

Chapter 880
Earned Income Tax

EDITOR'S NOTE: Continuation of the authority to tax a shareholder's distributive share of the net profits of an "S" corporation to the same extent currently permitted by the Village was approved by the voters on November 2, 2004.

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CROSS REFERENCES

Power to tax - see Ohio Const., Art. XVIII, Sec. 3

Limitation on rate of taxation - see CHTR. Sec. 11.01

Payable deductions - see Ohio R.C. 9.42

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

880.01 PURPOSE.

To provide funds for the purpose of general Municipal operations, maintenance, new equipment, extension, and enlargement of Municipal services and facilities and capital improvements of the Municipality, there shall be, and is hereby levied a tax on qualifying wages and on net profits as hereinafter provided.

(Ord. 325. Passed 4-12-77; Ord. 05-9-1. Passed 11-15-05; Ord. 06-02-02. Passed 2-14-06.)

880.02 DEFINITIONS.

As used in this chapter, the following words shall have the meaning ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning:

(a) "Adjusted Federal taxable income" means a C corporation's Federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, 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 under division (1) of this definition, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in Section 1221 of the Internal Revenue Code;

(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 Section 1221 or 1231 of the Internal Revenue Code;

(4) Except as provided in division (4)B. of this definition:

A. 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 Section 1221 or 1231 of the Internal Revenue Code;

B. Division (4)A. of this definition does not apply to the extent the income or gain is income or gain described in Section 1245 or 1250 of the Internal Revenue Code.

(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 and 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) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted Federal taxable income as if the taxpayer were a C corporation, except:

A. Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and

B. Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

(8) Nothing in this definition 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.

(b) "Administrator" means the individual designated by this chapter, whether appointed or elected, to administer and enforce the provisions of this chapter.

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

(d) "Board of Review" means the Board created by and constituted as provided in Section 880.13.

(e) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit, or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, including, but not limited to, the renting or leasing of property, real, personal or mixed.

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

(g) "Employee" means a person who works for qualifying wages in the service of an employer.

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

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

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

(k) "Intangible income" means 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. Chapter 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 or other similar games of chance.

(l) "Net profit" means for a taxpayer other than an individual, adjusted Federal taxable income; and, for a taxpayer who is an individual, the individual's profit, other than amounts described in Ohio R.C. 718(F), required to be reported on Schedule C, Schedule E, or Schedule F of the taxpayer's Federal income tax return.

(m) "Nonresident" means an individual domiciled outside the Municipality.

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

(o) "Other payer" means 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.

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

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

(r) "Qualifying wages" mean wages as defined in Ohio R.C. 718.03.

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

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

(u) "Taxable income" means any and all income earned or received by an individual or an entity, the taxation of which is not prohibited by Federal law, State law or specifically exempted under Section 880.03(e) of this chapter. Qualifying wages, lottery winnings, and other winnings from any other and all types of gambling shall be considered taxable income. All employee compensation, before any deduction, and/or the net profits from the operation of a business, profession or other enterprise or activity, adjusted in accordance with the provisions of this chapter, shall be considered taxable income.

(v) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(w) "Taxpayer" means a person, whether an individual, firm, company, business trust, estate, trust, partnership, limited liability company, association, corporation, government entity, or other entity, required to file a return or pay a tax.

The singular shall include the plural and the masculine shall include the feminine and the neuter.

(Ord. 325. Passed 4-12-77; Ord. 04-02-01. Passed 2-10-04; Ord. 05-9-1. Passed 11-15-05; Ord. 05-10-1, passed 11-15-05; Ord. 05-11-1. Passed 11-15-05; Ord. 06-02-02. Passed 2-14-06.)

