

City of Xenia

**INCOME TAX
RULES AND REGULATIONS**

**ISSUED UNDER AUTHORITY OF
CHAPTER 881
OF THE
XENIA CODIFIED ORDINANCES**

**APPROVED BY CITY COUNCIL – February 22, 2018
EFFECTIVE FOR TAX YEARS BEGINNING 1/1/2018**

**FOR TAX YEARS 2016 TO 2017 THE PREVIOUS RULES AND REGULATIONS (last updated July 9,
2015) and CHAPTER 881 OF THE XENIA CODIFIED ORDINANCES ARE IN EFFECT**

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ARTICLE I PURPOSE OF THE INCOME TAX

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

ARTICLE II PURPOSE OF THE RULES AND REGULATIONS

The Ohio Revised Code Chapter 718: Municipal Income Tax effective January 1, 2016 contains the majority of the rules and regulations related to the administration of the City of Xenia income taxes. Xenia Income Tax Rules and Regulations are provided to give additional guidance to individual taxpayers and highlight specific areas of Ohio Revised Code Chapter 718 that might be of interest to a majority of businesses but the Rules and Regulations are not designed to replace or supersede Ohio Revised Code Chapter 718. The stated purpose of the Rules and Regulations is compliance with Ohio Revised Code Chapter 718 and any deviations from this compliance are unintentional. These Rules and Regulations are considered a part of the Ordinance per 881.14.

ARTICLE III DEFINITIONS

As used in these Rules and Regulations, the following words shall have the meaning ascribed to them in this Article, unless a different meaning is clearly required. Taxpayers should refer to Ohio Revised Code Chapter 718 for additional information on definitions and/or definitions that may not be included in this section.

ACCOUNTS RECEIVABLE DIVISION means the division within the City of Xenia that includes both the Income Tax Division and the Utility Billing Division.

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

ASSESSMENT means a written finding by the tax administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the local board of tax review pursuant to section 718.11 of the Ohio Revised Code, and has "ASSESSMENT" written in all capital letters at the top of such finding. Assessment does not include an informal notice denying a request for refund, a billing statement notifying a taxpayer of current or past due balances, a request for additional information, a notification to the taxpayer of mathematical errors or the tax administrator's other written correspondence to a person or taxpayer that does not commence the person's time limitation for making an appeal to the local board of tax review.

BUSINESS or DIRECT ACCOUNT means an account established for 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.

CITY means the City of Xenia.

NON-RESIDENT means an individual that is not a resident.

ORC means Ohio Revised Code.

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

RESIDENT means an individual who is domiciled in the municipal corporation as determined under ORC 718.012.

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

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.

WITHHOLDING ACCOUNT means an account established to accept payments of City of Xenia income taxes withheld by an employer, whether mandated because of work location or as a courtesy to a resident employee.

ARTICLE IV IMPOSITION OF TAX

An annual tax of two and one-quarter percent (2 1/4%) is imposed on all taxable income received or accrued on or after January 1, 2011 during the effective period of the Ordinance.

ARTICLE V DIRECT ACCOUNTS – THOSE FILING UNDER A SOCIAL SECURITY NUMBER

A. Direct accounts for individuals and small businesses (if filing under a Social Security Number)

1. Identification and filing of individual returns and small businesses (if filing under a Social Security Number)

(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 Income Tax Division, 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, shall complete Questionnaires upon the request of the Income Tax Division 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 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 or for the City, and on whose qualifying wages, commissions or any other compensation constituting taxable income under this Ordinance, if 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. An Individual Income Tax Questionnaire obtainable from the Income Tax Division shall be completed and returned within fifteen (15) working days following the employment notification.

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

(d) Having a rental property within the City is considered doing business within the City.

(e) It shall be the responsibility of the taxpayer to inform the Income Tax Division, in writing, of any change of the taxpayer's address within 30 days of such change. The taxpayer may request that an account be closed using the "Affidavit to Inactivate or Close an Individual Account" available on the Income Tax Division webpage or at the Income Tax Office.

2. Date and Requirement for Filing Direct Returns:

(a) On or before the date prescribed by ORC 718, every person and business entity subject to City's income tax shall, except as provided in the exceptions below, make and file with the Income Tax Division an annual return on the form provided by the City or a generic city income tax form whether or not tax is due. This process is also known as mandatory filing.

(b) 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.

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

(d) The fact that any taxpayer is not required to file a Federal tax return does not relieve them of the responsibility for filing a City tax return.

