

CHAPTER 880

CHAPTER 880 Earned Income Tax

- 880.01 Purpose; levy of tax.
- 880.02 Definitions.
- 880.03 Rate and income taxable.
- 880.04 Effective period.
- 880.05 Determination of tax.
- 880.06 Sales in City defined.
- 880.07 Business allocation percentage.
- 880.08 Rental income.
- 880.09 Operating loss carry-forward.
- 880.10 Exceptions.
- 880.11 Date of filing return; persons required to file returns.
- 880.12 Form and content of return.
- 880.13 Extension of time for filing returns.
- 880.14 Consolidated returns.
- 880.15 Amended returns.
- 880.16 Payment of tax on filing of return; overpayment.
- 880.17 Collection at source.
- 880.18 Declaration of income.
- 880.19 Filing of declaration.
- 880.20 Form of declaration.
- 880.21 Payment upon declaration.
- 880.22 Annual returns.
- 880.23 Recovery of unpaid taxes.
- 880.24 Taxes erroneously paid.
- 880.25 Amounts of less than one dollar.
- 880.26 Tax credit.

CHAPTER 880

- 880.27 Disbursement of funds.
- 880.28 Powers and duties of Administrator.
- 880.29 Refusal to produce records.
- 880.30 Retention of records by taxpayers.
- 880.31 Confidentiality of information.
- 880.32 Board of Review established.
- 880.33 Approval of rules and regulations by Board.
- 880.34 Appeals.
- 880.35 Separability.
- 880.36 Continuation of tax; collection after termination.
- 880.37 Interest on unpaid taxes.
- 880.38 Penalties on unpaid tax.
- 880.39 Exceptions to interest and penalty assessments.
- 880.40 Abatement of penalty and interest.
- 880.41 Violations.
- 880.42 Limitation on prosecution.
- 880.43 Failure to procure forms.
- 880.44 Registration of tenants required.
- 880.99 Penalty.

CROSS REFERENCES

- Power to tax - see Ohio Const., Art. XVIII, Sec. 3
- Payroll deductions - see Ohio R.C. 9.42
- Municipal income taxes - see Ohio R.C. Ch. 718
- Contract for collection of Earned Income Tax - see ADM. 234.03

880.01 PURPOSE; LEVY OF TAX.

To provide for the purposes of paying costs of constructing, reconstructing, widening, grading, draining, paving, resurfacing, maintaining, repairing and otherwise improving streets, sidewalks, curbs and gutters, and related infrastructure improvements, costs of constructing and installing storm water improvements, costs of acquiring related equipment and other related municipal street and storm water operating expenses and general municipal functions of the City, there is hereby levied a tax on all salaries, wages, commissions and other compensation, and on net profits, as hereinafter provided.

CHAPTER 880

880.02 DEFINITIONS.

As used in this chapter:

- (a) "Adjusted Federal Taxable Income" means a "C" Corporation's Federal income tax before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute "Adjusted Federal Taxable Income" as if the pass-through entity was a "C" Corporation. This definition does not apply to any taxpayer required to file a return under ORC section 5745.03 or to the net profit from a sole proprietorship;
- (b) "Administrator" means the individual designated by the Mayor to administer and enforce 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 established by and constituted as provided in Section 880.32;
- (e) "Business" means an enterprise, activity, profession or undertaking of any kind conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, excluding, however, all nonprofit corporations which are exempt from the payment of Federal income tax;
- (f) "Corporation" means a corporation or joint stock association organized under the laws of the United States, the State or any other state, territory, foreign country or dependency;
- (g) "Employee" means one who works for wages, salary, commission or another type of compensation 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 salary, wage, commission or other basis of compensation;
- (i) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31;
- (j) "Generic Form" means an electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or requests for refunds, which contain all the information required on the regular tax return, estimated payment forms, and request for refund forms, and are in a similar format that will allow processing of the generic forms without altering the procedures for processing forms;
- (k) "Gross receipts" means the total income from any source;
- (l) "Intangible Income" follows the definition per ORC 718.01(A)(5);
- (m) "Net profits" means a net gain from the operation of a business, profession, enterprise or other activity after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes without deduction of taxes imposed by this chapter and Federal, State and other taxes based on income and, in the case of an association, without deduction of salaries paid to partners and other owners. For tax years 2004 and later, see "adjusted federal taxable income";
- (n) "Nonresident" means an individual domiciled outside the City;
- (o) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business in the City;
- (p) "Person" means a natural person, partnership, fiduciary, association or corporation. When used in a clause prescribing and imposing a penalty, "person," as applied to an unincorporated entity, means the partners or members thereof and, as applied to a corporation, the officers thereof;

