

City of Xenia
**INCOME TAX
RULES AND REGULATIONS**

ISSUED UNDER
AUTHORITY OF ORDINANCE 82-6, PASSED FEBRUARY 11, 1982

AND UNDER
CHAPTER 880
OF THE
XENIA CODIFIED ORDINANCES

APPROVED BY CITY COUNCIL
FEBRUARY 25, 1982
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CITY OF XENIA, OHIO

INCOME TAX RULES AND REGULATIONS

ARTICLE I

PURPOSE

The tax is levied to provide funds for the purpose of general municipal operations and permanent improvements.

ARTICLE II

DEFINITIONS

As used in these Rules and Regulations, the following words shall have the meaning ascribed to them in this Article, 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 section 5745.03 or to the net profit from a sole proprietorship.

ADMINISTRATOR means the Director of Finance as defined in the Xenia Codified Ordinance, or the delegate of the Director of Finance.

BUSINESS or DIRECT ACCOUNT means an enterprise, profession, undertaking or other activity of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, limited partnership, corporation or any other entity, including but not limited to the leasing of property, real, personal or mixed.

BUSINESS ALLOCATION as used in these Regulations, means the portion of adjusted federal taxable income to be allocated to the City of Xenia as having been made in the City of Xenia or while working for the City of Xenia under the three (3) factor formula of property, payroll, and sales, provided for in Article III A 2 of these Regulations.

CITY means the City of Xenia.

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.

EMPLOYEE means one who works for qualifying wages, salary, commission, other compensation, and other taxable income earned and received in the service of an employer.

EMPLOYER means an individual, partnership, corporation, 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 City and businesses performing services for the City of Xenia and who or that employ one or more persons on a qualifying wages, commission, other compensation, or other taxable income basis.

FISCAL YEAR means an accounting period of twelve months or less ending on any day other than December 31st.

GENERIC FORM means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a refund claim that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income.

GROSS RECEIPTS means the total income from any source whatsoever required is to be included in the return.

MONTH means the first thirty (30) days of any calendar month, beginning on day one (1) through day thirty (30), except in the case of February which shall end March 1 or March 2, dependent upon leap year. (Approved and added 11/11/82.)

NET PROFIT for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit required to be reported on schedule C, schedule E, schedule F, schedule K1, or any other applicable federal schedule.

NONQUALIFIED DEFERRED COMPENSATION PLAN means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code

NON-RESIDENT means any individual who is domiciled outside this City.

NON-RESIDENT UNINCORPORATED BUSINESS ENTITY means an unincorporated business entity not having a place of business within the City.

OHIO BUSINESS GATEWAY means Ohio's central processing system maintained by the Department of Administrative Services.

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.

PARTNERSHIP means all partnerships, limited partnerships or any other form of unincorporated enterprise owned by two or more persons.

PERSON means individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, governmental entities, and any other entities. Whenever used in any section prescribing and imposing a penalty, the term "person" includes an officer or employee of a corporation, or a member or employee of an association, who, 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 regular employees regularly in attendance.

PROPERTY means the rights and interests which an individual or business has in anything subject to ownership, whether that thing be movable or immovable, tangible or intangible, visible or invisible.

QUALIFYING WAGES means wages, as defined in section 312(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code.

RESIDENT means an individual domiciled in this City: Also, an individual temporarily living in Xenia for purposes such as employment and/or education, etc., and who is thereby covered by City services and protection.

RESIDENT UNINCORPORATED BUSINESS ENTITY means an unincorporated business entity having a place of business within the City or doing business with the City.

S CORPORATION means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

SOLE PROPRIETORSHIP means a business entity that is owned entirely by one individual.

TAXABLE INCOME means qualifying wages paid by an employer or employers, compensation for personal services, other income defined by statute as taxable, including all income received as gambling winnings as reported on IRS form W-2G, Form 5754 and or any other form required by the IRS that reports winnings from gambling, prizes, and lottery winnings and net profits, and /or adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this Chapter.

TAX APPEALS COMMITTEE means the Committee created by and constituted as provided in Section 880.13 of the Ordinance.

TAXPAYER means an individual or an officer of any unincorporated enterprise, any corporation, or any other entity, required hereunder to file a return or pay a tax.

UNINCORPORATED BUSINESS means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual (sole-proprietor) or partnership.

ARTICLE III

IMPOSITION OF TAX

A. Bases and procedure for direct filing.

1. Bases

a. General requirements: An annual tax of one and three-quarters percent (1.75%) is imposed on all taxable income received or accrued prior to January 1, 2011 during the effective period of the Ordinance. An annual tax of two and one-quarter percent (2.25%) is imposed on all taxable income received or accrued on or after January 1, 2011 during the effective period of the Ordinance.

b. Individuals:

(1) Residents: For the purpose of determining the tax on the earnings of resident taxpayers taxed under Ordinance Section 880.03, the source of the earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings as listed and defined in Article III B 1 d, or filed as ordinary income on Federal form 1040, 1040A or 1040EZ and adjusted to the requirements of the Ordinance, wherever earned or paid are taxable.

(2) Non-residents: In the case of individuals who are not residents of the City of Xenia, the tax is imposed under Ordinance Section 880.03 on all ordinary income as filed on Federal Form 1040, 1040A or 1040EZ and adjusted to the requirements of the Ordinance, received or accrued for work done or services performed or rendered in the City of Xenia. In the case of a non-resident employed at a place of business within the City of Xenia, the qualifying wages for such non-resident for the performance of employee services will be treated as earned outside the City of Xenia only for those services which of necessity, as distinguished from convenience, obligate such non-resident to duties outside the City of Xenia in service of the non-resident's employer. The location of the place from which payment is made is immaterial. The items subject to the tax are listed and defined in Article III B 1 d and include the net profits of any business. For the methods of computing the extent of such work or services performed within the City of Xenia, in cases involving compensation for personal services partly within and partly without the City, see Article III A 2 c of these Regulations.

c. Types of Businesses:

(1) Sole Proprietorship:

(a) Residents: In the case of residents' ownership of unincorporated businesses, professions, enterprises, undertakings or other entities conducted, operated, engaged in, prosecuted or carried on, irrespective of whether such taxpayers have an office or place of business in the City of Xenia, the tax is imposed on the net profits wherever earned, accrued or received during the effective period of the ordinance.

(b) Non-residents: In the case of non-residents' ownership of unincorporated businesses, professions, enterprises, undertakings, or other activities conducted, operated, engaged in, prosecuted or carried on within or for the City of Xenia, the tax is imposed on the net profits earned, accrued or received during the effective period of the Ordinance, attributable to this municipality, under the formula provided for in Article III A 2 c.

(2) Partnerships: The imposition of the tax on unincorporated business entities owned by two or more persons is upon the partners' distributive shares of the net profits attributable to the City of Xenia, from business conducted, operated, engaged in, prosecuted or carried on within or for the City of Xenia, earned, accrued or received during the effective period of the Ordinance. On and after January 1, 2003, all pass through entities (any class of entity the income or profits from which are given pass-through treatment under the internal revenue code) shall be taxed at the hands of the entity, not the hands of the owners of the entity. (ORC 718.14(D)) In the case of a taxpayer that is not a C corporation and is not an individual, the taxpayer shall compute Federal Taxable Income as if the taxpayer were a C corporation and, in addition to the above adjustments shall not be allowed a deduction for guaranteed payments, payments to a qualified self-employed retirement plan, payments for health or life insurance for an owner or owner-employee, or federal self-employment tax.

(3) Corporations: In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the City of Xenia, the tax is imposed on the net profits earned and received or accrued during the effective period of the Ordinance, attributable to the City of Xenia under the formula provided for in Article III A 2 c of these Regulations.

(a) Corporations required by the provisions of Section 5727.38 to 5727.41, inclusive, of the Revised Code of Ohio, to pay an excise tax in any taxable year as defined by the Ordinance, may exclude that part of their gross receipts upon which the excise tax is paid. In such case, expenses incurred in the production of such gross receipts shall not be deducted in computing net profits subject to the tax imposed by the Ordinance.

(b) "Tax Option" corporations filing form 1120S with the Internal Revenue Service will file as separate business entities, in the same manner as prescribed for regular corporations. In the case of a taxpayer that is not a C corporation and is not an individual, the taxpayer shall compute Federal Taxable Income as if the taxpayer were a C corporation and, in addition to the above adjustments, shall not be allowed a deduction for guaranteed payments, payments to a qualified self-employed retirement plan, payments for health or life insurance for an owner or owner-employee, or federal self-employment tax.

(4) Amplification: In amplification of the definition contained in Article II of these Regulations, but not in limitation thereof, the following additional information respecting net business profits is furnished.

(a) Net Profits:

.1 Net Profits and/or adjusted federal taxable income as used in the Ordinance and these regulations means net profits derived from any business, profession or other activity or undertaking carried on for profit or normally carried on for profit.

.2 Net Profits and or adjusted federal taxable income as disclosed on any return filed pursuant to the provisions of the Ordinance shall be computed by the same accounting method used in reporting net income to the Federal Internal Revenue Service (providing such method does not conflict with any provisions of the Ordinance). Net profits and /or adjusted federal taxable income, shown on returns filed pursuant to the Ordinance must be reconciled with the income reported to the Federal Internal Revenue Service.