880.03 IMPOSITION OF TAX.

(a) Income Taxed. Subject to the provisions of Section 880.14, an annual tax for the purposes specified in Section 880.01 shall be imposed on and after August 1, 1983, at the rate of one percent per year upon the following:

(1) All qualifying wages, lottery winnings, and other gambling winnings, earned during the effective period of this chapter by residents of the Municipality. Lottery and gambling losses are deductible against lottery and gambling winnings. The administrator shall provide by rules and regulations the manner in which to determine such losses;

(2) On all qualifying wages earned during the effective period of this chapter by nonresidents for work done or services performed or rendered in the Municipality;

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

(4) On the portion of the distributive share of the net profits earned during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to the Municipality and not levied against such unincorporated business entity by the Municipality;

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

(6) On the portion of the distributive share of the net profits earned during the effective period of this chapter of a resident partner or owner of a nonresident unincorporated business entity not attributable to this Municipality and not levied against such unincorporated business entity by this Municipality;

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

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

(c) Operating Loss-Carry Forward.

(1) The portion of a net operating loss sustained in any taxable year subsequent to the effective date of this chapter allocable to the Municipality, may be applied against the portion of the profit of succeeding years allocable to the Municipality, until exhausted, but in no event for more than five taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.

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

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

(d) Consolidated Returns.

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

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

(e) Exception. The tax provided for herein shall not be levied upon qualifying wages or net profits to the extent that such qualifying wages or net profits are exempted from municipal income taxes under Ohio R.C. 718.01(F). The tax provided for herein shall be levied upon the net profits of all utility companies that the municipality is permitted to tax as set forth in Ohio R.C. 718.01(F)(6).

(Ord. 325. Passed 4-12-77; Ord. 437. Passed 7-18-83; Ord. 04-02-01. Passed 2-10-04; Ord. 05-9-1. Passed 11-15-05; Ord. 05-10-1. Passed 11-15-05; Ord. 06-02-02. Passed 2-14-06.)

880.04 EFFECTIVE PERIOD.

The tax imposed by this chapter shall be levied, collected and paid with respect to the qualifying wages, lottery winnings, and other gambling winnings, and with respect to net profits of businesses, professions or other activities earned on and after January 1, 1987.

(Ord. 88-3-1. Passed 3-8-88; Ord. 05-9-1. Passed 11-15-05; Ord. 06-02-02. Passed 2-14-06.)

880.05 RETURN AND PAYMENT OF TAX.

(a) Return Required. Each taxpayer, except as herein provided, shall, whether or not a tax is due, make and file a return on or before April 15 of the year following the effective date of this chapter, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or period. The Administrator is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by said employer or employers from the qualifying wages of an employee, and paid by him, her or them to the Administrator shall be accepted unless otherwise specified as the return required of any employee whose sole income, subject to tax under this chapter is such qualifying wage.

(Ord. 91-8-1. Passed 10-8-91.)

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

(1) The aggregate amount of qualifying wages, lottery winnings, and other gambling winnings and gross income, income from businesses, professions, and other enterprises or activities, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to tax;

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

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

(c) Extensions. For taxable years beginning on and after January 1, 2004, the Administrator may extend the time for filing of the annual return upon the request of the taxpayer, to the last day of the month following the month to which the due date for the filing of the Federal Income Tax Return has been extended. The Tax Administrator may require a tentative return, accompanied by payment of the amount of tax shown to be due thereon, by the date the return is normally due. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

(d) Payment.

(1) The taxpayer making a return shall, at the time of filing thereof, pay to the Tax Administrator the amount of taxes shown as due thereon, provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Section 880.06, or where any portion of the tax shall have been paid pursuant to Section 880.07, or where an income tax has been paid to another municipality pursuant to the provisions of Section 880.14, credit for the amount so paid shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return.

(2) A taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder or, at the taxpayer's election indicated on the return, such overpayment, or a part thereof, shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded. Interest shall be allowed and paid on any overpayment by a taxpayer 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 complete return is filed, whichever is later, no interest shall be allowed on the refunded overpayment. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by Ohio R.C. 5703.47.

(e) Amended Return.

(1) Where necessary an amended return must be filed in order to report additional income and pay any additional tax due, or to claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 880.11 and 880.14. Such amended returns shall be on a form obtainable on request from the Tax Administrator. A taxpayer may not change the method of accounting or apportionment of new profits after the due date for filing the original return.