CHAPTER 880

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

(r) "Qualifying Wage" follows the definition as set forth in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. "Qualifying Wage" represents employees' income from which municipal tax shall be deducted by the employer, and any wages not considered a part of "qualifying wage" shall not be taxes by the municipality. This definition is effective January 1, 2004, for taxable years 2004 and later;

(s) "Resident" means an individual domiciled in the City;

(t) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business in the City;

(u) "Taxable income" means wages, salaries and other compensation paid by an employer before any deduction and/or the net profits from the operation of a business, profession or other enterprise or activity adjusted in accordance with this chapter;

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

(w) "Taxpayer" means a person, whether an individual, partnership, association, corporation or other entity, required by this chapter to file a return or pay a tax.

880.03 RATE AND INCOME TAXABLE.

An annual tax for the purposes specified in Section 880.01 shall be imposed on and after January 1, 2007, at the rate of 2% per year, of which rate 1% is hereinafter referred to as the Base Tax and 1% is hereinafter referred to as the Additional Tax, upon the following:

(a) On all income, qualifying wages, commissions and other compensation earned during the effective period of this chapter by residents of the City; and

(b) On all income, qualifying wages, commissions and other compensation earned during the effective period of this chapter by nonresidents of the City for work done or services performed or rendered in the City;

(i) A non-resident individual who works in the municipality twelve (12) or fewer days per year shall be considered an occasional entrant, and shall not be subject to the municipality income tax for those 12 days. For purposes of the 12-day calculation, any portion of a day worked in the municipality shall be counted as one day worked in the municipality;

(ii) Beginning with the thirteenth (13th) day, the employer of said individual shall begin withholding the municipality income tax from remuneration paid by the employer to the individual, and shall remit the withheld income tax to the municipality in accordance with the requirements of this Chapter. Since the individual can no longer be considered to have been an occasional entrant, the employer is further required to remit taxes on income earned in the municipality by the individual for the first twelve (12) days;

(iii) If the individual is self-employed, it shall be the responsibility of the individual to remit the appropriate income tax to the municipality and

(iv) The 12-day occasional entry rule does not apply to entertainers or professional athletes, their employees or individuals who perform services on their behalf, or to promoters and booking agents of such entertainment events and sporting events.

CHAPTER 880

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

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

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

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

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

(h) Income earned by a taxpayer from a royalty interest in the production of an oil or gas well, whether managed, extracted or operated by the taxpayer individually or through an agent or other representative, which income shall be included in the computation of net profits from a business activity to the extent that such royalty interest constitutes a business activity of the taxpayer. Where the gross income received by a taxpayer from a royalty interest in the production of an oil or gas well in a taxable year exceeds three thousand (\$3,000), it shall be prima-facie evidence that the income was derived from a business activity of such taxpayer, and the new income from such royalty interest shall be subject to tax.

880.04 EFFECTIVE PERIOD.

The tax levied by this chapter shall be levied, collected and paid with respect to all salaries, wages, commissions and other compensation, and with respect to all net profits of businesses, professions or other activities, earned on and after January 1, 2007.