(b) Gross Receipts:

.1 Gross Receipts shall include but not be limited to income in the form of commissions, fees, rentals from real and tangible personal property, and other compensation for work or services performed or rendered as well as income from sales of stock in trade.

.2 From gross receipts there shall be deducted allowable expense to arrive at the net profit subject to tax.

(c) Expenses: All ordinary, reasonable and necessary expenses of doing business, including reasonable compensation paid employees, shall be allowed, but no deduction may be claimed for salary or withdrawal of a proprietor or of the partners, members, or other owners of an unincorporated business or enterprise.

.1 If not claimed as part of the cost of goods sold or elsewhere in the return filed, there may be claimed and allowed a reasonable deduction for depreciation, depletion, obsolescence, losses resulting from theft used in the trade or business. However, the amount may not exceed that recognized for the purpose of the Federal income tax; provided, however, that loss on the sale, exchange or other disposition of real estate, used in the taxpayer's business shall not be allowed as a deductible expense.

.2 Current amortization of emergency facilities under the provisions of the Internal Revenue Code, if recognized as such for Federal income tax purposes, may be included as an expense deduction.

.3 Where depreciable property is voluntarily destroyed, only the cost of such demolition and un-depreciated balance thereof will be allowed as an expense in the year of such demolition, to the extent allowable for Federal income tax purposes.

.4 Bad debts in a reasonable amount may be allowed in the year ascertained worthless and charged off or (if the reserve method is used), a reasonable addition to the reserve may be claimed, but in no event shall the amount exceed the amount allowable for Federal income tax purposes.

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.5 Only taxes directly connected with the business may be claimed as a deduction. If for any reason the income from property is not subject to the tax, then taxes on and other expenses of the property are not deductible. In any event, the following taxes are not deductible from income: (1) the tax under the Ordinance; (2) or other taxes based upon income, exclusive of the amount of Ohio franchise tax computed on the net worth basis; (3) gift, estate or inheritance taxes; and (4) taxes for local benefits or improvements to property which tend to appreciate the value of the property. In the case of a real estate investment trust or regulated investment company, add all dividends, distributions, or amounts set aside for the benefit of investors and allowed as a deduction in the computation of federal taxable income.

.6 In general, non-taxable income and expenses incurred in connection with it are not to be considered in determining net profits. Income from intangibles, by way of dividends, interest and the like, shall not be included if such income is subject to taxation under the intangible personal property laws of the State of Ohio or is specifically exempt from taxation under the law.

.7 If the taxpayer reports income that is non-taxable under the Ordinance and such amounts are deducted in order to reconcile the City of Xenia return with the taxpayer's Federal income tax return, expenses attributable to this non-taxable income shall not be allowed. In the absence of records showing the actual expenses attributable to such income, such amount shall be deemed to equal five percent (5%) of such non-taxable income.

.8 Contributions are deductible by corporations only in an amount not exceeding five percent (5%) of the income subject to the tax imposed by this Ordinance. Contributions in excess of the five percent (5%) limit may not be carried forward or backward to a different taxable year.

.9 Capital gains and losses from a sale, exchange or other disposition of capital assets shall not be taken into consideration in arriving at net profits earned.

.10 Losses sustained on sales or other dispositions of tangible personal property used in business are deductible to the extent of the un-depreciated value. Any amount received on a sale or other disposition of tangible property used in business, in excess of original cost, shall be treated as taxable income under the Ordinance to the extent of depreciation allowable after October 1, 1967 (from Federal Form #4797). The balance shall be treated as capital gain.

.01 Definition of "Property Used in the Trade or Business" means, for purposes of this Article, property used in the trade or business of a character which is subject to the allowance for depreciation and real property used in the trade or business, held for more than twelve months, which is not: (1) Property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year; (2) Property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or (3) A copyright, a literary, musical, or artistic composition, or similar property held by the taxpayer.

(5) Rentals from Real Property:

(a) Rentals received by the taxpayer are to be included 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 the taxpayer individually or through agents or other representatives) constitutes a business activity of the taxpayer whether in whole or in part.

(b) Where the gross monthly rental of any real properties, regardless of number and value, aggregate in excess of one hundred dollars (\$100.00) per month, it shall be prima facie evidence that the rental, ownership, management or operation of such properties is a business activity of such taxpayer, and the net income of such rental properties shall be subject to tax; provided that in case of commercial property the owner shall be considered engaged in a business activity when the rental is based on a fixed or fluctuating percentage of gross or net sales, receipts or profits of the lessee, whether or not such rental exceeds \$100.00 per month; provided further that in the case of farm property, the owner shall be considered engaged in a business activity when he shares in the 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 \$100.00 per month; and provided further that the person who operates a rooming house of five or more rooms rented shall be considered in business whether or not the gross income exceeds \$100.00 per month.

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- (c) In determining the amount of gross monthly rental of any real property, periods during which (by reason of vacancy or any other cause) rentals are not received shall not be taken into consideration by the taxpayer.
 - (d) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of business income.
 - (e) Real property, as the term is used in this regulation, shall include commercial property, residential property, farm property and any and all other types of real estate.
 - (f) In determining the taxable income from rentals, the deductible expenses shall be of the same nature, extent and amount as are allowed by the Internal Revenue Service for federal income tax purposes.
 - (g) Residents of this City are subject to taxation upon the net income from rentals (to the extent above specified), regardless of the location of the real property owned.
 - (h) Non-residents of this City are subject to such taxation only if the real property is situated within the City of Xenia. Non-residents, in determining whether gross monthly rentals exceed one hundred dollars (\$100.00), shall take into consideration only real estate situated within this City.
 - (i) Corporations owning or managing real estate are taxable only on that portion of income derived from property located within the City of Xenia.
 - (6) Patents and Copyrights: Income from patents or copyrights is not to be included in net profits subject to the tax if the income from such patents or copyrights is subject to the State intangible tax. Conversely, such a state intangible tax is not deductible in determining City tax. Such items shall be clearly disclosed on an attachment which also includes a copy of the state intangible tax form to be filed with the City tax return.
 - (7) Operating losses:

 - (a) Commencing with taxable years beginning subsequent to December 31, 1985, the net loss from an unincorporated business activity, real estate investments and partnerships may not be used to offset qualifying, wages, commissions, other compensation, or other taxable income. However, if a taxpayer is engaged in two or more such taxable activities to be included in the same return, the net loss of one unincorporated activity (except any portion of a loss separately reportable for municipal tax purposes to another taxing entity) may be used to offset the profits of another for purposes of arriving at overall net profits. (Approved and added 7/15/85)
 - (b) Losses are deductible only in the taxable period in which they are incurred.
 - (c) Expenses as itemized and deductible from gross income on Federal Schedule A will not be allowed as expenses on the Form R or generic form with the exception of expenses allowable on Form 2106 and Line 27 "Other Miscellaneous Deductions" for the deduction of gambling losses up to the amount of gambling winnings. Net gambling income is fully taxable and may not be offset by any other type of business loss.
 - (8) Exceptions: The following shall not be considered taxable:

 - (a) Poor relief, Federal and State unemployment insurance benefits, old age pensions or similar payments received from local, state or federal governments or charitable or religious organizations
 - (b) Proceeds of insurance paid by reason of the death of the insured, annuities, workman's compensation insurance, social security benefits, pensions, compensation for damages for personal injuries and like reimbursement, not including damages for loss of profits.
 - (c) Compensation for damage to property by way of insurance or otherwise.
 - (d) Interest and dividends from intangible property as listed by individuals on IRS form #1040, Schedule B. (Approved & added 7/15/85)
 - (e) 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 (ORC 718.01).
 - (f) Personal earnings of all persons under sixteen years of age.
 - (g) Employment of newsboys, as such, under eighteen years of age.
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- (h)** Any charitable, educational, fraternal, or other type of non-profit association or organization enumerated in Section 718.01 of the Revised Code of Ohio which is exempt from payment of real estate taxes is exempt from payment of the tax imposed by the Ordinance.
- .1** Any organization listed in the preceding paragraph not exempt from the payment of real estate taxes is required to file declarations and final returns and remit the taxes levied under the Ordinance on all business activities of a type ordinarily conducted for profit by taxpayers operating for profit.
- .2** Where such non-profit association or organization conducts income producing business both within and without the corporate limits, it shall calculate its profits allocable to the City of Xenia under the methods provided in Article III A 2 c of these Regulations.
- (i)** Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.
- (j)** Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually. Such compensation in excess of one thousand dollars may be subjected to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.
- (k)** Compensation paid to an employee of a transit authority, regional transit authority, or regional transit commission created under Chapter 306. of the Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the municipal corporation, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such a tax by reason of residence or domicile in the municipal corporation, or the headquarters of the authority or commission is located within the municipal corporation.
- (l)** The income of a public utility, when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Revised Code, except a municipal corporation may tax the following, subject to Chapter 5745. of the Revised Code:
- .1** Beginning January 1, 2002, the income of an electric company or combined company.
- .2** Beginning January 1, 2004, the income of a telephone company.
- (m)** On and after January 1, 2001, compensation paid to a nonresident individual to the extent prohibited under section 718.011 of the Revised Code.
- (n)** An S corporation shareholder's distributive share of net profits other than that which represents wages as defined in section 3212(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.
- (o)** Qualifying wages, commissions, 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.
- (p)** Qualifying wages, commissions, 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 City to impose net income taxes.
- (q)** On and after January 1, 2001 compensation paid to an individual for personal services performed within the Municipal Corporation twelve (12) or fewer days in the calendar year unless one of the following applies:
- .1** The individual is an employee of another person, the principal place of business of the individual's employer is located in another municipality in Ohio that imposes a tax applying to compensation paid to the individual for services paid on those days; and the individual is not liable to that other municipality for tax on the compensation paid for such services.
- .2** The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the Municipality.
- (r)** Employee wages earned by non-resident, active duty military spouses as defined in the Soldiers and Sailors Relief Act (SSCRA).

