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**CHAPTER 880
Municipal Income Tax
Village of Yellow Springs, Ohio**

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880.01 PURPOSE.

To provide funds for the purpose of capital improvements and general operations of the Village of Yellow Springs, there is hereby levied a tax on income, salaries, wages, commissions and other compensation and on net profits as hereinafter provided.

880.02 DEFINITIONS.

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

“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, 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 Ohio Revised Code (ORC) section 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

“Association” means a partnership, limited partnership, limited liability company, Chapter S Corporations as defined in the federal tax code, 26 U.S.C. 1361, or any other form of unincorporated enterprise.

“Board of Tax Appeals” means the Board created by and constituted as provide in Section 880.13.

“Business” means an enterprise, profession, undertaking or other activity of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity.

“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, but not including Chapter S Corporations as defined in the federal tax code, 26 U.S.C. 1361.

“Domicile” means the permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.

“Employee” means one who works for wages, salary, commission or other type of compensation or other income in the service of an employer.

“Employer” means an individual, partnership, association, corporation or governmental body, unit or agency or any other entity, whether or not organized for profit, having a place of business or doing business within the Village, and who or which employs one or more persons on a salary, wage, commission or other compensation or other income basis.

“Fiscal Year” means an accounting period of twelve months or less ending any day other than December 31.

“Generic form” means an electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or separate requests for refunds that contain all the information required on Yellow Springs’s regular tax return, estimated payment forms, and refund forms and are in a similar format that will allow processing of the generic forms without altering the Village’s procedures for processing forms.

“Gross receipts” means the total revenue derived from sales, work done, or service rendered, before any deductions, exceptions, or credits are claimed.

“Income” means all monies derived from any source whatsoever, including but not limited to:

- (A) All salaries, wages, commissions, other compensation and other income from whatever source received by residents of the Village of Yellow Springs.
- (B) All salaries, wages, commissions, other compensation and other income from whatsoever source received by nonresidents for work done or services performed or rendered or activities conducted in the Village of Yellow Springs.
- (C) The portion attributable to the city of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in the Village of Yellow Springs.

“Net profits” means, for taxable years prior to 2004, the net gain from the operation of a business, profession, enterprise or other activity excluding capital gains and losses after provision for all ordinary and necessary expenses, paid or accrued in accordance with the accounting system (i.e., cash or accrual) used by the taxpayer for Federal income tax purposes, adjusted to the requirements of this chapter. (For taxable years 2004 and later, see “adjusted federal taxable income”.)

“Nonresident” means any individual who is domiciled outside the Village.

“Nonresident unincorporated business entity” means an unincorporated business entity not having a place of business within the Village.

“Other activity” means any undertaking, not otherwise specifically defined herein, which is normally entered into for profit, including, but not limited to, rental of real and personal property and a business conducted by a trust or guardianship estate.

“Person” means every nature person, partnership, fiduciary, association or corporation. Whenever used in any section prescribing and imposing a penalty, the employee of an association as such officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

“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.

“Qualifying wage” means Wages as defined 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 taxed by the Village. This definition is effective January 1, 2004.

“Resident” means an individual domiciled in the Village.

“Resident unincorporated business entity” means an unincorporated business entity having a place of business within the Village.

“Superintendent of Taxation” or “Superintendent” means the Superintendent of Taxation of the Village or the person executing the duties of the aforesaid Superintendent of Taxation.

“Taxable income” means income minus the deductions and credits allowed by this chapter. (See “Income” definition.)

“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 fractional part of a year, the period for which such return is required to be made. Unless otherwise approved by the Superintendent, the taxable year of a wage earner shall be a calendar year.

“Taxpayer” means a person, whether an individual, partnership, association, corporation or other entity, required hereunder to file a return or pay a tax.

“Village” means the Village of Yellow Springs, Ohio.

