) The Tax Administrator of the municipality shall accept for filing a generic form of any income tax return, report or document required by the municipality in accordance with this chapter, provided that the generic form, once completed and filed, contains all of the information required by ordinances, resolutions or rules adopted by the municipality or Tax Administrator; and, provided that, the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this chapter and of the municipality's ordinance or resolution governing the filing of returns, reports or documents.

(13) When income tax returns, reports or other documents require the signature of a tax return preparer, the Tax Administrator shall accept a facsimile of such a signature in lieu of a manual signature.

(14) (a) As used in this division, "worksite location" has the same meaning as in §880.05(B) of this chapter.

(b) A person may notify a Tax Administrator that the person does not expect to be a taxpayer with respect to the municipal corporation for a taxable year if both of the following conditions apply.

1. The person was required to file a tax return with the municipal corporation for the immediately preceding taxable year because the person performed services at a worksite location within the municipal corporation, and the person has filed all appropriate and required returns and remitted all applicable income tax and withholding payments as provided by this chapter. The Tax Administrator is not required to accept an affidavit from a taxpayer who has not complied with the provisions of this chapter.

2. The person no longer provides services in the municipal corporation, and does not expect to be subject to the municipal corporation's income tax for the taxable year. The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the municipal corporation. The affidavit also shall include the following statement: "The affiant has no plans to perform any services within the municipal corporation, make any sales in the municipal corporation or otherwise become subject to the tax levied by the municipal corporation during the taxable year. If the affiant does become subject to the tax levied by the municipal corporation for the taxable year, the affiant agrees to be considered a taxpayer and to properly register as a taxpayer with the municipal corporation, if such a registration is required by the municipal corporation's resolutions, ordinances or rules." The person shall sign the affidavit under penalty of perjury.

3. If a person submits an affidavit described in this division (A)(14)(b), the Tax Administrator shall not require the person to file any tax return for the taxable year unless the Tax Administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change, or the taxpayer has engaged in activity which results in work being performed, services provided, sales made or other activity that results in municipal taxable income reportable to the municipality in the taxable year. It shall be the responsibility of the taxpayer to comply with the provisions of this chapter relating to the reporting and filing of municipal taxable income on an annual municipal income tax return, even if an affidavit has been filed with the Tax Administrator for the taxable year. Nothing in this division (A)(14) prohibits the Tax Administrator from performing an audit of the person.

(Prior Code, § 880.091)

(B) *Return and payment of tax; individuals serving in combat zone.*

(1) Each member of the national guard of any state and each member of a reserve component of the Armed Forces of the United States called to active duty pursuant to an executive order issued by the President of the United States or an act of the Congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the Armed Forces, may apply to the Tax Administrator of the municipality for both an extension of time for filing of the return and an extension of time for payment of taxes required by the municipality in accordance with this

chapter during the period of the member's or civilian's duty service and for 180 days thereafter. The application shall be filed on or before the one hundred-eightieth day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

(2) (a) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the one hundred eighty-first day after the applicant's active duty or service terminates. Except as provided in division (B)(2)(c) below, the Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate.

(b) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report or other tax document nor be required to pay any tax otherwise due to the municipality before the one hundred eighty-first day after the applicant's active duty or service terminates.

(c) Taxes paid pursuant to a contract entered into under division (B)(2)(a) above are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(3) (a) Nothing in this division (B) denies to any person described in this division the application of divisions (B)(1) and (B)(2) above.

(b) 1. A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report or other tax document and an extension of time in which to make any payment of taxes required by the municipality in accordance with this chapter. The length of any extension granted under this division (B)(c)(b)1. shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this section, **QUALIFYING TAXPAYER** means a member of the national guard or a member of a reserve component of the Armed Forces of the United States called to active duty pursuant to either an executive order issued by the President of the United States or an act of the Congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the Armed Forces.

2. Taxes the payment of which is extended in accordance with division (B)(3)(b)1. above are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (B)(3)(b)1. above in calculating the penalty or interest due on any unpaid tax.

(4) For each taxable year to which divisions (B)(1), (B)(2) or (B)(3) above applies to a taxpayer, the provisions of divisions (B)(2)(a) and (B)(2)(c) or (B)(3) above, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

(Prior Code, § 880.092)

(C) *Use of Ohio Business Gateway; types of filings authorized.*

(1) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file any municipal income tax return or, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.

(2) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.

(3) Nothing in this section affects the due dates for filing employer withholding tax returns or deposit of any required tax.

(4) The use of the Ohio Business Gateway by municipal corporations, taxpayers or other persons does not affect the legal rights of municipalities or taxpayers as otherwise permitted by law. The state shall not be a party to the administration of municipal income taxes or to an appeal of a municipal income tax matter, except as otherwise specifically provided by law.

(5) Nothing in this section shall be construed as limiting or removing the authority of any municipal corporation to administer, audit and enforce the provisions of its municipal income tax.

(Prior Code, § 880.093)

(D) *Extension of time to file.*

(1) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. For tax years ending on or after January 1, 2023, the extended due date of the municipal income tax return for a taxpayer that is not an individual shall be the fifteenth day of the eleventh month after the last day of the taxable year to which the return relates.