(2) Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's tax liability to this municipality, such taxpayer shall make and file an amended return showing income subject to the income tax of this municipality based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make a claim for refund of any overpayment.

(f) Notwithstanding the foregoing, for taxable years beginning on or after January 1, 2005, a taxpayer which is subject to any tax on the net profit from a business or profession may file any municipal income tax return or estimated municipal income return, and may make payment of amounts shown to be due on such returns, by using the Ohio business gateway as set forth in Ohio R.C. 718.051(B).

(g) Notwithstanding the foregoing, for taxable years beginning on or after January 1, 2005, a taxpayer which is subject to any tax on the net profit from a business or profession and which has received an extension to file the Federal income tax return shall not be required to notify this municipality of the Federal extension and shall not be required to file any municipal income tax return until the last day of the month to which the due date for filing the Federal return has been extended, provided that, on or before the date for filing the municipal income tax return, the person notifies the Tax Commissioner of the Federal extension through the Ohio business gateway as set forth in Ohio R.C. 718.051(B).

(h) Required filings may be deemed filed when postmarked by the United States Postal Service; the date of receipt recorded by the authorized delivery service (as defined by Ohio R.C. 5703.056), or on the date otherwise delivered to the Tax Administrator during normal business hours.

(Ord. 325. Passed 4-12-77; Ord. 04-02-01. Passed 2-10-04; Ord. 05-9-1. Passed 11-15-05; Ord. 05-10-1. Passed 11-15-05; Ord. 05-11-1. Passed 11-15-05; Ord. 06-02-02. Passed 2-14-06.)

880.06 COLLECTION AT SOURCE.

(a) In accordance with the rules and regulations prescribed by the Tax Administrator, each employer, or other payer, within or doing business within this Municipality, shall deduct, at the time of the payment of such qualifying wage, the tax of 1% of the gross qualifying wage due by the said employer to said employee and shall, on or before the last day of the month following the close of each calendar quarter, make a return and pay to the Tax Administrator the amount of taxes so deducted. Such employer who deducts tax in the amount of one hundred dollars (\$100.00) or more in the first or second month of the calendar quarter shall, on or before the fifteenth day of the following month, file a return and pay to the Tax Administrator the amount of taxes so deducted. Said returns shall be on a form or forms prescribed by or acceptable to the Tax Administrator and shall be subject to the rules and regulations prescribed therefor by the Tax Administrator. Such employer, or other payer, shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld.

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

(c) On or before January 31 of each year, beginning with the year 1978, each employer shall file a withholding return setting forth the names and addresses of all employees from whose compensation the tax was withheld during the preceding calendar year, and the amount of tax withheld, and such other information as may be required by the Tax Administrator. All payments not subject to withholding shall be reported on a form required by the Tax Administrator.

(d) The Tax Administrator, for good cause, may require returns to be filed and payments made immediately.

(e) Any employer may report the amount of municipal income tax withheld from qualifying wages paid on or after January 1, 2007, and may make remittance of such amounts, by using the Ohio business gateway, as set forth in Ohio R.C. 718.051(D)(2).

(Ord. 325. Passed 4-12-77.; Ord. 437. Passed 7-18-83; Ord. 05-9-1. Passed 11-15-05; Ord. 05-10-1. Passed 11-15-05; Ord. 05-11-01. Passed 11-15-05; Ord. 06-02-02. Passed 2-14-06; Ord. 10-11-05. Passed 11-9-10.)

880.07 DECLARATIONS.

(a) Every person who anticipates any taxable income which is not subject to Section 880.06, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 880.03, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity, together with the estimated tax due thereon, if any. However, if a person's income is wholly from wages from which the tax will be withheld and remitted to the Municipality in accordance with Section

880.06, such person need not file a declaration.

(b) Such declaration shall be filed on or before the day on which the annual tax return for the prior year is required to be filed, disregarding any extension, or within four months of the date the taxpayer becomes subject to for the first year.