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

880.03 IMPOSITION OF TAX

(a) Rate; Taxable income. Subject to the provisions of Section 880.16, an annual tax for the purposes specified in Section 880.01 shall be imposed on and after January 1, 1984, at the rate of one and one-half percent per year upon the following:

- (1) On all income, qualifying wages, commissions and other compensation earned or received during the effective period of this chapter by residents of the Village.
 - A. For further clarification "income" includes, but is not limited to, Lottery, gambling, and sports winnings, and no deductions shall be allowed against these types of income unless, for federal income tax purposes, the taxpayer is considered a professional gambler.
 - B. Also for clarification, alimony received is taxable.
- (2) On all income, qualifying wages, commissions and other compensation earned or received during the effective period of this chapter by nonresidents for work done or services performed or rendered in the Village.
- (3)
 - A. On the portion attributable to the Village of the net profits earned and accrued or received during the effective period of this chapter of all resident associations, unincorporated businesses, professions or other entities derived from sales made, work done, services performed or rendered and business or other activities conducted in the Village.
 - B. On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to the Village upon which the tax was not paid by the entity.
- (4)
 - A. On the portion attributable to the Village of the net profits earned and accrued or received during the effective period of this chapter of all nonresident associations, 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 Village, whether or not such association or other unincorporated business entity has an office or place of business in the Village.
 - B. On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this chapter of a resident partner or owner of a nonresident association or other unincorporated business entity not attributable to the Village on which the tax was not paid by the entity.
- (5) On the portion attributable to the Village of the net profits earned and accrued or received 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 Village, whether or not such corporations have a place of business in the Village.

(b) Determination of Net Profits. The portion of the entire net profits of a taxpayer to be allocated as having been derived from within the Village shall be determined as follows:

(1) Multiply the entire net profits by a business allocation percentage to be 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 Village 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 the preceding paragraph, real property shall include property rented or leased by the taxpayer, and the value of such property shall be determined by multiplying the annual rental thereon by eight.

B. Wages, salaries and other compensation paid or accrued during the taxable period to persons employed in a business or profession for services performed in the Village to wages, salaries and other compensation paid or accrued during the same period to persons employed in a business or profession, wherever their services are performed. Wages, salaries, and other compensation shall be included to the extent that they represent qualifying wages.

C. Gross receipts of the business or profession from sales made and services performed during the taxable period in the Village to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.

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

(2) As used in paragraph (b)(1)C hereof, "sales made in the Village" means:

A. All sales of tangible personal property which are delivered within the Village regardless of where title passes if shipped or delivered from a stock of goods within the Village;

B. All sales of tangible personal property which are delivered within the Village regardless of where title passes even though transported from a point outside the Village, if the taxpayer is regularly engaged through its own employees in

the solicitation or promotion of sales within the Village and the sales result from such solicitation or promotion;

- C. All sales of tangible personal property which are shipped from a place within the Village to purchasers outside the Village, regardless of where title passes, if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(c) Consolidated Returns.

- (1) 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 Village. However, once the affiliated group has elected to file a consolidated return or a separate return with the Village, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the Superintendent.
- (2) In the case of a corporation that carried on transactions with its Stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the Village constituting a portion of its total business, the Superintendent may require such additional information as he or she may deem necessary to ascertain whether or not net profits are properly allocated to the Village. If the Superintendent finds net profits are not properly allocated to the Village by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he or she shall make such allocation as he or she deems appropriate to produce a fair and proper allocation of net profits to the Village.

(e) Exceptions. The Tax provided for herein shall not be levied upon:

- (1) Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard.
- (2) 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.
- (3) Poor relief, unemployment insurance benefits, pensions paid as a result of retirement, and disability benefits received from local, State or Federal governments or charitable, religious or educational organizations.

- (4) Proceeds of insurance paid by reason of the death of the insured, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
- (5) Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations.
- (6) Personal earnings of all persons under sixteen years of age.
- (7) Expenses deductible on federal form 2106, subject to audit and approval by the Superintendent of Taxation.
- (8) 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 minister must be duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination and be permitted to perform all the sacraments of the religious body, including that of marriage.
- (9) Compensation paid to a precinct election official, to the extent that such compensation does not exceed \$1,000 annually.
- (10) Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exclusion does not apply to compensation paid for lost salaries or wages, or to compensation for punitive damages.
- (11) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio from which the Village is specifically prohibited from taxing and income of a decedent's estate during the period of administration (except such income from the operation of a business).
- (12) Income, 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.
- (13) Income, salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the Village to impose net income taxes.