(a) A copy of the federal extension request shall be included with the filing of the municipal income tax return.

(2) Any taxpayer that qualifies for an automatic federal extension for a period other than six-months for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return.

The extended due date of the municipal income tax return shall be the same as that of the extended federal income tax return.

(3) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the request is received by the Tax Administrator on or before the date the municipal income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

(4) An extension of time to file under this chapter is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

(5) If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of Ohio R.C. 5747.08, a taxpayer shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as the extended due date of the state income tax return.

(6) (a) If a taxpayer receives an extension for the filing of a municipal income tax return under divisions (D)(1) or (D)(2) of this section or division (A)(7)(a)2., the Tax Administrator shall not make any inquiry or send any notice to the taxpayer with regard to the return on or before the date the taxpayer files the return or on or before the extended due date to file the return, whichever occurs first.

(b) If a Tax Administrator violates division (D)(6) of this section, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to \$150.

(c) Division (D)(6) of this section does not apply to an extension received under division (D)(1) of this section if the Tax Administrator has actual knowledge that the taxpayer failed to file for a federal extension as required to receive the extension under division (D)(1) of this section or failed to file for an extension under division (D)(3) of this section.

(Prior Code, § 880.094)

(E) *Amended returns.*

(1) (a) A taxpayer shall file an amended return with the Tax Administrator in such form as the Tax Administrator requires if any of the facts, figures, computations or attachments required in the taxpayer's annual return to determine the tax due levied by the municipality in accordance with this chapter must be altered.

(b) Within 60 days after the final determination of any federal or state tax liability affecting the taxpayer's municipal tax liability, that taxpayer shall make and file an amended municipal return showing income subject to the municipal income tax based upon such final determination of federal or state tax liability, and pay any additional municipal income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is \$10 or less.

(c) If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the Tax Administrator before filing the amended return.

(2) (a) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. If the combined tax shown to be due is \$10 or less, such amount need not accompany the amended return. Except as provided under division (E)(2)(b) below, the amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless the applicable statute of limitations for civil actions or prosecutions under § 880.19 of this chapter has not expired for a previously filed return.

(b) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations and attachments were reopened.

(3) (a) In the case of an overpayment, a request for refund may be filed under this division (E)(3) within the period prescribed by § 880.19(E) of this chapter for filing the amended return even if it is filed beyond the period prescribed in that division if it otherwise conforms to the requirements of that division. If the amount of the refund is \$10 or less, no refund need be paid by the municipality to the taxpayer. Except as set forth in division (E)(3)(b) below, a request filed under this division (E)(3) shall claim refund of overpayments resulting from alterations to only those facts, figures, computations or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless it is also filed within the time prescribed in division (F) below. Except as set forth in division (E)(3)(b) below, the request shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return.

(b) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations and attachments were reopened.

(Prior Code, § 880.095)

(F) *Refunds.*

(1) Upon receipt of a request for a refund, the Tax Administrator of the municipality, in accordance with this section, shall refund to employers, agents of employers, other payers or taxpayers, with respect to any income or withholding tax levied by the municipality:

- (a) Overpayments of more than \$10; and
- (b) Amounts paid erroneously if the refund requested exceeds \$10.

(2) (a) Except as otherwise provided in this chapter, returns setting forth a request for refund shall be filed with the Tax Administrator, within three years after the tax was due or paid, whichever is later. Any documentation that substantiates the taxpayer's claim for a refund must be included with the return filing. Failure to remit all documentation, including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses or other pertinent factors on the return will cause delay in processing, and/or disallowance of undocumented credits or losses.

(b) On filing of the refund request, the Tax Administrator shall determine the amount of refund due and certify such amount to the appropriate municipal corporation official for payment. Except as provided in division (F)(2)(c) below, the Administrator shall issue an assessment to any taxpayer whose request for refund is fully or partially denied. The assessment shall state the amount of the refund that was denied, the reasons for the denial and instructions for appealing the assessment.

(c) If a Tax Administrator denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the Tax Administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial and instructions for requesting an assessment that may be appealed under § 880.18 of this chapter.

(3) A request for a refund that is received after the last day for filing specified in division (F)(2) above shall be considered to have been filed in a timely manner if any of the following situations exist:

(a) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request;

(b) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request and the request is received within seven days of such last day; and

(c) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible and the request is received within seven days of the last day for making the request.

(4) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment; except that, if any overpayment is refunded within 90 days after the final filing date of the annual return or 90 days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in § 880.10(A)(4) of this chapter.

(5) As used in this section, "withholding tax" has the same meaning as in §880.10 of this chapter.

(Prior Code, § 880.096)

(Ord. 182-2015, passed 11-23-2015; Ord. 147- 2023, passed 11-13-2023)

§ 880.10 PENALTY, INTEREST, FEES AND CHARGES.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICABLE LAW. This chapter, the resolutions, ordinances, codes, directives, instructions and rules adopted by the municipality provided such resolutions, ordinances, codes, directives, instructions and rules impose or directly or indirectly address the levy, payment, remittance or filing requirements of a municipal income tax.