880.05 DETERMINATION OF TAX.

Net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for purposes of municipal income tax in the same proportion as the average ratio of:

(a) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City during the taxable period to the average original cost of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. As used in this section, "real property" includes property rented or leased by the taxpayer, the value of such property to be determined by multiplying the annual rental thereon by eight;

CHAPTER 880

(b) Wages, salaries and other compensation paid during the taxable period to persons employed in the business or profession for services performed in the City to wages, salaries and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed;

(c) Gross receipts of the business or profession from sales made and services performed during the taxable period in the City to gross receipts of the business or profession during the same period from sales and services, wherever made or performed; and

If the formula does not produce an equitable result, another basis (including books and records method) may, under uniform regulations, be substituted so as to produce such result.

880.06 SALES IN CITY DEFINED.

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

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

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

(c) All sales of tangible personal property which is shipped from a place in the City to purchasers outside of the City, regardless of where title passes, if the taxpayer is not, through his or her own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

880.07 BUSINESS ALLOCATION PERCENTAGE.

The business allocation percentage referred to in Section 880.05 shall be determined by adding together the percentages determined in accordance with subsections (a) through (c) of Section 880.05 or such of these percentages as are applicable to the particular taxpayer and dividing the total so obtained by the number of percentages used in deriving such total. A factor is applicable even though it may be allocable entirely in or outside of the City.

880.08 RENTAL INCOME.

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

Where the gross monthly rental of any and all real properties, regardless of number and value, aggregates one hundred twenty-five dollars (\$125.00) per month or more, it shall be prima-facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental property shall be subject to tax, provided that:

CHAPTER 880

(a) In the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based upon a fixed or fluctuating percentage of gross net sales, receipts or profits of the lessee, whether or not such rental exceeds one hundred twenty-five dollars (\$125.00) per month;

(b) In the case of farm property, the owner shall be considered engaged in a business activity when he or she shares in crops or when the rental is based on a percentage of the gross or net receipts derived from the farm, whether or not the gross income exceeds one hundred twenty-five dollars (\$125.00) per month; and

(c) The person who operates a licensed rooming house shall be considered to be in business whether or not the gross income is one hundred twenty-five dollars (\$125.00) per month or more.

880.09 OPERATING LOSS CARRY-FORWARD.

(a) The portion of a net operating loss, sustained in any taxable year subsequent to January 1, 1967, allocable to the City may be applied against the portion of the profit of succeeding tax years allocable to the City until exhausted, but in no event for more than five taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year;

(b) The portion of net operating loss sustained shall be allocated to the City in the same manner as provided in this chapter for allocating net profits to the City; and

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

880.10 EXCEPTIONS.

The tax levied by this chapter shall not be levied on the following:

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

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

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

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

(e) Alimony received;

(f) Personal earnings of a natural person under eighteen years of age;

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

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

CHAPTER 880

- (i) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State which the City is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business);
- (j) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce;
- (k) Salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State or any act of the General Assembly limiting the power of the City to impose net income taxes; and
- (l) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation. The ordained minister must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination, as recognized by the Internal Revenue Service.

880.11 DATE OF FILING RETURN; PERSONS REQUIRED TO FILE RETURNS.

Each taxpayer, except as herein provided, shall, whether or not a tax is due thereon, make and file a return on or before April 15 of the year following the effective date of this chapter (Ordinance 1988-147, passed July 18, 1988) 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, showing the amount of tax deducted by such employer from the salary, wage, commission or other compensation of an employee, and paid by him or her to the Administrator, shall be accepted as the return required of any employee whose sole income, subject to tax under this chapter, is such salary, wage, commission or other compensation.

880.12 FORM AND CONTENT OF RETURN.

The return for the tax levied by this chapter shall be filed with the Administrator on a form furnished by, or obtainable upon request from, the Administrator, or a generic form that meets the requirements, setting forth:

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

CHAPTER 880

880.13 EXTENSION OF TIME FOR FILING RETURNS.

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

880.14 CONSOLIDATED RETURNS.

(a) Filing of consolidated returns may be permitted or required in accordance with rules and regulations prescribed by the Administrator. Any affiliated group which files a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with the municipality. However, once the affiliated group has elected to file a consolidated return or a separate return with the municipality, the affiliated group may not change their method of filing in any subsequent year without written approval of the Tax Administrator; and

(b) 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 the case of a person who operates a division, branch, factory, office, laboratory or activity in the City constituting only a portion of its total business, the Administrator shall require such additional information as he or she may deem necessary to ascertain whether or not net profits are properly allocated to the City. If the Administrator finds that such net profits are not properly allocated to the City 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 City.