880.04 EFFECTIVE PERIOD.

(a) The tax shall be levied, collected and paid with respect to the income, salaries, wages, commissions and other compensation earned or received, and shall be levied with respect to the net profits of businesses, professions or other activities

earned and accrued or received, commencing January 1, 1969. This ordinance replaces the Initiative Ordinance, passed 11-5-68, and all amendments and supplements thereto.

(b) Where the fiscal year of the business, profession or other activity differs from the calendar year, the tax shall be applied to that part of the annual net profits for the fiscal year as shall be earned and accrued or received on and after January 1, 1969.

880.05 RETURN AND PAYMENT OF TAX.

(a) Filing Returns. Each person who engages in business or other activity or whose income, salary, qualifying wages, commission or other compensation is subject to the tax imposed by this chapter shall, whether or not a tax is due thereon, make and file a return on or before April 30 of each year for years prior to taxable year 2004, and on or before April 15th for taxable years 2004 and later. 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 for years prior to taxable year 2004, and within 105 days for taxable years 2004 and later.

(b) Required Forms; Contents. The return shall be filed with the Superintendent on a form or forms furnished by or obtainable upon request from the Superintendent or on other forms deemed acceptable by the Superintendent setting forth:

- (1) The aggregate amounts of income, qualifying wages, commissions and other compensation received by the taxpayer and the gross income and gross receipts from a business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earning during the preceding year and subject to such tax; and
- (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 Superintendent may require, including but not limited to copies of all W-2 forms, 1099 Miscellaneous Income Forms, and all applicable federal schedules.

(c) Extensions. The Superintendent may extend the time for filing of the annual return upon the request of the taxpayer for a period not to exceed six months, or for one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax return for taxable years prior to 2004. For taxable year 2004 the extended due date shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. For taxable years subsequent to 2004 the extended due date shall be the last day of the month to which the due date of the federal income

tax return has been extended. The Superintendent 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. The extension request may be made by filing a copy of the taxpayer's request for a federal filing extension, or by filing a written request. The Superintendent may deny the extension if the taxpayer's income tax account with the Village is delinquent in any way. Interest but no penalty will be assessed when an extension has been granted by the Superintendent and the final tax has been paid within the period as extended.

(d) Payment; Credits; Refunds.

- (1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Superintendent the amount of taxes shown as due thereon, provided, however, that credits shall be allowed for:
 - A. Any portion of the tax so due which has been deducted at the source pursuant to the provisions of Section 880.06;
 - B. Any portion of such tax which has been paid by the taxpayer pursuant to the provisions of Section 880.07; and
 - C. Credit to the extent allowed by Section 880.15 for tax paid to another municipality.
- (2) Subject to the limitations contained in Section 880.11, any taxpayer who has overpaid the amount of tax to which the Village is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder or, at his or her election indicated on the return, may have such overpayment or part thereof refunded.

(e) Amended Returns.

- (1) Where necessary, an amended return must 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 and/or limitations contained in Section 880.11. Such amended returns shall be filed on a form obtainable upon request from the Superintendent. A taxpayer may not change the method of accounting (i.e., cash or accrual) or apportionment of net profits after the due date for filing the original return without the approval of the Superintendent.
- (2) Within three months from the final determination of any Federal tax liability affecting the taxpayer's Village tax liability, such taxpayer shall make and file an amended Village return showing income subject to the Village tax based upon such final determination of Federal tax liability, and shall pay any addition tax shown due thereon or make a claim for a refund or any overpayment.

(f) Information Returns, Schedules and Statements. Information returns, schedules and statements required to support tax returns, which are incomplete without such information, shall be filed within the time limits set forth for the filing of

the tax returns, and the failure to file such information returns, schedules and statements shall be deemed to be a violation of this chapter. However, the taxpayer shall have ten days after notification by the Superintendent or his or her authorized representative, to file the items required by this subsection.

(g) The Village shall accept a generic form of its annual income tax return if the generic form once completed and filed contains all of the information required to be submitted with the Village's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the Village governing the filing of returns, reports or documents.