FEDERAL SHORT-TERM RATE. The rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under I.R.C. § 1274, for July of the current year.

INCOME TAX, ESTIMATED INCOME TAX and WITHHOLDING TAX. Any income tax, estimated income tax, and withholding tax imposed by a municipal corporation pursuant to applicable law, including at any time before 1-1-2016.

INTEREST RATE AS DESCRIBED IN DIVISION (A) OF THIS SECTION. The Federal short-term rate, rounded to the nearest whole number percent, plus 5%. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance herewith.

RETURN. Includes any tax return, report, reconciliation, schedule and other document required to be filed with a Tax Administrator or municipal corporation by a taxpayer, employer, any agent of the employer or any other payer pursuant to applicable law, including at any time before 1-1-2016.

UNPAID ESTIMATED INCOME TAX. Estimated income tax due but not paid by the date the tax is required to be paid under applicable law.

UNPAID INCOME TAX. Income tax due but not paid by the date the income tax is required to be paid under applicable law.

UNPAID WITHHOLDING TAX. Withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.

WITHHOLDING TAX. Includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent or other payer is required to withhold from an employee's qualifying wages.

(B) (1) This section shall apply to the following:

(a) Any return required to be filed under applicable law for taxable years beginning on or after 1-1-2016; and

(b) Income tax, estimated income tax and withholding tax required to be paid or remitted to the municipality on or after 1-1-2016 for taxable years beginning on or after 1-1-2016.

(2) This section does not apply to returns required to be filed or payments required to be made before 1-1-2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before 1-1-2016, but filed or paid after that date shall be subject to the ordinances or rules, as adopted from time to time before 1-1-2016 of the municipality.

(C) The municipality shall impose on a taxpayer, employer, any agent of the employer and any other payer, and will attempt to collect, the interest amounts and penalties prescribed in this section when the taxpayer, employer, any agent of the employer or any other payer for any reason fails, in whole or in part, to make to the municipality timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the municipality any return required to be filed.

(1) Interest shall be imposed at the rate defined as "interest rate as described in division (A) of this section", per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month.

(2) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to 15% of the amount not timely paid shall be imposed.

(3) With respect to any unpaid withholding tax, a penalty equal to 50% of the amount not timely paid shall be imposed.

(4) For tax years ending on or before December 31, 2022, with respect to returns other than estimated income tax returns, the municipality shall impose a monthly penalty of \$25 for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed a total of \$150 in assessed penalty for each failure to timely file a return.

(5) For tax years ending on or after January 1, 2023, with respect to returns other than estimated income tax returns, the Municipality may impose a penalty not exceeding \$25 for each failure to timely file each return, regardless of the liability shown thereon, except that Municipality shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.

(D) With respect to income taxes, estimated income taxes, withholding taxes and returns, the municipality shall not impose, seek to collect or collect any penalty, amount of interest, charges or additional fees not described in this section.

(E) With respect to income taxes, estimated income taxes, withholding taxes and returns, the municipality shall not refund or credit any penalty, amount of interest, charges or additional fees that were properly imposed or collected before 1-1-2016.

(F) The Tax Administrator may, in the Tax Administrator's sole discretion, abate or partially abate penalties or interest imposed under this section when the Tax Administrator deems such abatement or partial abatement to be appropriate. Such abatement or partial abatement shall be properly documented and maintained on the record of the taxpayer who received benefit of such abatement or partial abatement.

(G) The Municipality may impose on the taxpayer, employer, any agent of the employer or any other payer the municipality's post-judgment collection costs and fees, including attorney's fees.

(Prior Code, § 880.10) (Ord. 182-2015, passed 11- 23-2015; Ord. 147-2023, passed 11-13-2023)

§ 880.11 AUDIT.

(A) At or before the commencement of an audit, as defined in §880.03 of this chapter, the Tax Administrator shall provide to the taxpayer a written description of the roles of the Tax Administrator and of the taxpayer during an audit and a statement of the taxpayer's rights, including any right to obtain a refund of an overpayment of tax. At or before the commencement of an audit, the Tax Administrator shall inform the taxpayer when the audit is considered to have commenced.

(B) Except in cases involving suspected criminal activity, the Tax Administrator shall conduct an audit of a taxpayer during regular business hours and after providing reasonable notice to the taxpayer. A taxpayer who is unable to comply

with a proposed time for an audit on the grounds that the proposed time would cause inconvenience or hardship must offer reasonable alternative dates for the audit.

(C) (1) At all stages of an audit by the Tax Administrator, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper or other tax practitioner. The Tax Administrator shall prescribe a form by which a taxpayer may designate such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the Tax Administrator. If a taxpayer has not submitted such a form, the Tax Administrator may accept other evidence, as the Tax Administrator considers appropriate, that a person is the authorized representative of a taxpayer.

(2) A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper or other tax practitioner. This division (C) does not authorize the practice of law by a person who is not an attorney.

(D) A taxpayer may record, electronically or otherwise, the audit examination.

(E) The failure of the Tax Administrator to comply with a provision of this section shall neither excuse a taxpayer from payment of any taxes owed by the taxpayer nor cure any procedural defect in a taxpayer's case.