(e) Residents 65 years of age or older with no city taxable earned income, no businesses or any type of self-employment (including rental properties) and no gambling winnings are not required to file an annual City Income Tax return beginning with the first tax year after they reach their 65th birthday. The resident must notify the Income 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

(f) The filing of an annual City 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 City 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 Income Tax Division.

(g) 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 only to comply with active duty military orders and who have continued to maintain a residence or domicile outside the City, are not required to file a City Income Tax return if the appropriate State of Ohio form proving non-residence is submitted to the Income 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 since all business income generated within the City is taxable or if the active duty servicemember has any type of income for services other than their active duty military pay.

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

3. Other information required to reconcile with Federal returns:

(a) Resident individual taxpayers who file Form 1040 or Form 1040A with the Internal Revenue Service, must include with their City return, 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:

.1 All W-2 Wage or Gambling Winning Information Forms. To receive credit for Xenia or other city tax withheld, the W-2s submitted must indicate the city for which tax was withheld, along with the city taxable gross and city tax withheld. If the employee is subject to Medicare tax, a W-2 must be submitted showing Medicare taxable wages.

.2 Schedule C - Profit or <Loss> from Business or Profession

.3 Form 4797 - Supplemental Schedule of Gains and Losses (Recovery of Depreciation - ordinary income only)

.4 Schedule E - Supplemental Income Schedule

.5 Schedule F - Farm Income and Expenses

.6 Form 2106 - Employee Business Expenses

.7 Schedule K-1 (Form 1065) - Partner's Share of Income, Credits and Deductions, etc.

.8 Form 1099-MISC - Non-Employee Compensation, Gambling Winnings

.9 Schedule A

(b) Non-resident individual taxpayers who file Form 1040 or Form 1040A with the Internal Revenue Service, must include with their City returns, any of the above mentioned Federal schedules that apply to income earned or accrued within or from the City, whether or not that income is taxable under the Ordinance in whole or in part.

(c) 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 the City return.

.1 Partnerships:

.2 All resident partnerships will file a return. A complete Federal Form 1065 (U.S. Partnership Return of Income) must be included with the City return. Payment of any tax due will be paid by the partnership as an entity.

.3 Non-resident partnerships having net profits attributable to the City, will file a return as stated above and adjusted to the requirements of the Ordinance, but shall pay the tax due as an entity.

.4 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 via Schedule K-1.

(d) A City Income Tax return shall not be considered as filed until it is received complete with all the above listed applicable Federal Schedules by the Income Tax Division. 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. Any payment submitted with the incomplete return will be applied to the taxpayer's account as an estimated payment.

4. City taxable Income for individuals (those filing a return under a Social Security Number)*

**Most common only – not a complete list – see ORC 718.01 for a complete list*

(a) For most individual taxpayers, city taxable wages will be the Medicare wages shown on the W-2.

(b) Determination of city taxable wages:

Qualifying wages earned by residents or earned within the City. Qualifying wages means wages as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

➤ Deduct the following amounts:

- 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.
- Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.
- Any amount included in wages that is exempt income.

➤ Add the following amounts:

- Any amount not included in the wages solely because the employee was employed by the employer before April 1, 1986.
- Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, exercise of a stock option, or the sale, exchange of other disposition of stock purchased under a stock option. This applies only to amounts constituting ordinary income.
- Any amount not included in the wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. This applies only to employee contributions and employee deferrals.

(c) Personal earnings of all individuals sixteen (16) years of age or over are city taxable. If an individual is over sixteen (16) years of age but less than eighteen (18) years of age and all City tax is fully withheld by their employer, an annual City tax return is not required until the individual reaches the age of eighteen (18) years of age.

(d) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards are city taxable income. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings.

(e) Precinct election official compensation in excess of one thousand dollars (\$1,000) for the taxable year is city taxable.

(f) Compensation paid for lost salaries or wages or compensation from punitive damages are city taxable.

(g) Net profit for a person who is an individual is city taxable. "Net Profit" for an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carryforward* (when net operating loss carryforwards go into effect for tax year 2018). If the individual does not file a Schedule C to report self-employment earnings, the Federal 1099 forms related to this income must be provided with the City return. If the individual received partnership income on a K-1, this income is taxable and must be reported on the City return but the individual will receive credit for any city income tax already paid on this income by the partnership.

(h) Current year net-profit losses (or net operating loss carryforwards from previous tax years*) cannot be used to reduce taxes due on city taxable qualifying wages.