(h) Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this chapter.

(i) All employers that provide any contractual service within the Village, and who employ subcontractors in conjunction with that service, shall provide the Village the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withholding requirements under this chapter.

880.06 COLLECTION AT SOURCE.

(a) Each employer shall, at the time of payment of any income, qualifying wage, commission or other compensation, deduct the tax at the current effective rate stipulated by Section 880.03(a) from the income, qualifying wages, commissions or other compensation due by such employer to his employees who are subject to the provisions of this chapter. In making such deduction at the time of payment, the employer shall compute the tax to the nearest full cent so that mills or five or more shall be increased to the next full cent and mill less than five shall be dropped. No person shall be entitled to a refund merely because such rounding off of the tax results in an apparent overpayment based on his or her total earnings. Each employer shall, on or before the last day of each month, make a return and pay to the Superintendent the tax withheld during the preceding month. However, the Superintendent shall have the authority to approve the filing of returns and payment of the tax withheld on a quarterly basis if the employee tax withheld by the employer for Yellow Springs, in the previous tax year, averaged less than \$300 per month. In such case the employer shall, on or before the last day of each month following the calendar quarters ending March 31, June 30, September 30 and December 31, make a return and pay to the Superintendent the tax withheld during the preceding calendar quarter. Such approval for quarterly filings and payments may be withdrawn by the Superintendent when it is in the best interest of the Village to do so. The Superintendent shall provide, by regulations, the manner in which such approval is to be granted or withdrawn.

(b) The employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax has in fact been withheld.

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

(d) No personal shall be required to withhold the tax on the 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 Village, but such employee shall be subject to all of the requirements of this chapter.

(e) On or before January 31 of each year beginning with the year 1970, each employer shall file a withholding return on a form prescribed by and obtainable upon request from the Superintendent, 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 from such employees and such other information as may be required by the rules and regulations adopted by the Superintendent.

(f) Those officers or employees having control or supervision of, or charged with, the responsibility of collecting and withholding the tax and/or filing the return and making payments for a corporation or association shall be personally liable for failure to collect and withhold the tax, and/or file the return or pay the taxes and penalties and interest due as required. The dissolution, bankruptcy, or reorganization of any employer does not discharge the officers' or employees' liability for a prior failure of such business to collect and withhold the tax and/or file a return or pay the taxes due.

880.07 DECLARATIONS.

(a) Every person who anticipates the receipt of any taxable income which is not subject to collection at the source as provided by Section 880.06, or income which is not taxed at a municipal tax rate equal to or greater than the Village's, 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 person's estimated taxable income together with any estimated tax due thereon, if any.

(b) (1) Such declaration shall be filed on or before April 30 of each year, and on or before April 15th for taxable years 2005 and later, during the life of this chapter.

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year or period, except the filing shall be within 105 days for taxable years 2005 and later.

(c) (1) Such declaration shall be filed upon a form furnished by or obtainable upon request from the Superintendent, or on other forms deemed

acceptable by the Superintendent. Credit shall be taken for the Village tax to be withheld from any portion of such income to determine the estimated tax due. In accordance with the provisions of Section 880.15, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.

- (2) The original declaration (or any subsequent amendment thereof) may be amended at any time.
 - (3) An amended declaration must be filed on or before January 31 of the following year, or in the case of a taxpayer on a fiscal year, on or before the date fixed by regulation of the Superintendent if it appears that the original declaration made for such taxable year underestimated the taxpayer's income by thirty percent or more. At such time a payment, which, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability, shall be made.
- (d) Upon the filing of the return required by Section 880.05, it appears that the taxpayer did not pay ninety percent of his or her tax liability as shown on such return, on or before January 31 or the date fixed by regulations, whichever is applicable, the difference between ninety percent of such taxpayer's tax liability and the amount of estimated tax actually paid on or before January 31 or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Section 880.10, except that no penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the Village on the first day of January in the year in which they became subject to estimated payments, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period.
- (e) (1) Effective January 1, 2003, such declaration of net estimated tax to be paid the Village by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth of 90% of the estimated annual tax, less credit, and 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.
- (2) Effective January 1, 2003, such declaration of estimated tax to be paid to the village by corporations and associations shall be accompanied by a payment of at least one-fourth of 90% of the estimated annual tax and at least a similar amount shall be paid on or before June 15, September 15 and December 15. In the case of a fiscal year taxpayer the second, third, and fourth quarterly estimated

payments shall be due on the fifteenth day of the sixth, ninth, and twelfth months of the taxable year, respectively. 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.