(F) If the Tax Administrator fails to substantially comply with the provisions of this section, the Tax Administrator, upon application by the taxpayer, shall excuse the taxpayer from penalties and interest arising from the audit.

(Prior Code, § 880.11) (Ord. 182-2015, passed 11-23-2015)

§ 880.12 ROUNDING.

A person may round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher or other document required under this chapter. Any fractional part of a dollar that equals or exceeds \$0.50 shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than \$0.50 shall be dropped, rounding down to the nearest whole dollar. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.

(Prior Code, § 880.12) (Ord. 182-2015, passed 11-23-2015)

§ 880.13 AUTHORITY AND POWERS OF THE TAX ADMINISTRATOR.

(A) *Authority of Tax Administrator; administrative powers of the Tax Administrator.* The Tax Administrator has the authority to perform all duties and functions necessary and appropriate to implement the provisions of this chapter, including without limitation:

(1) Exercise all powers whatsoever of an inquisitorial nature as provided by law, including, the right to inspect books, accounts, records, memorandums and federal and state income tax returns, to examine persons under oath, to issue orders or subpoenas for the production of books, accounts, papers, records, documents and testimony, to take depositions, to apply to a court for attachment proceedings as for contempt, to approve vouchers for the fees of officers and witnesses, and to administer oaths; provided that, the powers referred to in this division (A)(1) shall be exercised by the Tax Administrator only in connection with the performance of the duties respectively assigned to the Tax Administrator under a municipal corporation income tax ordinance or resolution adopted in accordance with this chapter;

(2) Appoint agents and prescribe their powers and duties;

(3) Confer and meet with officers of other municipal corporations and states and officers of the United States on any matters pertaining to their respective official duties as provided by law;

(4) Exercise the authority provided by law, including orders from bankruptcy courts, relative to remitting or refunding taxes, including penalties and interest thereon, illegally or erroneously imposed or collected, or for any other reason overpaid, and, in addition, the Tax Administrator may investigate any claim of overpayment and make a written statement of the Tax Administrator's findings, and, if the Tax Administrator finds that there has been an overpayment, approve and issue a refund payable to the taxpayer, the taxpayer's assigns or legal representative as provided in this chapter;

(5) Exercise the authority provided by law relative to consenting to the compromise and settlement of tax claims;

(6) Exercise the authority provided by law relative to the use of alternative apportionment methods by taxpayers in accordance with § 880.06(B) of this chapter;

(7) Make all tax findings, determinations, computations, assessments and orders the Tax Administrator is by law authorized and required to make and, pursuant to time limitations provided by law, on the Tax Administrator's own motion, review, re-determine or correct any tax findings, determinations, computations, assessments or orders the Tax Administrator has made, but the Tax Administrator shall not review, re-determine or correct any tax finding, determination, computation, assessment or order which the Tax Administrator has made for which an appeal has been filed with the Local Board of Tax Review or other appropriate tribunal, unless such appeal or application is withdrawn by the appellant or applicant, is dismissed or is otherwise final;

(8) Destroy any or all returns or other tax documents in the manner authorized by law; and

(9) Enter into an agreement with a taxpayer to simplify the withholding obligations described in §80.05(A) of this

chapter.

(Prior Code, § 880.131)

(B) Authority of Tax Administrator; compromise of claim and payment over time.

(1) As used in this division (B), **CLAIM** means a claim for an amount payable to the municipality that arises pursuant to the municipal income tax imposed in accordance with this chapter.

(2) The Tax Administrator may do either of the following if such action is in the best interests of the municipality:

(a) Compromise a claim; and

(b) Extend for a reasonable period the time for payment of a claim by agreeing to accept monthly or other periodic payments, upon such terms and conditions as the Tax Administrator may require.

(3) The Tax Administrator's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable.

(4) A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall inure to the benefit of only the parties to the compromise or agreement, and shall not extinguish or otherwise affect the liability of any other person.

(5) (a) A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due.

(b) The Tax Administrator shall have sole discretion to determine whether or not penalty, interest, charges or applicable fees will be assessed through the duration of any compromise or payment-over-time agreement.

(6) The Tax Administrator may require that the taxpayer provide detailed financial documentation and information, in order to determine whether or not a payment-over-time agreement will be authorized. The taxpayer's failure to provide the necessary and required information by the Tax Administrator shall preclude consideration of a payment-over-time agreement.

(Prior Code, § 880.132)

(C) Authority of Tax Administrator; right to examine.

(1) The Tax Administrator, or any authorized agent or employee thereof may examine the books, papers, records and federal and state income tax returns of any employer, taxpayer or other person that is subject to, or that the Tax 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 filed, to ascertain the tax due under this chapter. Upon written request by the Tax Administrator or a duly authorized agent or employee thereof, every employer, taxpayer or other person subject to this section is required to furnish the opportunity for the Tax Administrator, authorized agent or employee to investigate and examine such books, papers, records and federal and state income tax returns at a reasonable time and place designated in the request.