880.15 AMENDED RETURNS.

(a) Where necessary, an amended return shall be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements, limitations, or both, contained in Sections 880.23 through 880.26. Such amended return shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return; and

CHAPTER 880

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

880.16 PAYMENT OF TAX ON FILING OF RETURN; OVERPAYMENT.

(a) A taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the amount of tax shown to be due thereon, provided, however, that where any portion of the tax so due has been deducted at the source pursuant to Section 880.17, or where any portion of such tax has been paid by the taxpayer pursuant to Section 880.18, or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Section 880.26 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 such return; and

(b) A taxpayer who has overpaid the amount of tax to which the City is entitled under this chapter may have such overpayment applied against any subsequent liability hereunder or, at his or her election, indicated on the return, such overpayment or any part thereof shall be refunded, provided that no additional taxes or refunds of less than one dollar (\$1.00) shall be collected or refunded.

880.17 COLLECTION AT SOURCE.

(a) In accordance with rules and regulations prescribed by the Administrator, each employer within or doing business within the City shall deduct, at the time of the payment of such salary, wages, commissions or other compensation, the tax of 2% per year of the gross salaries, wages, commissions or other compensation due by the employer to the employee, and shall, on or before the twentieth day of the month following the close of each calendar quarter, make a return and pay to the Administrator the amount of taxes so deducted, subject to subsections (d) to (f) hereof;

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

(c) The employer, in collecting the tax, shall be deemed to hold the same until payment is made by such employer to the City, and any such tax collected by such employer from his or her employees shall, until the tax is paid to the City, be deemed a trust fund in the hands of such employer;

(d) An employer who deducts a tax of one hundred dollars (\$100.00) or more per month shall pay to the Administrator, before the twentieth of the following month, the amount of taxes so deducted on a monthly basis beginning with the first month the employer exceeds one hundred dollars (\$100.00) in taxes withheld. Quarterly returns shall be filed and paid to the Administrator on or before the twentieth of the following month;

(e) Payments shall be on a form furnished by or obtainable upon request from the Administrator;

CHAPTER 880

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

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

880.18 DECLARATION OF INCOME.

(a) Every resident shall file a declaration of estimated income; and

(b) Every person who anticipates any taxable income 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.

880.19 FILING OF DECLARATION.

(a) The declaration required by Section 880.18 shall be filed on or before April 15 of each year, during the effective period set forth in Section 880.04, or within three and one-half months of the date the taxpayer becomes subject to tax for the first time; and

(b) Those taxpayers reporting on a fiscal year basis shall file a declaration within three and one-half months after the beginning of each fiscal year or period.

880.20 FORM OF DECLARATION.

(a) The declaration required by Section 880.18 shall be filed upon a form furnished by or obtainable from the Administrator. A credit, calculated in accordance with Section 880.26, shall be taken for a portion of the tax to be paid or to be withheld and remitted to another taxing municipality; and

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

880.21 PAYMENT UPON DECLARATION.

The declaration of estimated tax to be paid to the City shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax by April 15, or the day on which the annual tax return for the prior year is required to be filed disregarding any extension, if the

CHAPTER 880

estimated annual tax is \$50.00 or greater. At least a similar amount shall be paid on or before the last day of the seventh, tenth, and thirteenth months after the beginning of the taxable year. However, in case an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

No penalties or interest shall be assessed on estimated payments if the taxpayer has remitted an amount equal to 100% of the previous year's tax liability, provided that the previous year reflected a 12-month period, or if 90% of the actual liability has been received.