- (3) The last quarterly payment of estimated tax need not be made if the taxpayer files his or her final return and pays the balance of the tax due thereon within forty-five days following the end of his or her taxable year.

(f) The declaration and estimated payments shall be filed upon a form furnished by, or obtainable from the Superintendent, or on a generic form deemed acceptable by the Superintendent.

880.08 DUTIES AND POWERS OF THE SUPERINTENDENT OF TAXATION.

- (a) (1) It shall be the duty of the Superintendent 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 daily all moneys so received.
- (2) It shall be the duty of the Superintendent to enforce payment of all taxes owing the Village, to keep accurate records or a minimum of six 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 payments thereof.

(b) The Superintendent is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of Council, by motion, to adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns. Taxpayers are hereby required to comply with said rules and regulations.

(c) In any case where a taxpayer or employer as failed to file a return or has filed a return which does not show the proper amount of tax due, the Superintendent may assess the amount of tax appearing to be due, together with interest and penalties thereon, if any, in the following manner:

(1) General provisions.

A. If the Superintendent determines that any taxpayer subject to the provisions of this chapter has a tax liability for which he or she as filed no return or has filed an incorrect return and has failed to pay the full amount of tax due, the Superintendent may issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.

1. Such proposed assessment shall be served upon the taxpayer in person or by mailing to his or her last known address. Proof of mailing furnished by the U.S. Post Office shall be presumptive proof receipt thereof by the addressee.
 2. A taxpayer may, within fifteen days after the date the proposed assessment was served or mailed, file a written protest with the Superintendent. Within fifteen days after receipt of the protest, the Superintendent shall give the protestant an opportunity to be heard. The Superintendent may extend the date of hearing for good cause shown. After the hearing the Superintendent shall withdraw the assessment or adjust or reaffirm the assessment, and it shall then become final. If no protest is filed as herein provided, such proposed assessment shall become final fifteen days after being served.
- B. After a proposed assessment becomes final, notice of such final assessment shall be issued and shall be served in the same manner as a proposed assessment.
1. A taxpayer shall have thirty days after the date the final assessment was served or mailed within which to file a written notice of appeal with the Board of Tax Appeals. Such written notice of appeal shall be filed in a sealed envelope plainly marked "Appeal to Board of Tax Appeals" and mailed or delivered to the Superintendent. The Superintendent shall, within five days after receipt thereof, deliver such appeal to the Chairperson of the Board of Tax Appeals or, if the Chairperson is not available, the Vice-Chairperson.
 2. The Board of Tax Appeals shall then proceed in accordance with the provisions of Section 880.13.
- C. When any taxpayer, subject to the provision of this chapter, has filed a return indicating the amount of tax due and has failed to pay such tax to the Superintendent as required by this chapter, the Superintendent need not issue an assessment but may proceed under the provisions of Sections 880.11 and 880.12.

(2) Provisions affecting employers.

- A. If the Superintendent determines that an employer subject to the provisions of this chapter has failed to file a return for tax withheld and has failed to pay to the Superintendent the full amount of such taxes, the Superintendent shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may have

accrued thereon, and the provisions of paragraphs (c)(1)B hereof shall then apply.

- B. If the Superintendent determines that an employer subject to the provisions of this chapter has failed to withhold tax, the Superintendent shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon, and the provisions of paragraphs (c)(1)A and (c)(1)B hereof shall then apply.
- C. When an employer subject to the provisions of this chapter has filed a return indicating the amount of tax withheld and has failed to pay such tax to the Superintendent as required by this chapter, the Superintendent may proceed under the provisions of Sections 880.11 and 880.12 and need not issue an assessment as provided in paragraphs (c)(2)A. and (c)(2)B hereof.