2. Procedure

a. Identification and filing individual returns and net profit returns.

(1) Responsibility for identification:

(a) Resident individuals: All resident individuals shall, as they establish residency within the City of Xenia, complete a Questionnaire (Form #ITD 4001-A) in its entirety, for the purpose of determining their tax liability, and the tax liability of persons residing within the household. Form #ITD 4001-A is available upon request from the Division of Income Tax, and shall be completed and returned to that office within 30 days of occupancy within the City. All resident individuals, regardless of the length of their residency within the City of Xenia, shall complete Questionnaires upon the request of the Division of Income Tax and return same within fifteen (15) working days. Should the resident fail to return the completed Questionnaire within the specified time, a second notice will be sent. If no response is received to the second notice, an account will be activated and all residents known to reside at that address will be required to file a Xenia City income tax return, whether or not a direct liability to the City exists.

(b) Non-resident individuals working within the corporate limits of the City of Xenia or for the City of Xenia, and on whose qualifying wages, commissions or any other compensation constituting taxable income under this Ordinance, the employer is not required to withhold Xenia City income tax, shall advise the Division of Income Tax of their direct liability within 30 days of such employment. A Questionnaire (Form #ITD 4001-A or Form #IT-4002) obtainable from the Division of Income Tax shall be completed and returned within fifteen (15) working days following the employment notification (above).

(c) Business entities: Except as provided herein, it is the duty of each business entity doing business within or for the City of Xenia to identify their business with the City's Division of Income Tax within fifteen (15) working days of establishing their business, through the completion of a Questionnaire, form #IT 4002. It is also the duty of each business to identify subcontractors working for their businesses and to submit Form 1099-MISC to the City of Xenia Division of Income Tax for said contractors on or before February 28 each year.

(d) It shall be the responsibility of the taxpayer to inform the Administrator, in writing, of any change of the taxpayer's address within 30 days of such change. (Approved & amended 11/21/89)

b. Date and Requirement for Filing Direct Returns:

(1) On or before April 15 of the year following the effective date of the Ordinance and each year thereafter, every person and business entity subject to the provisions of Article III A 1 of the Regulations shall, except as provided, make and file with the Division of Income Tax a return on Form R for Individuals or Form R-B for Businesses, obtainable upon request from the City of Xenia, Division of Income Tax, whether or not tax is due. Effective for tax years beginning after 2007, the filing date for filing on a calendar year basis shall not be required to be filed on any date before the filing date for the corresponding tax year reporting period as prescribed for such a taxpayer under the Internal Revenue Code.

(2) If the return is made for a fiscal year or any period less than a year, the return shall be made by the 15th day of the fourth month following the end of such fiscal year or other period.

(3) Every person subject to the provisions of Article III A 1 of these regulations shall file a return setting forth the aggregate amount of income taxable under the Ordinance, earned and accrued or received for the period covered by the return and such other pertinent facts and information in detail as listed on Form R (Individual) or Form R-B (Business). Any taxpayer having taxable income from more than one source is required to file only one Form R (Individual) return.

(4) A husband and wife are encouraged to file a joint return.

(5) The fact that any taxpayer is not required to file a Federal tax return does not relieve them from filing a City of Xenia tax return.

(6) Residents 65 years of age or older with no city taxable earned income, no businesses (including rental properties) and no gambling winnings are not required to file an annual Xenia Income Tax return beginning with the first tax year after they reach their 65th birthday. The resident must notify the Tax Division in writing of their change in status. On a joint tax return, both spouses must be 65 years of age or older to be eligible for both individuals to stop filing an annual return. The requirement to file is waived until the next tax year that the resident has city taxable earned income, a business (including rental properties) and/or gambling winnings. (continued next page)

(7) The filing of an annual Xenia Income Tax return will be waived for residents with no city taxable income and with medical/mental disabilities that make them incapable of understanding their responsibility to file a Xenia Income Tax return if the resident and their healthcare provider complete and file with the Income Tax Division FORM IT-HEALTH PROVIDER available from the Xenia Income Tax Division.

(8) A servicemember or their spouse do not lose or acquire a residence or domicile for purposes of taxation by reason of being absent or present in any tax jurisdiction of the United States solely for military service or to be with their spouse servicemember in compliance with the servicemember's military orders if the residence or domicile is the same for the service member and their spouse. Active duty servicemembers and their spouses residing together within the City of Xenia only to comply with active duty military orders and who have continued to maintain a residence or domicile outside the City of Xenia, are not required to file a Xenia Income Tax return if the appropriate State of Ohio form proving non-residence is submitted to the Tax Division annually on or before tax return due date for calendar filers. An exception to this rule is if the active duty servicemember or their spouse has a business located in or doing business within the City of Xenia since all business income generated within the City of Xenia is taxable or if the active duty servicemember has any type of income for services other than their active duty military pay.

c. Allocation of Business Profits:

(1) Business Allocation Percentage Method

(a) STEP 1. Ascertain the percentage which the average original cost of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within the City of Xenia is of the average original cost of all real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.

.1 The percentage of taxpayer's real and tangible personal property within the City of Xenia is determined by dividing the average original cost of such property within the City of Xenia (without deduction of any encumbrances) by the average original cost of all such property within and without the City of Xenia. In determining such percentage, property rented to the taxpayer as well as real and tangible personal property owned by the taxpayer must be considered.

.01 The original cost of real and tangible personal property rented by the taxpayer shall be determined by multiplying the gross annual rents payable by eight (8).

.02 Gross rents means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or possession of property and includes (1) any amount payable for the use or possession of real and tangible personal property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales profits or otherwise; and (2) any amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs, or other amounts required to be paid by the terms of a lease or other arrangement.

(b) STEP 2. Ascertain the percentage which the total qualifying wages, commissions and other compensation of employees within the City of Xenia is of the total qualifying wages, commissions and other compensation of all the taxpayer's employees within and without the City of Xenia during the period covered by the return.

.1 Salaries and reasonable compensation paid owners or credited to the account of owners or partners during the period covered by the return are considered qualifying wages for the purpose of this computation.

.2 Qualifying wages and other compensation shall be computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.

.3 In the case of an employee who performs services both within and without the City of Xenia, the amount treated as compensation for services performed within Xenia shall be deemed to be:

.01 In the case of an employee whose compensation depends directly on the volume of business secured by him, such as a salesman on a commission basis, the amount received by him for the business attributable to his efforts within the City of Xenia.

.02 In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation received which the value of his services within the City of Xenia bears to the value of all his services; and,

.03 In the case of an employee compensated on a time basis, the proportion of the total amount

received by him which his working time within the City of Xenia is of his total working time.

(c) STEP 3: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made and services rendered in the City of Xenia is of the total gross receipts wherever derived during the period covered by the return.

.1 The following sales shall be considered the City of Xenia's sales:

.01 All sales made through retail stores located within the City of Xenia to purchasers within or without the City of Xenia except such of said sales to purchasers outside the City of Xenia that are directly attributable to regular solicitations made outside the City of Xenia personally by taxpayer's employees

.02 All sales of tangible personal property delivered to purchasers within the City of Xenia if shipped or delivered from an office, store, warehouse, factory, or place of storage located within the City of Xenia.

.03 All sales of tangible personal property delivered to purchasers within the City of Xenia even though transported from a point outside the City of Xenia if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City of Xenia and the sale is directly or indirectly the result of such solicitation.

.04 All sales of tangible personal property shipped from an office, store, warehouse, factory or place of storage within the City of Xenia to purchasers outside the City of Xenia if the taxpayer is not, through its own employees regularly engaged in the solicitation or promotion of sales at the places of delivery.

.05 Charges for work done or services performed incident to a sale, whether or not included in the price of the property shall be considered gross receipts from such sale.

.2 In the application of the foregoing subparagraphs a carrier shall be considered the agent of the seller regardless of the FOB point or other conditions of the sale; and the place at which orders are accepted or contracts legally consummated shall be immaterial. Solicitation of customers outside the City of Xenia by mail or phone from an office, or place of business within the City of Xenia shall not be considered a solicitation of sales outside the City of Xenia.

(d) STEP 4: Add the percentages determined in accordance with Steps 1, 2 and 3 or such of the aforesaid percentages as may be applicable to the particular taxpayer's business and divide the total so obtained by the number of percentages used in ascertaining the total. The result so obtained is the business allocation percentage. In determining the average percentage, a factor shall not be excluded from the computation merely because the factor is found to be allocable entirely outside the City of Xenia. A factor is excluded only when it does not exist anywhere.

(e) STEP 5: The business allocation percentage determined in Step 4 above shall be applied to the entire taxable net profits of the taxpayer wherever derived to determine the net profits allocable to the City of Xenia.