880.22 ANNUAL RETURNS.

On or before the 15th day of the fourth month of the year following that for which a declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with Section 880.16.

All residents of the City shall file an annual return or exemption certificate on or before the 15th day of the fourth month following the end of the year for which they are subject for any tax due. Joint returns may be filed by a husband and wife.

880.23 RECOVERY OF UNPAID TAXES.

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

880.24 TAXES ERRONEOUSLY PAID.

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

880.25 AMOUNTS LESS THAN ONE DOLLAR.

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

CHAPTER 880

880.26 TAX CREDIT.

(a) Any taxpayer who is a nonresident of the City and is subject to the tax imposed by this chapter shall receive no credit for any tax paid on his or her income in the municipality of his or her residence, or any other municipality, and shall pay to the City a 2% tax on the income earned within the City;

(b) (1) When a resident of the City is subject to a municipal income tax in another municipality on the same income taxable under this chapter, a credit shall be allowed against the City income tax in the amount of 100% of the amount of municipal income tax paid to another municipality on the same income taxable under this chapter, up to 1.25%. For the purpose of this section, "taxable income" shall include the distributive share of net profits of a resident partner or owner of an unincorporated business entity; and

(2) If such City resident fails, neglects or refuses to file such return or form as is prescribed by the Administrator, he or she shall not be entitled to such credit and shall be considered in violation of this chapter for failure to file a return and make payment of taxes due hereunder.

(c) Any claim for credit for income taxes paid to another municipality on the same income taxable hereunder, or any refund due to the credit provided for herein, must be filed with the Administrator on or before December 31 of the year following that for which such credit is claimed.

(d) No reductions to the rate of the municipal income tax credit set forth in division (b) of this section shall be made unless a majority of the electors of the City voting on the question vote in favor of such reduction.

880.27 DISBURSEMENT OF FUNDS.

(a) All receipts collected under this chapter shall be deposited with a bank having an effective depository agreement with the Municipality.

(b) The base tax, as defined in Section 880.03, collected under this chapter shall be disbursed by the Director of Finance in the following manner:

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

(2) Income tax funds available shall be disbursed in the following manner;

SCM & R Fund	\$215,000 per year
Office on Aging Fund	\$165,000 per year
City Income Tax Fund	6.00% of collections
Police Facility Operating Fund	\$180,000 per year
General Fund	Balance Remaining

(c) Funds which are attributable to the additional tax, as defined in Section 880.03, collected under this chapter, shall be disbursed by the Director of Finance in the following manner:

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

(2) Income tax funds available shall be disbursed in the following manner;

CHAPTER 880

- A. 30% of collections shall be placed in the General Fund;
- B. 45% of collections shall be placed in the SCM&R Fund; and
- C. 25% of collections shall be placed in the Storm Water and Drainage Fund.

(d) The Director of Finance shall be solely responsible for the proper allocation and disbursement of the income tax revenues in accordance with subsections (b) and (c) of this section.

(e) (1) In order to apprise Council and the Mayor as to the current status of the Income Tax Fund, a financial statement shall be prepared each month by the Director of Finance, showing the amount of income tax receipts received, the proportions of allocation and the expenditures for the current month.

(2) A copy of such financial statement shall be given to the Mayor and each Council Member for their study and review.

880.28 POWERS AND DUTIES OF ADMINISTRATOR.

The powers and duties of the Administrator are as follows:

(a) Receipt of Tax. The Administrator shall receive the tax levied by this chapter from the taxpayers in the manner prescribed herein, keep an accurate record thereof and report all moneys so received;

(b) Payment; Records. The Administrator shall enforce payment of all taxes owing to the City and keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and make any return, or both, including taxes withheld, and showing the dates and amounts of payments thereof;

(c) Enforcement; Rules and Regulations. The Administrator shall enforce this chapter and, subject to the approval of the Board of Review, may adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the collection of taxes levied under this chapter and the administration and enforcement of this chapter, including the re-examination and correction of returns;