(d) Any taxpayer or employer who has not filed a notice of appeal to the Board of Tax Appeals from a final assessment issued against the taxpayer or employer shall pay the amount thereof within thirty days after service of such final assessment.

(e) When application for deferred payment of tax due is filed by a taxpayer, the Superintendent may authorize partial payments of unpaid taxes when, in his or her judgment, the taxpayer is unable, due to hardship conditions, to pay the full amount of the tax when due and when, in his or her judgment, such deferred payments are the best means of accomplishing the intent of this chapter. However, the Superintendent shall not authorize an extension of time for the payment of such taxes due for more than six months beyond the date of the filing of the application.

**880.09 INVESTIGATIVE POWERS OF THE SUPERINTENDENT;
DIVULGING CONFIDENTIAL INFORMATION.**

(a) The Superintendent or any authorized employee is hereby authorized to examine the books, papers, records and copies of Federal and State income tax returns of any employer or of any taxpayer or person subject to, or whom the Superintendent 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 suppose taxpayer is hereby directed and required to furnish within ten days following a written request by the Superintendent, or his or her duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(b) The Superintendent 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. For this purpose he or she may compel the production of books, papers, records and copies of Federal and State 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.

(c) The refusal to produce books, papers, records and copies of Federal Income Tax Returns, or the refusal to submit to such examination by an 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 the provisions of this section or with an order or subpoena of the Superintendent authorized hereby, shall be deemed a violation of this chapter, punishable as provided in Section 880.00.

(d) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official tax purposes, or except when ordered by a court of competent jurisdiction. No person shall divulge such information. (See Section 880.99(a)).

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

880.10 INTEREST AND PENALTIES.

(a) All taxes imposed and all moneys withheld or required to be withheld by employers under the provisions of this chapter, and remaining unpaid ten days after they become due, shall bear interest at the rate of one-half of one percent per month or fraction of a month.

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

- (1) For failure to pay taxes due, other than taxes withheld: one-half of one percent per month or fraction of a month or ten percent, whichever is greater;
- (2) For failure to remit taxes withheld from employees: three percent per month or fraction of a month or ten percent, whichever is greater;
- (3) If by the due date of the annual return the taxpayer has failed to pay taxes, through tax withheld and/or estimated payments, equal to or greater than the tax paid for the previous year, or to pay taxes equal to or greater than ninety percent of the actual tax for the year: Ten percent of the difference between ninety percent of the actual tax for the year and the amount paid through withholding and/or estimated payments.

(4) Except in the case of fraud, the penalty shall not exceed fifty percent of the unpaid tax.

(c) A penalty shall not be assessed on an additional tax assessment made by the Superintendent when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Superintendent. Further, 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 final determination of the Federal tax liability.

(d) Upon recommendation of the Superintendent, the Board of Tax Appeals may abate penalty or interest or both, and on appeal from the refusal of the Superintendent to so recommend, the Board of Tax Appeals may nevertheless abate interest or penalty, or both.

(e) However, in no case shall penalty and interest charges be levied when the total of such penalty and interest is less than one dollar (\$1.00).

(f) Any person required to withhold the tax, who knowingly fails to withhold such tax or pay over such tax or knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded or not withheld or not paid over. No other penalty under this section shall be applied to any offense to which this penalty is applied.

880.11 COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS.

(a) All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of twenty-five percent of income subject to this 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. In the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover Municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. However, in those cases in which the 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 Superintendent shall be one year from the time of the final determination of the Federal tax liability.

(b) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date when such payment was made or the return was due or within three months after final determination of the Federal tax liability,

whichever is later. However, the following shall apply regarding refunds of tax withheld from non-qualified deferred compensation plans (NDCP):

- (1) A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from a NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.
- (2) A taxpayer who receives income as a result of payments from a NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.
- (3) Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified compensation.

(c) Income tax that has been deposited with the Village, but should have been deposited with another municipality, is allowable by the Village as a refund but is subject to the three-year limitation on refunds. Income tax that should have been deposited with the Village, but was deposited with another municipality, shall be subject to recovery by the Village. The Village will allow a non-refundable credit for any amount owed the Village that is in excess of the amount to be refunded by the other municipality, as long as the tax rate of the other municipality is the same or higher than the Village's tax rate. If the Village's tax rate is higher, the tax representing the net difference of the rates is also subject to collection by the Village.