(2) Substitute Method:

(a) In the event a fair and equitable result cannot be obtained under the formula, the Administrator, upon application of the taxpayer, may substitute other factors in the formula or prescribe other methods of allocating net income calculated to effect a fair and proper allocation.

(b) Application to the Administrator to substitute other factors in the formula or to use a different method to allocate net profits must be made in writing before the end of the taxable year. The application shall state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought to be obtained. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method, he must continue to so file until given permission to change by the Administrator.

d. Consolidated Returns.

- (1) Consolidated returns may be filed by a group of corporations who are affiliated through stock ownership provided such group files consolidated returns for Federal income tax purposes. For a subsidiary corporation to be included in a consolidated return, eighty percent (80%) of its stock must be owned by the other members of the affiliated group. A consolidated return must include all companies which are so affiliated.
- (2) Once a consolidated return has been filed for any taxable year, the consolidated group must continue to file consolidated returns in subsequent years unless:
 - (a) Permission in writing is granted by the Administrator to file separate returns.
 - (b) A new corporation other than a corporation created or organized by a member of the group has become a member of the group during the taxable year.
 - (c) A corporation member of the group is sold or exchanged. Liquidating a corporation or merging one of the corporations of the group into another will not qualify the group for filing separate returns.
- (3) If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income for the entire taxable year of the common parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary which becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member of the group, but for the period after it ceases to be a member, separate returns must be filed. If a corporation has been a member of the affiliated group for less than one (1) month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member of the group does not exceed one (1) month. If a subsidiary is a member of the consolidated group for only part of a taxable year, the income considered to be earned in such fractional part of the year shall be that portion of the net income for the entire year which the number of days it was a member of the group bears to the total number of days in the taxable year.
- (4) In determining the allocation fraction where a corporation becomes a member of the group or ceases to be a member of the group during the taxable year, the property factor (Step 1 of the formula) shall be determined on the basis of the average original cost of the property during the period such corporation was a member of the group. The rental portion of the factor, however, shall be computed at eight (8) times the annual rent. The gross receipts and wage factors shall be based on the actual figures.
- (5) All subsidiary corporations must agree in writing to the filing of the consolidated return as they will be liable for the tax as well as the parent corporation.
- (6) In consolidating the net income, the taxable income of each corporation shall be computed in accordance with the provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of the affiliated group.
- (7) In determining expenses that are not allowable because they are allowable to non-taxable income, such calculations shall be based on the consolidated net income. As an example, inter-company dividends which are eliminated in the consolidation shall not be taken into consideration in determining non-taxable income.

e. Other information required to reconcile with Federal returns:

- (1) Resident individual taxpayers who file Form 1040 or Form 1040A with the Internal Revenue Service, must include with their Form R or generic form, copies of the 1040 or 1040A (if applicable to report income not included on any other Federal schedule or when deducting 2106 Expense) along with copies of the following Federal Schedules as filed with their Federal returns:
 - (a) All W-2 Wage or Gambling Winning Information Forms
 - (b) Schedule C - Profit or <Loss> from Business or Profession
 - (c) Form 4797 - Supplemental Schedule of Gains and Losses (Recovery of Depreciation - ordinary income only)
 - (d) Schedule E - Supplemental Income Schedule
 - (e) Schedule F - Farm Income and Expenses
 - (f) Form 2106 - Employee Business Expenses

(continued next page)

- (g) Schedule K-1 (Form 1065) - Partner's Share of Income, Credits and Deductions, etc.
- (h) Form 1099-MISC - Non-Employee Compensation, Gambling Winnings
- (i) Schedule A
- (2) Non-resident individual taxpayers who file Form 1040 or Form 1040A with the Internal Revenue Service, must include with their Form R or generic form, any of the above mentioned Federal schedules that apply to income earned or accrued within or from the City of Xenia, whether or not that income is taxable under the Ordinance in whole or in part.
- (3) Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof. Federal Form 1041 (U.S. Fiduciary Income Tax Return) must be included with Form R-B (Business) or generic form.
- (4) Partnerships:

 - (a) All resident partnerships will file a return. A complete Federal Form 1065 (U.S. Partnership Return of Income) must be included with the Xenia Form R-B (Business) or generic form. Payment of any tax due will be paid by the partnership as an entity.
 - (b) Non-resident partnerships having net profits attributable to the City of Xenia, will file a return as stated above and adjusted to the requirements of the Ordinance, but shall pay the tax due as an entity.
 - (c) In the case of a resident individual partner or part owner of a non-resident business, the partner's distributive share of net profits is reported with the individual's return as listed in paragraph (e)(1) above.
- (5) Corporations will include with the filing of Form R-B (Business) or generic form, a copy of Federal Form 1120 (U.S. Corporate Income Tax Return) or 1120S (U.S. Small Business Corporation Income Tax Return), including Form 4797 (Supplemental Schedule of Gains and Losses), when applicable. In addition, when deducting that portion of the Ohio Corporation Franchise Tax based on net worth, a copy of the Ohio Corporation Franchise Tax Report (Form FT 1120) must be included to substantiate the deduction. In the case of a tax option corporation, a resident owner or part owner of a non-resident S Corporation, the owner's distributive share of net profits is reported with the individual's Form R or generic return to the extent it is taxable to the Municipality.
- (6) A Xenia City Income Tax Return (Form R for Individuals, Form R-B for Businesses or generic form) shall not be considered as filed until it is received complete with all the above listed applicable Federal Schedules by the Division of Income Tax. All incomplete returns shall be returned to the taxpayer. It shall be the responsibility of the taxpayer to file the completed return by the due date as specified in paragraph 2 b. above.
- (7) Where figures of total income, total deductions, and net profits are included, as shown by a Federal return, any items of income which are not subject to the City of Xenia tax and unallowable expenses shall be eliminated in determining net income subject to the Xenia tax. In the absence of records showing the actual allowable expenses, such expenses shall be determined in accordance with Article III A 1 c (4) (c) .7 of these Regulations.
- (8) If a change in Federal income tax liability, made by the Federal Internal Revenue Service, or by a judicial decision, results in an additional amount of tax payable to the City of Xenia, a report of such change shall be filed on Form R for Individuals, Form R-B for Businesses or generic form as an amended return by the taxpayer within three (3) months after receipt of the final notice from the Federal Internal Revenue Service or final Court decision.
- (9) If a change in Federal income tax liability results in a reduction of taxes owed and paid to the City of Xenia, a claim for refund shall be filed on Form R for Individuals, Form R-B for Businesses or generic form as an amended return with the Division of Income Tax as prescribed in Article VIII B 1 of these Regulations.
- (10) An employee who is permitted to deduct business expenses from qualifying wages or commissions must file a return (Form R or generic form) in order to claim such deductions even though all or part of such qualifying wages or commissions are subject to withholdings. Federal Form 2106 or Federal Schedule C must be attached to the return.
- (11) Itemized deductions from Federal Schedule A are not allowed in the determination of taxable income under this chapter except for Form 2106 expenses and gambling expenses to the extent of winnings.
- (12) Resident individuals of the City of Xenia who are required to pay and do pay a tax to another municipality on qualifying wages, commissions or other compensation, for work done or services performed in such other municipality must seek reimbursement of their 2106 employee business expenses from the municipality where the income was earned and taxed. Xenia taxable income cannot be reduced for employee business expenses on income that was earned and taxed in another municipality.

f. Extensions:

- (1) Upon receiving a copy of the taxpayer's request for a Federal filing extension on or before the due date for filing the return, and for good cause shown, the Administrator may extend the time for filing such return until the last day of the month following the month of the due date granted by the Federal Internal Revenue Service. No non-filing penalty shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended, provided all other filing and payment requirements of the Ordinance have been met. An extension to file is not an extension to pay and extension requests must be accompanied by estimated taxes due to avoid non-payment penalties and/or interest.
- (2) Information returns, schedules, and statements needed to support tax returns are to be filed within the time limits set forth for filing the tax returns.
- (3) The request for extension of time to file may be denied if the individual taxpayer:
 - (a) Fails to timely file the request.
 - (b) Fails to file a copy of the request for the Federal extension.
 - (c) If the taxpayer owes delinquent income tax or any penalty, interest, assessment, or other charge for the late payment or nonpayment of income tax.
 - (d) If the taxpayer has failed to file any required income tax return, report, or other related document for a prior tax period.
- (4) On and after January 1, 2005, any taxpayer that is subject to any municipal corporation's tax on the net profit from a business or profession and has received an extension to file the federal income tax return shall not be required to notify the municipal corporation of the federal extension and shall not be required to file any municipal income tax return until the last day of the month to which the due date for filing the federal return has been extended, provided that, on or before the date for filing the municipal income tax return, the person notifies the tax commissioner of the federal extension through the Ohio Business Gateway. An extension of time to file is not an extension of time to pay any tax due.

g. Payment with Return:

- (1) The taxpayer making a return shall, at the time of the filing hereof, pay to the Division of Income Tax the amount of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source pursuant to the provisions of Article III B of these regulations, or where any portion of said tax shall have been paid by the taxpayer pursuant to the provisions of Article V of these Regulations or where an income tax has been paid to another municipality, credit for the amount so paid in accordance with Article XI hereof, shall be deducted from the amount shown to be due. Only the balance, if any, shall be due and payable at the time of filing said return.
- (2) A taxpayer who has overpaid the amount of tax to which the City of Xenia is entitled under the provisions of the Ordinance may have such overpayment applied against any subsequent liability, or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than two dollars (\$2.00) shall be collected or refunded.