(d) Installment Payments. The Administrator may arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has proved to the Administrator that, due to certain hardship conditions, he or she is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him or her under this chapter. Failure to make any deferred payment when due shall cause the total unpaid amount, including penalty and interest, to become payable on demand, and Sections 880.23 and 880.41 shall apply;

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

(f) Investigations. The Administrator or any authorized employee may examine the books, papers, records and Federal Income Tax Returns of any employer, taxpayer or person subject to, or whom the Administrator believes is subject to, this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request by the Administrator or his or her

CHAPTER 880

duly authorized agent or employee, the means, facilities and opportunity for making the examinations and investigations authorized in this subsection; and

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

880.29 REFUSAL TO PRODUCE RECORDS.

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

880.30 RETENTION OF RECORDS BY TAXPAYERS.

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

880.31 CONFIDENTIALITY OF INFORMATION.

Any information gained as the result of returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential except for official purposes or except in accordance with proper judicial order. No person shall divulge such information.

880.32 BOARD OF REVIEW ESTABLISHED.

A Board of Review, consisting of a Chairperson and two other individuals, each to be appointed by the Mayor and approved by Council, is hereby established. The Board shall select, each year for a one-year term, one of its members to serve as Chairperson and one to serve as Secretary. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 880.31, 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.

CHAPTER 880

880.33 APPROVAL OF RULES AND REGULATIONS BY BOARD.

All rules and regulations and amendments or changes thereto, which are adopted by the Administrator under the authority conferred by this chapter, shall be approved by the Board of Review before the same become effective.

The Board shall hear and pass on appeals from any ruling or decision of the Administrator and, at the request of a taxpayer or the Administrator, may substitute alternate methods of allocation.

880.34 APPEALS.

Any person dissatisfied with any ruling or decision of the Administrator which is made under the authority conferred by this chapter may appeal there from to the Board of Review within thirty days from the announcement of such ruling or decision by the Administrator, provided the taxpayer making the appeal has filed with the municipality the required return or other documents concerning the obligation at issue. The appeal shall be in writing and shall state why the decision should be deemed incorrect or unlawful.

The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision or any part thereof. Such hearing shall be scheduled within 45 days from the date of appeal. The Board's ruling must be made within 30 days from the date of the closing of the record, shall be in writing and filed with the Administrator, and within 15 days of its decision shall send notices of its decision by ordinary mail to the taxpayer making the appeal.

For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Review/Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

880.35 SEPARABILITY.

If a sentence, clause, section or part of this chapter, or any tax against a person specified in this chapter, 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.

880.36 CONTINUATION OF TAX; COLLECTION AFTER TERMINATION.

(a) This chapter shall continue effective, insofar as the levy of taxes is concerned, until repealed, and insofar as the collection of taxes levied under this chapter and the actions and proceedings for collecting any tax so levied or enforcing this chapter are concerned, this chapter shall continue effective until all taxes levied in such period are fully paid and any and all suits and

CHAPTER 880

prosecutions for the collection of such taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Sections 880.23 through 880.25 and 880.41 through 880.43; and

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 880.11 and 880.17 as though the tax levied in this chapter was continuing.

880.37 INTEREST ON UNPAID TAXES.

All taxes imposed and all moneys withheld or required to be withheld by employers under this chapter and remaining unpaid after they become due shall bear interest at the rate of one percent per month or fraction thereof.

880.38 PENALTIES ON UNPAID TAX.

In addition to the interest provided in Section 880.37, penalties based on the unpaid tax are hereby imposed as follows:

(a) For failure to pay taxes due, other than taxes withheld: one and one-half percent per month or fraction thereof, but not less than twenty-five dollars (\$25.00) for failure to file annual returns when due; and

(b) For failure to remit taxes withheld from employees: ten percent per month or fraction thereof.