(2) The records and other documents of any taxpayer, employer or other person that is subject to, or that a Tax Administrator believes is subject to, the provisions of this chapter shall be open to the Tax Administrator's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the Tax Administrator, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The Tax Administrator of a municipal corporation may require any person, by notice served on that person, to keep such records as the Tax Administrator determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by the municipality or for the withholding of such tax.

(3) The Tax Administrator may examine under oath any person that the Tax Administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Tax Administrator may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records and federal and state income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper or other tax practitioner at any such hearing or examination. This division (C)(3) does not authorize the practice of law by a person who is not an attorney.

(4) No person issued written notice by the Tax Administrator compelling attendance at a hearing or examination or the production of books, papers, records or federal and state income tax returns under this division (C) shall fail to comply.

(Prior Code, § 880.133)

(D) Authority of Tax Administrator; requiring identifying information.

(1) The Tax Administrator may require any person filing a tax document with the Tax Administrator to provide identifying information, which may include the person's Social Security number, federal employer identification number or other identification number requested by the Tax Administrator. A person required by the Tax Administrator to provide identifying information that has experienced any change with respect to that information shall notify the Tax Administrator of the change before, or upon, filing the next tax document requiring the identifying information.

(2) (a) If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within 30 days of making the request, nothing in this chapter prohibits the Tax Administrator from imposing a penalty upon the person to whom the request was directed pursuant to § 880.10 of this chapter, in addition to any applicable penalty described in § 880.99 of this chapter.

(b) If a person required by the Tax Administrator to provide identifying information does not notify the Tax Administrator of a change with respect to that information as required under division (D)(1) above within 30 days after filing the next tax document requiring such identifying information, nothing in this chapter prohibits the Tax Administrator from imposing a penalty pursuant to § 880.10 of this chapter.

(c) The penalties provided for under divisions (D)(2)(a) and (D)(2)(b) above may be billed and imposed in the same manner as the tax or fee with respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in § 880.99 of this chapter for a violation of §880.15 of this chapter, and any other penalties that may be imposed by the Tax Administrator by law.

(Prior Code, § 880.134)

(Ord. 182-2015, passed 11-23-2015)

§ 880.14 CONFIDENTIALITY.

(A) Any information gained as a result of returns, investigations, hearings or verifications required or authorized by Ohio R.C. Ch. 718 or by the charter or ordinance of the municipality is confidential, and no person shall access or disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the municipality as authorized by Ohio R.C. Ch. 718 or the charter or ordinance authorizing the levy. The Tax Administrator of the municipality or a designee thereof may furnish copies of returns filed or otherwise received under this chapter and other related tax information to the Internal Revenue Service, the State Tax Commissioner and Tax Administrators of other municipal corporations.

(B) This section does not prohibit the municipality from publishing or disclosing statistics in a form that does not disclose information with respect to particular taxpayers.

(Prior Code, § 880.14) (Ord. 182-2015, passed 11-23-2015)

§ 880.15 FRAUD.

No person shall knowingly make, present, aid or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim or document authorized or required by municipal corporation ordinance or state law to be filed with the Tax Administrator, or knowingly procure, counsel or advise the preparation or presentation of such report, return, schedule, statement, claim or document, or knowingly change, alter or amend, or knowingly procure, counsel or advise such change, alteration or amendment of the records upon which such report, return, schedule, statement, claim or document is based with intent to defraud the municipality or the Tax Administrator.

(Prior Code, § 880.15) (Ord. 182-2015, passed 11-23-2015)

§ 880.16 OPINION OF THE TAX ADMINISTRATOR.

(A) An **OPINION OF THE TAX ADMINISTRATOR** means an opinion issued under this section with respect to prospective Municipal income tax liability. It does not include ordinary correspondence of the Tax Administrator.

(B) A taxpayer may submit a written request for an opinion of the Tax Administrator as to whether or how certain income, source of income or a certain activity or transaction will be taxed. The written response of the Tax Administrator shall be an opinion of the Tax Administrator and shall bind the Tax Administrator, in accordance with divisions (C), (G) and (H) below; provided, all of the following conditions are satisfied:

(1) The taxpayer's request fully and accurately describes the specific facts or circumstances relevant to a determination of the taxability of the income, source of income, activity or transaction and, if an activity or transaction, all parties involved in the activity or transaction are clearly identified by name, location or other pertinent facts;

(2) The request relates to a tax imposed by the municipality in accordance with this chapter; and

(3) The Tax Administrator's response is signed by the Tax Administrator and designated as an opinion of the Tax Administrator.

(C) An opinion of the Tax Administrator shall remain in effect and shall protect the taxpayer for whom the opinion was prepared and who reasonably relies on it from liability for any taxes, penalty, or interest otherwise chargeable on the activity or transaction specifically held by the Tax Administrator's opinion to be taxable in a particular manner or not to be subject to taxation for any taxable years that may be specified in the opinion or until the earliest of the following dates:

(1) The effective date of a written revocation by the Tax Administrator sent to the taxpayer by certified mail, return receipt requested. The effective date of the revocation shall be the taxpayer's date of receipt or one year after the issuance of the opinion, whichever is later;

(2) The effective date of any amendment or enactment of a relevant section of the Ohio Revised Code, uncodified State

law, or the municipality's income tax ordinance that would substantially change the analysis and conclusion of the opinion of the Tax Administrator;

(3) The date on which a court issues an opinion establishing or changing relevant case law with respect to the Ohio Revised Code, uncodified state law or the municipality's income tax ordinance;

(4) If the opinion of the Tax Administrator was based on the interpretation of federal law, the effective date of any change in the relevant federal statutes or regulations, or the date on which a court issues an opinion establishing or changing relevant case law with respect to federal statutes or regulations;

(5) The effective date of any change in the taxpayer's material facts or circumstances; and

(6) The effective date of the expiration of the opinion, if specified in the opinion.