h. Interest and penalties for late filing and payment of direct tax liability, in accordance with Ordinance Section 880.10:

- (1) Interest: Except as provided in paragraph h (3) and (4) below all taxes imposed under the provisions of the Ordinance and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid taxes and penalties and interest, at the rate not to exceed of one and one-half percent (1 1/2%) per month or fraction thereof, compounded monthly. (Approved & amended 11/21/89)
- (2) Penalties: In addition to interest as provided in paragraph (1) of this Article, penalties based on the un-filed and unpaid tax are hereby imposed as follows:
 - (a) Late Filing Penalty: For failure to file Xenia Form R, Form R-B or generic form, together with all appropriate supporting Federal schedules, when due: five percent per month, not to exceed twenty-five percent (25%) of the unpaid taxes due, or twenty-five dollars (\$25.00), whichever is greater (Approved & amended 11/21/89).
 - (b) Non-Payment Penalty: For failure to remit the taxes due at the time of filing the Form R, Form R-B or generic form: five percent per month, not to exceed twenty-five percent (25%) of the unpaid taxes due.
 - (c) Minimum Late Filing Penalty: For failure to file a Xenia Form R, Form R-B or generic informational return, together with all appropriate supporting Federal schedules and information required by Article III A 2 e (4) of these Regulations when due, twenty-five dollars (\$25.00). (Approved & amended 11/21/89)

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- (d) At the time of filing, except in the case of fraud, the penalty shall not exceed fifty percent (50%) of the unpaid tax or twenty-five dollars (\$25.00), whichever is greater. (Approved & added 11/21/89)
- (3) Exceptions:
 - (a) No penalty shall be assessed on additional taxes found on audit to be due when a return was timely filed in good faith and the tax paid thereon within fifteen (15) days from the date the taxpayer was notified of such findings.
 - (b) In the absence of fraud neither penalty nor interest shall be assessed on any additional taxes resulting from a Federal audit for Federal income tax purposes provided an amended return is filed and the additional tax paid within three (3) months after final determination of the Federal tax liability.
- (4) Minimum assessment: Penalty and interest charges shall not be levied when the total of such charges amounts to less than two dollars (\$2.00). *Additional penalty and/or interest calculated monthly on the balance due will not be levied when the total of such additional charges amounts to less than two dollars (\$2.00). *(Approved and added 11/11/82)
- (5) Effect on Extensions:
 - (a) No late filing penalty will be assessed on a return due where a balance due is paid within the extended period for filing that return when such extension was authorized by the Administrator as provided in Article III A 2 f of these Regulations.
 - (b) Non-filing Penalty will be assessed from the date the return was due as provided in Section 880.06 of the Ordinance when the return is not filed within the extended period referred to above.
 - (c) Non-payment penalty as provided in Article III A 2 h (2) (b) and interest as provided in Article III A 2 h (1) of these Regulations will be assessed on returns not filed within the due dates provided in Section 880.06 of the Ordinance, even though the time for filing the return has been extended.

B. Bases and Procedure for Filing Withholding Wages and Salaries

1. Bases

a. General Requirements: An annual tax of one and three-quarters percent (1.75%) is imposed on all qualifying wages, commissions and other compensation, whether based upon hourly, daily, weekly, semi-monthly, annual, unit of production or piece work rates, received before January 1, 2011 and during the effective period of the Ordinance. An annual tax of two and one-quarter percent (2.25%) is imposed on all qualifying wages, commissions and other compensation, whether based upon hourly, daily, weekly, semi-monthly, annual, unit of production or piece work rates, received on or after January 1, 2011 and during the effective period of the Ordinance.

(1) Residents: For the purpose of determining the tax on the earnings of resident taxpayers taxed under Ordinance Section 880.03, the source of the earnings and the place or places in or at which the services were rendered, are immaterial. All such earnings wherever earned or paid are taxable.

(2) Non-residents are taxable on any compensation, as specified in Article III B 1 d of these Regulations, earned in or from the City of Xenia.

b. Duty of Withholding: Except as otherwise provided herein, it is the duty of each employer within or doing business within or for the City of Xenia, who employs one or more persons whether as an employee, officer, director or otherwise, to deduct each time any compensation is paid before January 1, 2011, the tax of one and three-quarters percent (1.75%) in accordance with Ordinance Section 880.04. Except as otherwise provided herein, it is the duty of each employer within or doing business within or for the City of Xenia, who employs one or more persons whether as an employee, officer, director or otherwise, to deduct each time any compensation is paid on or after January 1, 2011, the tax of two and one-quarter percent (2.25%) in accordance with Ordinance Section 880.04. Every employer required to deduct and withhold the tax at the source is liable directly to this City for payment of such tax whether or not actually collected from such employee.

c. Every employer is deemed to be a trustee for the City in collecting and holding the tax required under the Ordinance to be withheld and the funds so collected by such withholding are deemed to be trust funds.

d. Taxable income: The following are items which are subject to the tax imposed by Ordinance Section 880.03:

- (1) Qualifying wages, bonuses and incentive payments received by an individual whether directly or through an agent and whether in cash or in property for services rendered during the tax period as:
 - (a) An officer, director or employee of a business, including charitable and other non-profit organizations:
 - (b) An official or employee (whether elected, appointed or commissioned) of the United States Government or of a corporation created and owned or controlled by the United States Government or any of its agencies; or of the State of Ohio or any of its political subdivisions or agencies thereof; or any foreign country or dependency in accordance with Federal tax interpretations and accounting methods, when applicable.
 - (c) In the case of a non-resident employed at a place of business within the City of Xenia, the qualifying wages for such non-resident for the performance of employee services will be treated as earned outside the City of Xenia only for those services which of necessity, as distinguished from convenience, obligate such non-resident to duties outside the City of Xenia in service of the non-resident's employer.
- (2) Commissions received by a taxpayer whether directly or through an agent and whether in cash or in property for services rendered during the effective period of the Ordinance, regardless of how computed or where so ever paid.
 - (a) If amounts received as a drawing account exceed the commissions earned and the excess is not subject to the demand of the employer for repayment, the tax is payable on the amounts received as a drawing account.
 - (b) Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation if the employer deducts such expenses or advances as such from his gross income for the purpose of determining his net profits taxable under Federal law, and the employee is not required to include such receipts as income on his Federal income tax return.
 - (c) If commissions are included in the net earnings of the business enterprise of which the individual receiving such commission is owner or part owner and therefore subject to the tax under Article III A 1 c of these Regulations, they shall not be taxed under Article III A 1 b.
- (3) Fees, unless such fees are properly includible as part of the net profits of a business owned or partly owned by said individual and such net profits are subject to the tax under Article III A 1 c of these Regulations.
- (4) Other compensation, including tips, bonuses or gifts of any type in connection with services rendered.
- (5) Fringe benefit payments: Payments made to employees by an employer as vacation wages are taxable. Payments made to an employee by an employer under a wage continuation plan whether directly or through a third party, during periods of unemployment, disability or sickness are taxable.
- (6) Accrued benefits made to employees by an employer and paid by the employer to the employee upon retirement or termination of employment, such as accrued sick pay, accrued vacation pay, accrued annual leave, and longevity pay are deemed to be taxable.
- (7) All deferred compensation, including payroll deductions for a tax deferred annuity, shall be included in the qualifying wages in the year in which it is earned.
- (8) Where compensation is paid or received in property, its fair market value, at the time of receipt, shall be subject to the withholding tax. Board, lodging and similar items received by an employee in lieu of additional cash compensation shall be included in earnings at their fair market value.
- (9) Gambling winnings as reported on line 21 of Federal Form 1040. If deductions are itemized on Schedule A (Form 1040), losses may be deducted, but only to the extent of winnings.

2. Procedure

a. Identification and filing for withholding of employees' income:

- (1) Responsibility for identification:
 - (a) Except as otherwise provided herein, it is the duty of each employer doing business within or doing business with the City of Xenia, who employs one (1) or more persons whether as an employee, officer, director or otherwise, to identify their business with the City's Division of Income Tax within fifteen (15) working days of establishing their business within or for the City, through completion of a questionnaire, form #ITW 4002.
 - (b) Upon receipt of the questionnaire from the City, the questionnaire must be completed and returned within fifteen (15) working days, to the City's Division of Income Tax.
- (2) Filing for withholdings:

b. Refunds and adjustments: If more than the amount of tax required to be deducted by the Ordinance is withheld from an employee's pay, such excess may be refunded by the employer or the Division of Income Tax, depending upon the circumstances and the time when the over-withholding is determined as follows:

(1) Current employees:

(a) If the over-withholding is discovered in the same period, the employer shall make the necessary adjustment directly with the employee and the amount to be reported on the return as withheld shall be the correct amount.

(b) If the over-withholding is discovered in a subsequent period of the calendar year, the employer may make proper adjustment with the employee. In such case, the return for the period in which the adjustment is made shall indicate the total amount actually withheld on Line 4 of Form XW-1, the amount of the adjustment deducted there from on Line 6, and the corrected amount reported on Line 7 of the return.