880.39 EXCEPTIONS TO INTEREST AND PENALTY ASSESSMENTS.

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

880.40 ABATEMENT OF PENALTY AND INTEREST.

The Tax Administrator shall have the authority to abate a penalty, interest, or both. The determination for abatement will be made after review of the taxpayer's individual circumstances, tax records, and payment history. Additionally, in the event of a refusal to abate by the Tax Administrator, any person dissatisfied with the refusal may appeal to the Income Tax Board of Review pursuant to Section 880.34.

CHAPTER 880

880.41 VIOLATIONS.

No person shall:

- (a) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (b) Make any incomplete, false or fraudulent return;
- (c) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;
- (d) Fail, neglect or refuse to withhold the tax from his or her employees or remit such withholding to the Administrator;
- (e) Refuse to permit the Administrator or any duly authorized agent or employee to examine his or her books, records, papers and Federal Income Tax Returns relating to the income or net profits of a taxpayer;
- (f) Fail to appear before the Administrator and to produce his or her books, records, papers or Federal Income Tax Returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator;
- (g) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer;
- (h) Fail to comply with this chapter or any order or subpoena of the Administrator authorized hereby;
- (i) Give to the employer false information as to his or her true name, correct Social Security number and residence address, or fail to promptly notify an employer of any change in his or her residence address and the date thereof;
- (j) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City tax withheld, or knowingly give the Administrator false information; or
- (k) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

880.42 LIMITATION ON PROSECUTION.

All prosecutions under this chapter must be commenced within five years from the time of the offense complained of, except in the case of failure to file a return or in the case of filing a false or fraudulent return, in which event the limitation of time within which prosecution must be commenced shall be ten years from the date the return was due or the date the false or fraudulent return was filed.

880.43 FAILURE TO PROCURE FORMS.

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

CHAPTER 880

880.44 REGISTRATION OF TENANTS REQUIRED.

(a) On or before February 1, 1982, all owners of rental or leased property who rent to tenants of residential premises shall file with the Finance Director a report showing the names, addresses and Social Security numbers of each such tenant who occupies residential premises within the corporate limits of the City, as of January 1, 1982;

(b) Beginning October 1, 1993, and thereafter, within thirty days after a new tenant occupies residential rental property of any kind within the City, the owner of such rental or leased residential property who rents to tenants shall file with the Finance Director a report showing the names, addresses and Social Security numbers of each tenant who occupies residential premises within the corporate limits of the City;

(c) Beginning October 1, 1993, and thereafter, within thirty days after a tenant vacates a rental or leased residential property located within the City, the property owner of such vacated rental or leased property shall file with the Finance Director a report showing the date of vacation from the rental or leased residential property and identifying such vacating tenant and the tenant's Social Security number; and

(d) For purposes of this section, "tenant" means:

(1) If there is a written lease or rental agreement, the person or persons who sign the written lease or rental agreement with the owner.

(2) If there is an oral lease or rental agreement, the person or persons with whom the owner enters into the oral lease or rental agreement.

880.45 RULES AND REGULATIONS

The City hereby adopts the Regional Income Tax Agency (R.I.T.A.) Rules and Regulations, including amendments that may be made from time to time, for use as the City's Income Tax Rules and Regulations. In the event of a conflict with any provision(s) of the City's Income Tax Ordinance and the R.I.T.A. Rules and Regulations, the Ordinance will supersede. Until and if the contractual relationship between the City and R.I.T.A. ceases, Section 880.45 will supersede all other provisions within this Ordinance regarding promulgation of rules and regulations by the Administrator and approval of the same by the Board of Review.

880.99 PENALTY.

(a) Whoever violates or fails to comply with any of the provisions of this chapter, for which no penalty is otherwise provided, is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than six months, or both, for each offense;

(Adopting Ordinance)

(b) In addition to the penalty provided in subsection (a) hereof, any employee of the City who violates Section 880.31 shall be immediately dismissed; and

(c) Whoever violates Section 880.44 shall be fined not more than twenty-five dollars (\$25.00) for a first offense; not more than fifty dollars (\$50.00) for a second offense; and not more than one hundred dollars (\$100.00) for a third and each subsequent offense. (Ord. 1981-148. Passed 11-4-81.)