(D) (1) A taxpayer is not relieved of tax liability for any activity or transaction related to a request for an opinion that contained any misrepresentation or omission of one or more material facts.

(2) If the taxpayer knowingly has misrepresented the pertinent facts or omitted material facts with intent to defraud the municipality in order to obtain a more favorable opinion, the taxpayer may be in violation of § 880.15 of this chapter.

(E) If a Tax Administrator provides written advice under this section, the opinion shall include a statement that:

(1) The tax consequences stated in the opinion may be subject to change for any of the reasons stated in division (C) above; and

(2) It is the duty of the taxpayer to be aware of such changes.

(F) A Tax Administrator may refuse to offer an opinion on any request received under this section.

(G) This section binds a Tax Administrator only with respect to opinions of the Tax Administrator issued on or after 1-1-2016.

(H) An opinion of a Tax Administrator binds that Tax Administrator only with respect to the taxpayer for whom the opinion was prepared and does not bind the Tax Administrator of any other municipal corporation.

(I) A Tax Administrator shall make available the text of all opinions issued under this section, except those opinions prepared for a taxpayer who has requested that the text of the opinion remain confidential. In no event shall the text of an opinion be made available until the Tax Administrator has removed all information that identifies the taxpayer and any other parties involved in the activity or transaction.

(J) An opinion of the Tax Administrator issued under this section or a refusal to offer an opinion under division (F) above may not be appealed.

(Prior Code, § 880.16) (Ord. 182-2015, passed 11-23-2015)

§ 880.17 ASSESSMENT; APPEAL BASED ON PRESUMPTION OF DELIVERY.

(A) (1) The Tax Administrator shall serve an assessment either by personal service, by certified mail or by a delivery service authorized under Ohio R.C. 5703.056.

(2) The Tax Administrator may deliver the assessment through alternative means as provided in this section, including, but not limited to, delivery by secure electronic mail. Such alternative delivery method must be authorized by the person subject to the assessment.

(3) Once service of the assessment has been made by the Tax Administrator or other municipal official, or the designee of either, the person to whom the assessment is directed may protest the ruling of that assessment by filing an appeal with the Local Board of Tax Review within 60 days after the receipt of service. The delivery of an assessment of the Tax Administrator as prescribed in Ohio R.C. 718.18 is prima facie evidence that delivery is complete and that the assessment is served.

(B) (1) A person may challenge the presumption of delivery and service as set forth in this division (B). A person disputing the presumption of delivery and service under this section bears the burden of proving by a preponderance of the evidence that the address to which the assessment was sent was not an address with which the person was associated at the time the Tax Administrator originally mailed the assessment by certified mail. For the purposes of this section, a person is associated with an address at the time the Tax Administrator originally mailed the assessment if, at that time, the person was residing, receiving legal documents or conducting business at the address; or if, before that time, the person had conducted business at the address and, when the assessment was mailed, the person's agent or the person's affiliate was conducting business at the address. For the purposes of this section, a person's affiliate is any other person that, at the time the assessment was mailed, owned or controlled at least 20%, as determined by voting rights, of the addressee's business.

(2) If a person elects to appeal an assessment on the basis described in division (B)(1) above, and if that assessment is subject to collection and is not otherwise appealable, the person must do so within 60 days after the initial contact by the Tax Administrator or other municipal official, or the designee of either, with the person. Nothing in this division (B)(2) prevents the Tax Administrator or other official from entering into a compromise with the person if the person does not actually file such an appeal with the Local Board of Tax Review.

§ 880.18 LOCAL BOARD OF TAX REVIEW; APPEAL TO LOCAL BOARD OF TAX REVIEW.

(A) (1) The legislative authority of the municipality shall maintain a Local Board of Tax Review to hear appeals as provided in Ohio R.C. Ch. 718.

(2) The Local Board of Tax Review shall consist of three members. The three members of the Local Board of Tax Review may be domiciled in the municipality, but the appointing authority may consider membership from individuals who are not domiciled within the municipality. Two members shall be appointed by the legislative authority of the municipality, and may not be employees, elected officials or contractors with the municipality at any time during their term or in the five years immediately preceding the date of appointment. One member shall be appointed by the top administrative official of the municipality. This member may be an employee of the municipality, but may not be the Director of Finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(3) The term for members of the Local Board of Tax Review appointed by the legislative authority of the municipality shall be two years. There is no limit on the number of terms that a member may serve should the member be reappointed by the legislative authority. The Board member appointed by the top administrative official of the municipality shall serve at the discretion of the administrative official.