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

(d) Such declaration shall be filed upon a form furnished by or obtainable from the Tax Administrator, provided, however, that credit shall be taken for the Municipality's income tax to be withheld from any portion of such income. In accordance with the provisions of Section 880.14, credit may be taken for tax to be paid or to be withheld and remitted to another taxing municipality.

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

(f) Such declaration and estimated tax to be paid to this municipality shall be remitted by the taxpayer as follows:

(1) Not more than 22.5% of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before the day on which the annual tax return for the prior year is required to be filed disregarding any extension;

(2) Not more than 45% of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before July 31;

(3) Not more than 67.5% of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before October 31;

(4) Not more than 90% of the taxpayer's estimated tax liability for the current year shall be required to have been remitted on or before January 31;

(5) Any amount deducted and withheld for taxes from the compensation of an individual shall be considered as estimated taxes paid in equal amounts on each of the payment dates prescribed by this section.

(g) On or before the day on which the annual tax return for the prior year is required to be filed, an annual return shall be filed and any balance which maybe due the municipality shall be paid in accordance with the provisions of Section 880.05.

(h) Required filings may be deemed filed when postmarked by the United States Postal Service; the date of receipt recorded by the authorized delivery service (as defined by Ohio R.C. 5703.056; or on the date otherwise delivered to the Tax Administrator during normal business hours.

(Ord. 325. Passed 4-12-77; Ord. 05-11-01. Passed 11-15-05; Ord. 06-02-02. Passed 2-14-06.)

880.08 DUTIES OF TAX ADMINISTRATOR.

(a) It shall be the duty of the Tax Administrator, assisted by and in conjunction with a collection agency, which shall be chosen by this Municipality, to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, to keep an accurate record thereof and to report all monies so received.

(b) It shall be the duty of the Tax Administrator to enforce payment of all taxes owing to this Municipality; it shall be the responsibility of the collection agency so chosen to keep accurate records for a minimum of five years, showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payment thereof.

(c) The Tax Administrator, assisted by and in conjunction with a collection agency, is hereby charged with the enforcement of the provisions of this chapter. The Tax Administrator shall be governed by procedural rules relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns, which shall be adopted by this Municipality.

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

(e) Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand and the provisions of Sections 880.11 and 880.12 shall apply.

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

(g) Subject to the consent of the Board of Review, or pursuant to regulations approved by this Municipality, the Tax Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 880.10.

(Ord. 325. Passed 4-12-77; Ord. 06-02-02. Passed 2-14-06.)

880.09 INVESTIGATIVE POWERS OF TAX ADMINISTRATOR AND COLLECTION AGENCY; PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.

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

(b) The Tax Administrator is hereby authorized to order, in writing, any person presumed to have knowledge of the facts to appear before the Tax Administrator and may examine such person, under oath, concerning any income which was or should have been reported for taxation or any transaction tending to affect such income, and for this purpose may compel, by an order in writing, the production of books, papers, records and Federal Income Tax Returns and the attendance of all persons, whether as parties or witnesses, whenever the Tax Administrator believes such persons have knowledge of such income or information pertinent to such inquiry.

(c) The refusal to produce books, papers, records and Federal Income Tax Returns, or the refusal to submit to such examination, by any employer or person subject or presumed to be subject to the tax, or any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Tax Administrator or collection agency authorized hereby, shall be deemed a violation of this chapter, subject to the penalty provided in Section 880.99.

(d) Any information gained as a result of any returns, investigations, verifications or hearings before the Tax Administrator or collection agent, required or authorized by this chapter or by any rules and regulations promulgated hereunder shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable as set forth in Section 880.99.

(e) Every taxpayer shall retain all records necessary to compute the tax liability for a period of five years from the date the return is filed or the withholding taxes are paid.

(Ord. 325. Passed 4-12-77; Ord. 05-11-1. Passed 11-15-05; Ord. 06-02-02. Passed 2-14-06.)

880.10 INTEREST AND PENALTIES.

(a) All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this chapter, and remaining unpaid after they become due, shall bear interest at the rate of 1.5% per month or fraction thereof.