(c) If the over-withholding is discovered in the following year, the employer should notify the Division of Income Tax of such over-withholding and the circumstances thereof. Upon filing of the corrected monthly or quarterly withholding returns, a refund will be processed as long as the refund request is within 3 years of the original withholding return filing date.

(2) Former employees:

(a) In case too much has been withheld from an employee who is no longer employed by the employer, the employer shall notify the Division of Income Tax of the amount and circumstances of such over-withholding in writing, and the Administrator shall then refund to the employee the amount of such excess withholding, or;

(b) If the error is discovered by the employee, such employee shall file a claim on a refund request form, with and obtainable from the Division of Income Tax, and the Administrator shall refund to the employee the amount of such excess withholding.

(3) Non-residents employed outside the City: Where an employer has withheld the tax from all wages of a non-resident of this City, and such non-resident has no worked within the City for all or part of the time, the non-resident can file a refund request form with the Division of Income Tax covering such erroneous withholding and the Administrator shall, upon verification thereof by the employer, refund to the employee the amount of such excess withholding. See limitation for refunds, Article VIII B 1.

(4) Limitations: Where the total amount due or refund claimed for a tax year is less than two dollars (\$2.00), such amount shall not be collected or refunded.

c. Insufficient withholding: If less than the amount of tax required to be deducted is withheld from an employee, such deficiency shall be withheld from subsequent qualifying wages. However, if the employee-employer relationship has terminated, the employer shall notify the Division of Income Tax of such deficiency and the reason therefore. (Refer to Article III B 1 b.)

d. Exceptions:

(1) An employer whose records show that an employee is a non-resident of the City of Xenia and has no knowledge to the contrary, shall be relieved of the responsibility of withholding the tax on personal service compensation paid to such employee for services rendered or work done outside the City of Xenia by such employee; provided, however, that such employer must withhold the tax on all personal service compensation paid such employee after the Administrator, or any duly authorized employee notifies said employer in writing that such employee is a resident of the City of Xenia. All employees are required to notify the employer of any change of residence and the date thereof.

(2) A Xenia employer required to withhold the tax from a Xenia resident for work done or services performed in another municipality, shall be relieved from the requirement of withholding the City of Xenia tax from such Xenia resident, except where the rate of tax for such other municipality is less than the rate of tax imposed by the Xenia Income Tax Ordinance. In such case, the employer shall withhold and remit the difference to the Division of Income Tax.

(3) No person shall be required to withhold the tax on the qualifying wages or other compensation paid domestic servants employed exclusively in or about such person's residence, but such employees shall be subject to all the requirements of the Ordinance.

ARTICLE IV

EFFECTIVE PERIOD

- A.** The tax imposed by Section 880.03 of the Ordinance shall be levied, collected and paid with respect to qualifying wages, bonuses, incentive payments, commissions, fees, other compensation, and gambling winnings to the extent that it is taxable by the Internal Revenue Service received during the effective period of the Ordinance.
- B.** The tax imposed by Section 880.03 of the Ordinance, with respect to net profits of trades, businesses, professions, enterprises, undertakings and other activities is on the net profits earned and accrued or received during the effective period of the Ordinance.
- 1. Where the fiscal year of the taxpayer 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, 1970 to the close of the taxpayer's fiscal year.*

ARTICLE V

DECLARATIONS

A. Bases

1. Requirement of filing:

- a.** A declaration of estimated tax shall be filed with the Division of Income Tax by every taxpayer who may reasonably be expected to have taxable income, the tax on which is not or will not be withheld by an employer or employers. Where required, such declaration shall be filed by the 15th day of the 4th month after the beginning of the taxable year.
- b.** A taxpayer's final return for the preceding year may be used as a basis for computing his declaration of estimated tax for the current year. In the event a taxpayer has not previously been required to file a return, a declaration of estimated tax on anticipated income shall be filed in good faith.
- c.** A declaration of estimated tax which is less than eighty percent (80%) of the tax due as shown on the final return shall not be considered filed in good faith. (Approved & added 11/21/89).

B. Procedure

1. Date of filing:

- a.** A person or other entity conducting a business not previously subject to the tax, or whose employer does not withhold the tax, shall file a declaration of estimated tax by the 15th day of the 4th month following the date he becomes subject to the tax.
- b.** Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration by the 15th day of the 4th month after the start of each fiscal year or period.

2. Form for filing:

- a.** Such declaration shall be filed upon an annual tax return or on a form obtainable upon request from the Division of Income Tax or generic form.
- b.** The original estimate of tax liability or any subsequent amendment thereof may be increased or decreased by filing an amended declaration on or before any quarterly payment date as set forth in Article V B 4. Such amendment may be made on the regular declaration form or on the front of any quarterly payment form XQ-1 or generic form.

- 3. An amended declaration must be filed on or before January 15 of the following year, or in the case of a taxpayer on a fiscal year, on or before the 15th day of the 13th month following the beginning of a fiscal year, if it appears that the original declaration made for such taxable year underestimated the taxpayer's income by twenty percent (20%) 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. If, upon the filing of the return required by Section 880.06 of the Ordinance, it appears that the taxpayer did not pay eighty percent (80%) of his tax liability, as shown on said return, the difference between eighty percent (80%) of said taxpayer's tax liability and the amount of estimated tax actually paid on or before the above mentioned date, shall be subject to the interest and penalty provisions of Article V B 5 of these regulations. (Approved & added 11/21/89)**
- 4. Dates of payments:**
 - a. The estimated tax may be paid in full with the declaration or in equal installments on or before the 15th day of the fourth, seventh, tenth and thirteenth month after the beginning of the taxable year.**
 - b. The declaration must be accompanied by at least one installment of the estimated tax shown due thereon.**
 - c. In the event an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.**
- 5. Penalty for underpayment of estimated taxes: On the excess of eighty percent (80%) of the actual tax over the amount paid on declaration of estimated tax where a declaration has not been filed and paid estimating a tax liability in the same or greater amount than paid the previous year, or where a final return has not been filed and the total paid on or before the end of the month following the close of the taxable year; ten percent (10%) of the difference between eighty percent (80%) of the total tax for the year and the amount paid by declaration. (Approved & added 11/21/89)**
- 6. Final returns required: The filing of a declaration does not relieve the taxpayer of the necessity of filing a final return even though there is no change in the declared tax liability. A final return must be filed to obtain a refund of any overpayment of over two dollars (\$2.00).**

ARTICLE VI

DUTIES AND POWERS OF THE TAX ADMINISTRATOR

- A. Collection of tax and retention of records:**
 - 1. It shall be the duty of the Administrator to receive the tax imposed by the Ordinance in the manner prescribed therein from the taxpayers; to keep an accurate record and to report daily all monies so received.**
 - 2. It shall be the duty of the Administrator to enforce payment of all taxes owed the City of Xenia, to keep accurate records for a minimum of six (6) 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. Enforcement provisions:**
 - 1. The Administrator is charged with the administration and enforcement of the provisions of the Ordinance and is subject to the approval of the City Council by motion, empowered to adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the Ordinance. The Administrator has the authority to correct or adjust any return submitted, when a correction or adjustment is necessary to accomplish the intent of the Ordinance.**
 - 2. Any taxpayer or employer desiring a special ruling on any matter pertaining to the Ordinance or these Rules and Regulations, should submit to the Administrator in writing, all the facts involved for a final ruling.**
 - 3. These Regulations, together with all amendments and supplements hereto and all changes herein will be on file with the Administrator, and will be open to public inspection.**

C. Estimation of tax by the Administrator:

1. General provisions:

a. If the Administrator determines that any taxpayer subject to the provisions of the Ordinance has a tax liability for which he has filed no return or has filed an incorrect return and has failed to pay the full amount of tax due, the Administrator shall 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 the last known address. Proof of mailing furnished by the U.S. Post Office shall be presumptive proof of receipt thereof by the addressee.

(2) A taxpayer may, within fifteen (15) days after the date the proposed assessment was served or mailed, file a written protest with the Administrator. Within fifteen (15) days after receipt of the protest, the Administrator shall give the protestant an opportunity to be heard: provided further that the Administrator may extend the date of the hearing for good cause shown. After the hearing, the Administrator shall withdraw the assessment or shall 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 (15) 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. The taxpayer shall be notified in writing, at the same time of the decision, of their right to appeal the decision of the Administrator and the manner in which the taxpayer may appeal the decision.

(1) A taxpayer may, within thirty (30) days after the date the final assessment was served or mailed, file a written protest with the Administrator and shall state with particularity why the decision should be deemed incorrect or unlawful. The Tax Appeals Committee shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives the hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Committee and may be represented by an attorney at law. Other representatives such as CPAs may appear as witnesses. The Committee shall, on hearing, have jurisdiction to affirm, reverse or modify such ruling or decision, or any part thereof. The Tax Appeals Committee shall issue a decision on the appeal within ninety (90) days after the Committee's final hearing on the appeal, and send notice of its final decision by ordinary mail to all of the parties to appeal within fifteen (15) days after issuing the decision. The taxpayer or the Tax Administrator may appeal the Committee's decision to either Common Pleas Court or the Ohio Board of Tax Appeals.

c. When any taxpayer subject to the provisions of the Ordinance has filed a return indicating the amount of tax due and has failed to pay said tax to the Division of Income Tax as required by the Ordinance, the Administrator need not issue an assessment but may proceed under the provisions of Sections 880.11 and 880.12 of the Ordinance.