(4) Members of the Board of Tax Review appointed by the legislative authority may be removed by the legislative authority as set forth in Ohio R.C. 718.11(A)(4).

(5) A member of the Board who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.

(6) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within 60 days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the Board shall impair the power and authority of the remaining members to exercise all the powers of the Board.

(7) If a member is temporarily unable to serve on the Board due to a conflict of interest, illness, absence or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the Board in the member's place. This appointment shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

(8) No member of the Local Board of Tax Review shall receive compensation, fee or reimbursement of expenses for service on the Board.

(9) A member of a Local Board of Tax Review shall not be appointed to or serve on another such Board simultaneously.

(B) Whenever a Tax Administrator issues an assessment, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment and the address to which the appeal should be directed and to whom the appeal should be directed.

(C) Any person who has been issued an assessment may appeal the assessment to the Board by filing a request with the Board. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within 60 days after the taxpayer receives the assessment.

(D) The Local Board of Tax Review shall schedule a hearing to be held within 60 days after receiving an appeal of an assessment under division (C) above, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and/or may be represented by an attorney at law, certified public accountant or other representative. The Board may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within 120 days after the first day of the hearing unless the parties agree otherwise.

(E) The Board may affirm, reverse or modify the Tax Administrator's assessment or any part of that assessment. The Board shall issue a final determination on the appeal within 90 days after the Board's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within 15 days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the Board's final determination as provided in Ohio R.C. 5717.011.

(F) The Local Board of Tax Review created pursuant to this section shall adopt rules governing its procedures, including a schedule of related costs, and shall keep a record of its transactions. The rules governing the Local Board of Tax Review procedures shall be in writing, and may be amended as needed by the Local Board of Tax Review. Such records are not public records available for inspection under Ohio R.C. 149.43. For this reason, any documentation, copies of returns or reports, final determinations, or working papers for each case must be maintained in a secure location under the control of the Tax Administrator. No member of the Local Board of Tax Review may remove such documentation, copies of returns or reports, final determinations or working papers from the hearing. Hearings requested by a taxpayer before a Local Board of Tax Review created pursuant to this section are not meetings of a public body subject to Ohio R.C. 121.22. For this reason, such hearings shall not be open to the public, and only those parties to the case may be present during the hearing.

(Prior Code, § 880.18) (Ord. 182-2015, passed 11-23-2015)

§ 880.19 ACTIONS TO RECOVER; STATUTE OF LIMITATIONS.

(A) (1) (a) Civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within the latter of:

1. Three years after the tax was due or the return was filed, whichever is later; or
2. One year after the conclusion of the qualifying deferral period, if any.

(b) The time limit described in division (A)(1)(a) above may be extended at any time if both the Tax Administrator and the employer, agent of the employer, other payer or taxpayer consent in writing to the extension. Any extension shall also extend for the same period of time the time limit described in division (C) below.

(2) As used in this section, **QUALIFYING DEFERRAL PERIOD** means a period of time beginning and ending as follows:

(a) Beginning on the date a person who is aggrieved by an assessment files with a Local Board of Tax Review the request described in § 880.18 of this chapter. That date shall not be affected by any subsequent decision, finding or holding by any administrative body or court that the Local Board of Tax Review with which the aggrieved person filed the request did not have jurisdiction to affirm, reverse or modify the assessment or any part of that assessment.

(b) Ending the later of the sixtieth day after the date on which the final determination of the Local Board of Tax Review becomes final or, if any party appeals from the determination of the Local Board of Tax Review, the sixtieth day after the date on which the final determination of the Local Board of Tax Review is either ultimately affirmed in whole or in part or ultimately reversed and no further appeal of either that affirmation, in whole or in part, or that reversal is available or taken.

(B) Prosecutions for an offense made punishable under a resolution or ordinance imposing an income tax shall be commenced within three years after the commission of the offense; provided that, in the case of fraud, failure to file a return or the omission of 25% or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

(C) A claim for a refund of municipal income taxes shall be brought within the time limitation provided in §80.09(F) of this chapter.

(D) (1) Notwithstanding the fact that an appeal is pending, the petitioner may pay all or a portion of the assessment that is the subject of the appeal. The acceptance of a payment by the municipality does not prejudice any claim for refund upon final determination of the appeal.

(2) If upon final determination of the appeal an error in the assessment is corrected by the Tax Administrator, upon an appeal so filed or pursuant to a final determination of the Local Board of Tax Review created under § 880.18 of this chapter, of the Ohio Board of Tax Appeals, or any court to which the decision of the Ohio Board of Tax Appeals has been appealed, so that the amount due from the party assessed under the corrected assessment is less than the amount paid, there shall be issued to the appellant or to the appellant's assigns or legal representative a refund in the amount of the overpayment as provided by § 880.09(F) of this chapter, with interest on that amount as provided by this division (D).

(E) No civil action to recover municipal income tax or related penalties or interest shall be brought during either of the following time periods:

- (1) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties; and
- (2) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

(Prior Code, § 880.19) (Ord. 182-2015, passed 11-23-2015)

§ 880.20 ADOPTION OF RULES.