(b) In addition to interest as provided in subsection (a) hereof, penalties based upon the unpaid tax are hereby imposed as follows:

(1) For failure to pay tax due, other than taxes withheld, 1.5% per month or fraction thereof, together with a penalty of fifty dollars (\$50.00).

(2) For failure to remit taxes withheld from employees, 1.5% per month or fraction thereof, together with a penalty of fifty dollars (\$50.00).

(c) Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Tax Administrator when a return has

been filed in good faith and the tax paid thereon within the time prescribed by the Tax Administrator. Further, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, provided an amended return is filed and the additional tax is paid within three months after final determination of the Federal tax liability.

(d) Upon recommendation of the Tax Administrator, the Board of Review may abate interest, penalties, or both, and upon an appeal from the refusal of the Tax Administrator to so recommend, the Board of Review may nevertheless abate interest, penalties, or both.

(Ord. 325. Passed 4-12-77; Ord. 06-02-02. Passed 2-14-06; Ord. 10-11-05. Passed 11-9-10.)

880.11 COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENTS.

(a) All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by a civil action at law. All additional assessments shall be made and all civil actions to recover Municipal income taxes and penalties and interest thereon shall be brought within three years after the tax was due or the return was filed, whichever is later.

(b) Taxes erroneously paid shall not be refunded, unless a claim for a refund is made. Claims for refund of Municipal income taxes must be brought within the time limitation provided in paragraph (a) of this section.

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

(Ord. 325. Passed 4-12-77; Ord. 06-02-02. Passed 2-14-06.)

880.12 VIOLATIONS.

(a) No person shall:

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

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

(3) Willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;

(4) Willfully fail, neglect or refuse to withhold the tax from employees or remit such withholding to the Tax Administrator;

(5) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine the taxpayer's books, records, papers or Federal Income Tax Returns relating to the income or net profits of the taxpayer;

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

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

(8) Fail to comply with the provisions of this chapter or any written order or subpoena of the Tax Administrator authorized hereby;

(9) Give to an employer false information as to the taxpayer's true name, correct Social Security number and residence address, or fail to promptly notify an employer of any change in residence address and date thereof;

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

(11) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties and interest under this chapter.

(b) For violations that do not require a specific intent, none shall be required and any violation shall be one of strict liability.

(c) Liability shall be imposed on persons who have control over or are charged with the responsibility for filing tax returns and making payments of this income tax.

(d) Prosecutions for an offense made punishable under this section or any other provision of this chapter 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 a

twenty-five percent or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

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

(Ord. 325. Passed 4-12-77; Ord. 05-11-1. Passed 11-15-05; Ord. 06-02-02. Passed 2-14-06.)

880.13 BOARD OF REVIEW.

(a) A Board of Review, consisting of a Chairperson and two other individuals to be appointed by the Mayor, subject to the confirmation of Council, is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 880.09 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal.

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

(c) Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal therefrom to the Board within 30 days from the announcement of such ruling or decision by the Administrator. The Board may affirm, reverse or modify the Tax Administrator's decision or any part of that decision. The Board shall issue a final decision on the appeal within 90 days after the Board's final hearing on the appeal, and send a copy of its final decision by ordinary mail to all of the parties to the appeal within 15 days after issuing the decision. The taxpayer or the Tax Administrator may appeal the Board's decision as provided in Ohio R.C. 5717.011.

(d) Required filings may be deemed filed when postmarked by the United States Postal Service; the date of receipt recorded by the authorized delivery service (as defined by Ohio R.C. 5703.056), or on the date otherwise delivered to the Tax Administrator during normal business hours.

(Ord. 325. Passed 4-12-77; Ord. 05-10-1. Passed 11-15-05; Ord. 5-11-01. Passed 11-15-05; Ord. 06-02-02. Passed 2-14-06.)

880.14 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

(a) Where a resident of the Municipality is subject to a municipal income tax in another municipality, he or she shall not pay a total municipal income tax on the same income greater than the tax imposed at the higher rate.