2. Provisions affecting employers:

a. If the Administrator determines that an employer subject to the provisions of the Ordinance has failed to file a return for tax withheld and/or has failed to pay to the Division of Income Tax the full amount of said taxes, the Administrator 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 Article VI C 1 a and b of these regulations shall then apply.

b. If the Administrator determines that an employer subject to the Ordinance has failed to withhold tax, the Administrator shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon and the provisions of Article VI C 1 a and b of these Regulations shall then apply.

c. When an employer subject to the provisions of the Ordinance has filed a return indicating the amount of tax withheld and has failed to pay said tax to the Administrator as required by the Ordinance, the Administrator may proceed under the provisions of Sections 880.11 and 880.12 of the Ordinance and need not issue an assessment as provided in Article VI C 1 a and b of these Regulations.

ARTICLE VII

EXAMINATION OF BOOKS AND RECORDS INFORMATION SO OBTAINED CONFIDENTIAL; PENALTY

A. Investigations by the Administrator:

- 1. The administrator, or any duly authorized employee, is empowered to examine the books, papers, records and copies of Federal Income Tax returns of any employer, taxpayer or person subject to the Ordinance, or whom the Administrator believes is subject to the provisions of the Ordinance, for the purpose of verifying the accuracy of any return made; or, if no return was made, to ascertain the tax due under the Ordinance.**
- 2. An employer or taxpayer shall furnish, within ten (10) days following a written request by the Administrator, or any duly authorized employee, the means, facilities and opportunity for making examinations and investigations authorized by the Ordinance.**

B. Subpoena of records and persons:

- 1. The Administrator or any person acting in his/her capacity is authorized to examine any person, under oath, concerning any income which was, or should have been, returned for taxation, or any transaction tending to affect such income, or any other information required by the Ordinance. The administrator may compel the production of books, papers and records and the attendance of all persons before him/her, whether as parties or witnesses, whenever he/she believes such persons have knowledge of the facts concerning any supposed income or supposed transaction of the taxpayer.**
- 2. The Administrator's order to examine any document mentioned in the preceding paragraph shall state whether the examination is to be at the office of the taxpayer or at the Division of Income tax.**
- 3. The Administrator may order the appearance before him/her or any duly authorized employee, of any party whom the Administrator believes to have any knowledge of a taxpayer's income or withholdings, or any information pertaining to the taxpayers under investigation, whether or not the individual so ordered has actual custody of the records of the taxpayer being investigated. The Administrator is specifically authorized to order the appearance of the local manager or representative of any taxpayer. (Approved & amended 11/21/89)**
- 4. Persons required to attend any hearings shall be notified not less than ten (10) days prior to the time of the hearing. The notice shall show the time and place of the hearing and what books, papers or records the witness is to make available at such hearing.**
- 5. The notice shall be served by the Administrator or any duly authorized agent, by delivering it to the person named in the notice, or by mailing it to the person with Certificate of Mailing, addressed to his/her usual or last known place of business or residence. All such mail shall be endorsed "return service requested", or the current United States Postal Service verbiage requesting such service. Unless the subpoena is returned for no forwarding address, the subpoena will be considered served as of the date it was postmarked on the Certificate. (Approved & amended 11/21/89)**

C. Penalty for non-compliance:

Refusal by any employer, supposed employer, taxpayer, or supposed taxpayer, or the refusal of any such person to appear before the Administrator or any duly authorized employee to submit to such examination and to produce the records requested, constitutes a misdemeanor punishable by fine or imprisonment, or both, as prescribed by Section 880.12 of the Ordinance.

D. Confidential nature of examinations: Any information gained as a result of any returns, investigations, verifications or hearings before the Administrator, required by the Ordinance or authorized by these Rules and Regulations shall be confidential and/or no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction. Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of one thousand dollars (\$1000.00) or imprisonment for not more than six (6) months or both. In addition to the above penalty, any employee of the City of Xenia who violates the provisions of Section 880.09 of the Ordinance relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

- E. Retention of records:** All employers and taxpayers are required to keep such records as will enable the filing of true and accurate returns whether of taxes withheld at the source or of taxes payable upon earnings or net profits, or both. Such records shall be preserved for a period of not less than six (6) years from the date the final return is filed and paid or the withholding taxes are paid.
- F. Every owner of one or more rental units and every owner or operator of a mobile home park shall furnish to the Division of Income Tax, a semi-annual roster of the names and addresses of all persons residing in such rental unit or mobile home park and shall also file a statement of any changes in the roster at the end of each month. The semi-annual statement provided for under Section 880.09 of the Ordinance shall be filed with the Division of Income Tax on or before January 31 and July 31 of each year.**

ARTICLE VIII

COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS

- A. Unpaid sums: Civil suit**
- 1. In addition to any criminal penalties which may be imposed, all taxes imposed shall be collectible, together with any interest and penalties thereon, by civil suit. Employers who are required under Section 880.04 of the Ordinance to withhold and remit taxes required to be withheld at the source, and who fail to withhold and/or remit become liable to the City in a civil suit to enforce the payment of the deficiency created by such failure.**
 - 2. No additional assessment shall be made by the Administrator after three (3) years from the time the return was due or filed, whichever is later. Provided, however, there shall be no period of limitation on such additional assessments in the case of a return that omits a substantial portion of income or tax due, or filing a false or fraudulent return to evade payment of the tax, or failure to file a return. Failure to report twenty-five percent (25%) or more of gross income or tax due shall be considered a substantial omission.**
 - 3. 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 assessment may be made by the Administrator is extended to one (1) year from the time of final determination of Federal tax liability.**
- B. Refunds and Overpayments:**
- 1. Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made, or the return was due, or three (3) months after the determination of the Federal tax liability.**
 - 2. No refund shall be made to any taxpayer until he has complied with all provisions of the Ordinance and has furnished all information required by the Administrator.**
 - 3. Overpayments will be either refunded or credited to the taxpayer's current year's liability at his option. Where no election has been made by the taxpayer, overpayments of any year's taxes shall be applied as follows:**
 - a. To taxes owed for any previous years in the order in which such taxes become due.**
 - b. To his current estimated tax liability.**
 - 4. Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety (90) days after the final filing date of the annual return or ninety (90) days after the complete return is filed, whichever is later, no interest shall be allowed on the refunded overpayment. For purposes of computing the payment of interest of overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by section 5703.47 of the Revised Code.**
- C. Limitations:**
- Where the total amount due or refund claimed for a tax year is less than two dollars (\$2.00), such amount shall not be collected or refunded.**

ARTICLE IX

VIOLATIONS, PENALTIES

A. Any person who shall:

- 1. Fail, neglect or refuse to make any return or declaration required by the Ordinance; or**
- 2. Make any incomplete, false or fraudulent return; or**
- 3. Fail, neglect or refuse to pay the tax, penalties or interest imposed by the Ordinance; or**
- 4. Fail, neglect or refuse to withhold the tax from his employees or to remit such withholding, penalties or interest imposed by this chapter to the Accounts Receivable Division; or (Approved & amended 11/21/89)**
- 5. Refuse to permit the Administrator or any duly authorized agent or employee to examine his books, records, papers and copies of Federal income tax returns relating to the income or net profits of a taxpayer; or**
- 6. Fail to appear before the Administrator and to produce his 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 Administrator; or**
- 7. Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer; or**
- 8. Fail to comply with the provisions of the Ordinance or any order or subpoena of the Administrator authorized hereby; 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, shall be guilty of a misdemeanor of the first degree, punishable by a fine not to exceed one thousand dollars (\$1000.00) and a term of imprisonment not to exceed six (6) months. If the offender has not previously been convicted of a violation of this section, the court shall impose a minimum fine of twenty-five dollars (\$25.00) plus the costs of the action. If the offender has previously been convicted of a violation of this section within the last five (5) years from the date of the offense, the court shall impose a minimum fine of fifty dollars (\$50.00) plus the costs of the action, in addition to any other penalty provided by this section. (Approved & added 11/21/89)**

B. The term "person" used in this Article shall, in addition to the meaning prescribed in Article II of these Regulations, include in the case of an association or corporation not having any partner, member or officer within the City of Xenia, any employee or agent of such association or corporation who can be found within the corporate limits of the City of Xenia.

C. Prosecutions:

All prosecutions under this Section must be commenced within the time limit as now or hereafter may be provided by the applicable Sections of the Ohio Revised Code for prosecution or violations of municipal income tax Ordinances.

D. Failure to receive forms - not a defense:

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

ARTICLE X

TAX APPEALS COMMITTEE

- A.** A Tax Appeals Committee, consisting of a chairman and two other members, each to be appointed by the City Council, is hereby created and shall be maintained to hear appeals. The members of the Tax Appeals Committee shall be appointed for four (4) year terms. A majority of the members of the Committee shall constitute a quorum. The Committee shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Committee shall be conducted privately and the provision 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 Committee on appeal.
- B.** The committee may be conducted privately and the provision 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 Committee on appeal.
- C.** Whenever the Administrator issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the municipality, the Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.
- D.** Any person dissatisfied with any ruling or decision of the Administrator and who has filed with the Municipality the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Tax Appeals Committee by filing a request with the Committee. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Administrator has issued the decision. The Committee shall then follow the procedure outlined in VI C 1(b)(1).
- E.** The imposition of penalty and interest as prescribed in the codified ordinance of the Municipality is not a sole basis for an appeal.