(A) (1) Pursuant to Ohio R.C. 718.30, the municipality, pursuant to this chapter, grants authority to the Tax Administrator, to adopt rules to administer the income tax imposed by the municipality.

- (2) All rules adopted under this section shall be published and posted on the internet.

(Prior Code, § 880.20)

(B) *Contractors must have tax ID.* At the time a contractor or subcontractor applies for a building permit, he or she must obtain and supply a municipal tax identification number to the Building Department.

(Prior Code, § 880.201)

(C) *New municipal utility service registration.* At the time a deed holder signs for municipality utility service in the municipality, he or she shall be required to complete a form giving all information necessary to determine the income tax status for all persons living or working at that address.

(Prior Code, § 880.202)

(Ord. 182-2015, passed 11-23-2015)

§ 880.21 ELECTION TO BE SUBJECT TO R.C. 718.80 TO 718.95.

(A) The municipality hereby adopts and incorporates herein by reference Ohio R.C. 718.80 to 718.95 for tax years beginning on or after January 1, 2018.

(B) A taxpayer, as defined in division (C) of this section, may elect to be subject to Ohio R.C. 718.80 to 718.95 in lieu of the provisions of this chapter.

(C) "Taxpayer" has the same meaning as in Ohio R.C. 718.01, except that "taxpayer" does not include natural persons or entities subject to the tax imposed under Ohio R.C. Chapter 5745. "Taxpayer" may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.

(Ord. 147-2023, passed 11-13-2023)

§ 880.22 COLLECTION AFTER TERMINATION OF CHAPTER.

(A) This chapter shall continue in full force and effect 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 in full force and effect until all of the taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in § 880.19 of this chapter.

(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 § 880.09(A) of this chapter as though the same were continuing.

(Prior Code, § 880.97) (Ord. 182-2015, passed 11-23-2015)

§ 880.23 SAVINGS CLAUSE.

If any sentence, clause, section or part of this chapter, or any tax imposed against, or exemption from tax granted to, any taxpayer or forms of income 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 so found 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 the legislative authority of the municipality that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included in this chapter.

(Prior Code, § 880.98) (Ord. 182-2015, passed 11-23-2015)

§ 880.99 VIOLATIONS; PENALTY.

(A) Except as provided in division (B) below, whoever violates §§880.05(A), 880.14(A) or 880.15 of this chapter by failing to remit municipal income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than \$1,000 or imprisonment for a term of up to six months, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.

(B) Any person who discloses information received from the Internal Revenue Service in violation of I.R.C. §§ 7213(a), 7213A, or 7431 shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than \$5,000, plus the costs of prosecution, or imprisonment for a term not exceeding five years, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.

(C) Each instance of access or disclosure in violation of §880.14(A) of this chapter constitutes a separate offense.

(D) Whoever violates any provision of this chapter for which violation no penalty is otherwise provided is guilty of a misdemeanor of the third degree on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the second degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the first degree. By way of an illustrative enumeration, violations of this chapter shall include but not be limited to the following acts, conduct and/or omissions:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (2) Knowingly make any incomplete return;
- (3) Willfully fail, neglect, or refuse to pay the tax, penalties and interest, or any combination thereof, imposed by this chapter;
- (4) Cause to not be remitted the municipal income tax withheld from qualifying wages of employees to the municipality as required by § 880.05(A) of this chapter;
- (5) Neglect or refuse to withhold or remit municipal income tax from employees;
- (6) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or her books, records, papers, federal and state income tax returns, or any documentation relating to the income or net profits of a

taxpayer;

(7) Fail to appear before the Tax Administrator and to produce his or her books, records, papers, federal and state income tax returns, or any documentation relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator;

(8) Refuse to disclose to the Tax Administrator any information with respect to such person's income or net profits, or in the case of a person responsible for maintaining information relating to his or her employers' income or net profits, such person's employer's income or net profits;

(9) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator;

(10) To avoid imposition or collection of municipal income tax, willfully give to an employer or prospective employer false information as to his or her true name, correct Social Security number and residence address or willfully fail to promptly notify an employer or a prospective employer of any change in residence address and date thereof;

(11) Fail, as an employer, agent of an employer or other payer, to maintain proper records of employees residence addresses, total qualifying wages paid and municipal tax withheld, or to knowingly give the Tax Administrator false information;

(12) Willfully fail, neglect or refuse to make any payment of estimated municipal income tax for any taxable year or any part of any taxable year in accordance with this chapter;

(13) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter;

(14) For purposes of this section, any violation that does not specify a culpable mental state or intent shall be one of strict liability and no culpable mental state or intent shall be required for a person to be guilty of that violation; and

(15) For purposes of this section, the term **PERSON** shall, in addition to the meaning prescribed in §880.03 of this chapter, include in the case of a corporation, association, pass-through entity or unincorporated business entity not having any resident owner or officer within the municipality, any employee or agent of such corporation, association, pass-through entity or unincorporated business entity who has control or supervision over or is charged with the responsibility of filing the municipal income tax returns and making the payments of the municipal income tax as required by this chapter.

(Prior Code, § 880.99) (Ord. 182-2015, passed 11-23-2015)