(b) Every individual taxpayer who resides in the Municipality who receives net profits, salaries, wages, commission or other personal service compensation for work done or services performed or rendered outside of the Municipality, if it is made to appear that he or she has paid a municipal tax on the same income taxable under this chapter to another municipality, shall be allowed a credit against the tax imposed by this chapter of the amount so paid by him or her or on his or her behalf to such other municipality. The credit shall not exceed the tax assessed by this chapter on such income earned in such other municipality or municipalities where such tax is paid.

(c) As used in this section:

(1) "Limited Liability Company" mean A limited liability company formed under Ohio R.C. Chapter 1705 or under the laws of another state.

(2) "Pass-through entity" means a partnership, limited liability company, S corporation, or any other class of entity, the income or profits from which are given pass-through treatment under the Internal Revenue Code.

(3) "Income from a pass-through entity" means partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from other pass-through entities.

(4) "Owner" means a partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.

(5) "Owner's proportionate share" means, with respect to each owner of a pass-through entity, the ratio of (a) the owner's income from the pass-through entity that is subject to taxation by the municipal corporation, to (b) the total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.

(d) If this municipality imposes a tax that applies to income from a pass-through entity, a credit shall be granted to each owner who is domiciled in this municipality for taxes paid to another municipal corporation by a pass-through entity that does not conduct business in this municipality. The amount of the credit shall equal the lesser of the following amounts, subject to division (e) of this section:

(1) The owner's proportionate share of the amount, if any, of tax paid by the pass-through entity to another municipal corporation in this state;

(2) The owner's proportionate share of the amount of tax that would be imposed on the pass-through entity by the municipal corporation in which the taxpayer is domiciled if the pass-through entity conducted business in this municipality.

(e) If this municipality grants a credit for a percentage, less than 100%, of the amount of income taxes paid on compensation by an individual who resides or is domiciled in this municipality to another municipal corporation, the amount of credit otherwise required by division (d) of this section shall be multiplied by that percentage.

(f) Any tax on income of or from a pass-through entity shall apply to income from the pass-through entity in the hands of the owners of the entity.

(g) Except as otherwise provided in Ohio R.C. 718.021, 718.121 and 718.14 (qualifying losses attributable to non-qualified deferred compensation; taxes erroneously paid; and credits for owners of pass-through entities), no credit shall be permitted for nonresidents subject to the income tax of this municipality.

(h) A claim for a refund or credit under this section shall be made in such manner as the Administrator may by regulation provide.

(Ord. 325. Passed 4-12-77; Ord. 05-9-1. Passed 11-15-05; Ord. 05-11-01. Passed 11-15-05; Ord. 06-02-02. Passed 2-14-06.)

880.15 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

This chapter shall continue effective, insofar as the levy of taxes is concerned, until repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provision of this chapter are concerned, it shall continue effective until all of the taxes levied hereunder are fully paid and until any and all suits and prosecutions for the collection of the taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Sections 880.11 and 880.12.

(Ord. 88-3-1. Passed 3-8-88.)

880.16 ALLOCATION OF REVENUE.

Upon receipt by the Municipality, the Clerk-Treasurer shall distribute the Orwell Village Income Tax as follows:

(a) General Fund	82.5%
(b) Capital Improvement Fund	10%
(c) Street Fund	07.5%

(Ord. 99-2-1. Passed 3-9-99; Ord. 05-4-2. Passed 4-12-05.)

880.17 SEPARABILITY.

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

(Ord. 325. Passed 4-12-77; Ord. 06-02-02. Passed 2-14-06.)

880.99 PENALTY.

(a) Whoever violates any of the provisions of this chapter, for which no penalty is otherwise provided, is guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500) or imprisoned not more than six months, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

(b) (1) Whoever violates the provisions of Section 880.09 relative to disclosure of confidential information, shall be punished by a maximum fine of \$500 or imprisonment for not more than six months, or both. Each disclosure shall constitute a separate offense.

(2) In addition to the penalty provided in subsection (b)(1) hereof, an employee of the Municipality who violates Section 880.09 relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(Ord. 325. Passed 4-12-77; Ord. 06-02-02. Passed 2-14-06.)