ARTICLE XI

CREDITS

- A. Limitation:** Where a resident of the City of Xenia is subject to a municipal tax or joint economic development district tax (JEDD), on or measured by income, in another municipality or JEDD either located within or without the State of Ohio, he shall receive credit of the tax paid, not to exceed one and one-half percent (1.5%) against the tax imposed by this chapter, of the earnings taxed by such municipality or JEDD with the exception of the Xenia Township – City of Xenia JEDD-1 tax.. Residents of Xenia shall receive a credit of not to exceed two and one-quarter percent (2.25%) of the earnings taxed by the Xenia Township – City of Xenia JEDD-1 against the tax imposed by this chapter.
- B. Credits to residents:** Resident individuals of the City of Xenia who are required to pay and do pay a tax to another municipality or joint economic development district tax (JEDD) on qualifying wages, commissions or other compensation, for work done or services performed in such other municipality, may claim a credit of the amount of tax paid by them or on their behalf to such other municipality or JEDD but not to exceed one and one-half percent (1.5%) of such income earned and taxed by the other municipality or JEDD with the exception of the Xenia Township – City of Xenia JEDD-1 tax. Credit for taxes paid to the Xenia Township – City of Xenia JEDD-1 shall not exceed two and one-quarter (2.25%) of the income taxed by the Xenia Township – City of Xenia JEDD-1.

C. Method of applying for credit:

- 1. No credit will be given unless the taxpayer claims such credit on his final return or other form prescribed by the Administrator, and presents such evidence of the payment of a similar tax to another municipality, as the Administrator may require.**
- 2. A statement satisfactory to the Administrator from the taxing authority of the municipality to which the taxes are paid, that a City of Xenia resident or his employer is paying the tax shall be considered as fulfilling the filing requirements of this Article.**

D. If tax or withholding is paid to a municipal corporation on taxable income, and if a second municipal corporation imposes a tax on that taxable income after the time period allowed for a refund of the tax or withholding paid to the first municipal corporation, the second municipal corporation shall allow a nonrefundable credit, against the tax or withholding the second municipality claims is due with respect to such taxable income, equal to the tax or withholding paid to the first municipal corporation with respect to such taxable income. If the tax rate in the second municipal corporation is less than the tax rate in the first municipal corporation, then the credit shall be calculated using the tax rate in effect in the second municipal corporation.

E. A refundable credit shall be allowed against the income tax imposed by a municipal corporation for each qualifying loss relating to a nonqualified deferred compensation plan sustained by a taxpayer during the taxable year. A "qualifying loss" means the excess, if any, of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan over the total amount of income the taxpayer has recognized for federal income tax purposes for all taxable years on a cumulative basis as compensation with respect to the taxpayer's receipt of money and property attributable to distributions in connection with the nonqualified deferred compensation plan. The amount of credit shall be equal to the product of the qualifying loss and the qualifying tax rate. With respect to a nonqualified deferred compensation plan, the taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan. In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to a municipal corporation for all taxable years with respect to the nonqualified deferred compensation plan. The credit allowed under this section is allowed only to the extent the taxpayer's qualifying loss is attributable to the insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

- 1. If, for one or more taxable years, the taxpayer has not paid to one or more municipal corporations income tax imposed on the entire amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan, then the "qualifying loss" is the product of the amount resulting from the calculation described in division (E) of this section and a fraction the numerator of which is the portion of such compensation on which the taxpayer has paid income tax to one or more municipal corporations and the denominator of which is the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.**
- 2. If a taxpayer has paid tax to more than one municipal corporation with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.**

ARTICLE XII

SAVING CLAUSE

- A.** These Rules and Regulations shall not apply to any person, firm, corporation or income, as to whom, or as to which it is beyond the power of the City Council to impose the tax provided for in the Ordinance.
- B.** If any sentence, clause, section or part of the Ordinance, or any article or part of these Rules and Regulations, or any tax against any individual, or any of the several groups specified in the Ordinance or Rule and Regulations, is found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall affect only such sentence, clause, section or part of the Ordinance, or article, or part of these Rules and Regulations and shall not affect or impart any of the remaining provisions, sentences, clauses, sections or part of the Ordinance or these Rules and Regulations. It is hereby declared to be the intention of the City Council that these Rules and Regulations would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section, article or part thereof not been included therein or herein.

ARTICLE XIII

COLLECTION OF TAX AFTER TERMINATION OF CHAPTER

- A.** This chapter shall continue effective insofar as the levy of taxes and the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, until all of such taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter shall 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 Section 880.06 as though the same were continuing.

ARTICLE XIV

RELATIONSHIPS WITH RULES AND REGULATIONS ADOPTED PURSUANT TO ORDINANCE 82-6

- A.** The effectiveness of the Rules and Regulations issued under Ordinance 67-20 and the Rules and Regulations issued under Ordinance 82-6 are considered consecutive.
- B.** From time to time, amendments and supplements to these Regulations may be issued by the Administrator subject to the approval of the City Council.

ARTICLE XV

CHARGE FOR RETURNED ITEMS

A charge for dishonored checks or ACH transactions in the amount of twenty five dollars (\$25.00) shall be added to the taxpayer's income tax account as a handling charge when a check or ACH transaction submitted as payment for an income tax charge is not honored for any reason by the bank on which it is drawn. The Director of Finance shall recommend yearly to the City Council, at its first regular meeting in November, the amount of the charge for returned items based on an annual cost analysis.

ARTICLE XVI

OHIO BUSINESS GATEWAY

- A.** For taxable years beginning on or after January 1, 2005, a taxpayer subject to any municipal corporation's tax on the net profit from a business or profession may file any municipal income tax return or estimated municipal income return, and may make payment of amounts due on such returns, by using the Ohio Business Gateway.
- B.** Any employer may report the amount of municipal income tax withheld from qualifying wages paid on or after January 1, 2007, and may make remittance amounts, by using the Ohio Business Gateway.
- C.** On and after January 1, 2005, any taxpayer that is subject to any municipal corporation's tax on the net profit from a business or profession and has received an extension to file the federal income tax return shall not be required to notify the municipal corporation of the federal extension and shall not be required to file any municipal income tax return until the last day of the month to which the due date for filing the federal return has been extended, provided that, on or before the date for filing the municipal income tax return, the person notifies the tax commissioner of the federal extension through the Ohio Business Gateway. An extension of time to file is not an extension of the time to pay any tax due.

ARTICLE XVII

TAXPAYER CONFIDENTIALITY

- A.** Taxpayer information is confidential and cannot be disclosed to a third party [unless the third party has power of attorney] without written permission of the taxpayer(s). Documents granting permission for a third party to discuss taxpayer status with the Xenia Income Tax Division must include Social Security Number(s) or Federal ID Number; the tax years to be made available to the third party; taxpayer signature and the date signed. If an individual is unavailable to sign their tax return, a third party may file a tax return only if the third party has a power of attorney or the previously described permission document attached (or has previously filed one of these documents with the Xenia Income Tax Division).
- B.** To grant permission for the Xenia Income Tax Division to contact a tax preparer or accountant with questions on a tax return, the box on the tax return allowing this permission must be checked. If this box is not checked, all questions on a tax return will be directed to the taxpayer.
- C.** On joint tax returns, either spouse has access to the tax information for that tax year. If a married couple files separately, they are considered individuals for tax purposes and the requirements in paragraph A apply for disclosure of information.
- D.** Copies of tax returns may be provided upon written request and proof of identity. A minimum of 10 working days should be allowed for the fulfillment of requests.

ARTICLE XVIII

PAYMENT AGREEMENTS

- A.** Payment agreements are available for individual taxpayers [businesses are not eligible] when the taxpayer(s) can provide documentation of a financial hardship that precludes them from paying their tax, penalty and/or interest when their tax return is filed. Taxpayers are eligible for one payment agreement in a five (5) year period and compound interest of 1.5% per month (or part thereof) is charged. The length of the payment agreement is determined by the Tax Administrator's review of the account and the balances due; however, payment agreements in excess of six (6) months will not be permitted without approval of the Finance Director.
- B.** When a payment agreement is provided, the monthly payments specified will include the 1.5% per month interest as a part of each month's payment. If the payment agreement is completed before all the interest has been posted by the Tax Division (interest is posted the 1st of each month), the taxpayer may request a review of the account in writing and any overpayments on interest determined through this review will be carried forward as a credit to the next tax year or refunded.
- C.** All payment agreements must be signed to be considered in force. Payment agreements on joint accounts (even if signed by only one party) are considered in force against both parties. The payment agreement states a due date for each monthly payment (normally the first of the month) and all payments must be received by the Xenia City Income Tax Division on or before the due date or the payment agreement is void. Failure to adhere to the terms of the payment agreement will result in the account being subject to the applicable delinquency notice for non-payment.

**Approved by the City Council February 11, 1982,
Retroactive to January 1, 1982**

Amended by the City Council:

November 11, 1982

July 15, 1985

May 18, 1989

November 21, 1989

November 21, 1991

January 1, 1997

January 1, 1999

July 27, 2000

August 12, 2004

January 26, 2006

October 12, 2006

September 27, 2007

September 11, 2008

September 10, 2009

December 9, 2010

September 9, 2011

December 12, 2013

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