(d) In the case of delinquencies, Payments received shall first be applied to delinquent penalties and interest, beginning with the oldest delinquency. Upon satisfaction of this debt payments shall then be applied to delinquent taxes, beginning with the oldest delinquency.

(e) Additional amounts of less than one dollar (\$1.00) shall not be refunded or assessed unless such assessment results from income which the taxpayer has failed to report.

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) Knowingly fail or refuse to pay the tax, penalties or interest imposed by this chapter;
- (4) Knowingly fail or refuse to withhold the tax from his or her employees and remit such withholding to the Superintendent.
- (5) Refuse to permit the Superintendent or any duly authorized agent or employee to examine his or her or his or her employer's books, records, papers and copies of Federal income tax returns relating to the income or net profits of a taxpayer;
- (6) Fail to appear before the Superintendent and to produce his or her or his or employer's books, records, papers or copies of Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Superintendent;
- (7) Refuse to disclose to the Superintendent 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 order or subpoena of the Superintendent; or
- (9) 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.

(b) Any person who has filed a return under the provisions of Sections 880.01 through 880.17, indicating the amount of tax due, and who has failed to pay such tax, together with any penalties or interest that may have accrued thereon, shall not be deemed to have committed an offense for having knowingly failed to pay the tax, penalties or interest due as provided in paragraph (a)(3) hereof until the date of the filing of such return.

(c) The term "person", as used in this section, in addition to the meaning prescribed in Section 880.02, includes in the case of an association or corporation not having any partner, member or officer within the Village, any employee or agent of such association or corporation who can be found within the corporate limits of the Village.

(d) All prosecutions under this section must be commenced within the time stipulated in Ohio R.C. 718.12.

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

880.13 BOARD OF TAX APPEALS.

(a) A Board of Tax Appeals, consisting of a Chairperson and two other individuals, each to be appointed by Council and to serve staggered terms of three

years, is hereby created. A majority of the members of the Board shall constitute and quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board shall be conducted privately, and the provisions of Section 880.09 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) The Board shall hear and pass on appeals from any ruling or decision of the Superintendent and, at the request of the taxpayer or Superintendent, is empowered to substitute alternate methods of allocation.

(c) As provided in Section 880.08, any person dissatisfied with any ruling or decision of the Superintendent which is made under the authority conferred by this chapter and the rules and regulations related thereto may appeal there from to the Board of Tax Appeals, within thirty days from the announcement of such ruling or decision by the Superintendent, provided the taxpayer making the appeal has filed with the Village 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 Superintendent, and within 15 days of its decision shall send notice of its decision by ordinary mail to the taxpayer making the appeal.

(d) Any person dissatisfied with any ruling or decision of the Board of Tax Appeals may appeal therefrom to a court of competent jurisdiction within thirty days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

880.14 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be allocated in such manner as prescribed by ordinances adopted by Council.

880.15 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY

(a) Where a resident of the Village 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 highest rate to which he or she is subject.

(b) Every individual taxpayer who resides in the Village and who receives net profits, income, qualifying wages, commissions or other personal service

compensation for work done or services performed or rendered outside the Village, if it is made to appear that he or she has paid a municipal income 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 in 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) A claim for refund or credit under this section shall be made in such manner as the Superintendent may by regulations provide.

880.16 APPLICATION OF CHAPTER; SEPARABILITY

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

880.17 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

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

(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 880.05 and 880.06, as though the same were continuing.

880.99 PENALTY.

(a) Whoever violates any of the provisions of Section 880.09(d) shall be fined not more than five hundred dollars (\$500) or imprisoned not more than six months, or both. Each disclosure shall constitute a separate offense.

In Addition to the above penalty, any employee of the Village who violates the provisions of the section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(b) Whoever violates any of the provisions of this chapter for which no penalty is otherwise provided shall be fined not more than five hundred dollars (\$500) or imprisoned not more than six months, or both.