**Prior to tax year 2018, the City allows no net operating loss carryforward. This will change for tax year 2018. Please refer to the Net Operating Loss Carryforwards section for more information*

5. Income exempt from city tax for individuals (those filing a return under a Social Security Number)*

**Most common only – not a complete list – see ORC 718.01 for a complete list*

(a) Military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state.

(b) Intangible income. "Intangible income" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Ohio Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(c) Social security benefits, railroad retirement benefits, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or a beneficiary of an employee under a retirement program or plan.

(d) Disability payments received from private industry or local, state, or federal governments or from charitable, religious, or educational organizations, and the proceeds of sickness, accident or liability insurance policies.

(e) Unemployment compensation.

(f) Precinct election official compensation less than one thousand dollars (\$1,000).

(g) Alimony and child support received.

(h) Compensation for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or compensation from punitive damages.

6. 2106 (Employee Business Expense) deductions

(a) Individual employee business expenses reported on the individual's federal from 2106 that the individual deducted for federal income tax purposes for the taxable year may be deducted from the resident's City taxable wages before the City tax is calculated. If the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in the City.

(b) To allow this deduction, the taxpayer must provide the following with their City return:

- 1040 showing that Schedule A deductions were taken on the Federal return.
- Schedule A showing that the 2106 expenses were included on the schedule.
- 2106 form showing the 2106 expenses

Failure to provide this information will result in the 2106 expense deduction being disallowed until this information has been provided.

(c) Per IRS Section 67, the allowable 2106 deduction is reduced by 2% of the total City taxable income.

(d) If a taxpayer files for a credit based on 2106 expenses, the City reserves the right to contact other taxing agencies to determine if the resident taxpayer may have requested a refund of their 2106 expense from the taxing agency where they were employed or to determine if the non-resident taxpayer used their full Xenia credit on their resident tax return even though they received a refund from Xenia based on their 2106 expense.

B. Payment plans for individuals

(1) Payment plans are available for individual taxpayers (those filing under a Social Security Number) if they show both the financial need for the payment plan and the ability to make reasonable payments. Payment plans are not available for business accounts (those filing under a Federal ID number) or withholding accounts.

(2) No payment plan will be granted for a tax year until after the due date for that tax year. For example, if a return is filed on February 15, no payment plan may be requested until after the tax due date (normally April 15). The taxpayer must have a copy of their Xenia Income Tax return available to request a payment plan since there are time periods when the return may not yet have been reviewed/posted by the Tax Division.

(3) A payment plan cannot be considered until the Tax Division receives a completed Hardship Payment Plan Request form. Payment plans must be signed by the taxpayer and a signed copy returned to the Tax Division to be valid. Payment plans on joint accounts (even if signed by only one party) are considered in force against both parties. No third (3rd) party may sign a payment plan.

(4) The interest rate in effect for the tax year will apply to the pay plan even if the payments on the plan go beyond the tax year. For example, if a 2016 payment plan starts in November 2017, the interest rate on the entire plan will be the interest rate for tax year 2016 even if the plan's payments continue into a future tax year (or years). Interest for the entire plan is applied when the plan is created. If a payment plan is paid off in its entirety early, the taxpayer may request a written review of the plan to determine if there was interest overpaid that should be credited to the account.

(5) All payment plans have payments due on or before the first (1st) of each month (payment due dates are not negotiable) and no monthly reminder notices will be sent. The taxpayer is solely responsible for making the required payments each month on or before the first (1st) of each month. Failure to adhere to the terms of the payment plan will result in the account being immediately subject to legal action.

C. Extensions to File/Pay for service in or for the armed forces:

(1) ORC 718.052 contains special extension to file and pay rules for taxpayers who are members of the National Guard and Reserve and are called to active duty and taxpayers who are civilians serving as support personnel in a combat zone. If the affected taxpayer is unable to contact the Tax Division, it is requested that a family member or the person acting as the legal representative for the service member or civilian serving as support contact the Income Tax Division and notify us of the taxpayer's status to avoid non-filing legal action.

ARTICLE VI
DIRECT ACCOUNTS – THOSE FILING UNDER A FEDERAL ID NUMBER

A. Direct accounts for businesses (those filing under a Federal ID Number)

1. Tax preparers should review ORC 718 for information on determining city taxable income for business returns.

2. Identification and filing business returns

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

(b) It shall be the responsibility of the taxpayer to inform the Income Tax Division, in writing, of any change of the taxpayer's address within 30 days of such change. The taxpayer may request that an account be closed using the "Affidavit to Inactivate or Close a Business Account" available on the Income Tax Division webpage or at the Income Tax Office.

3. Date and Requirement for Filing Direct Returns:

(a) On or before the date prescribed by ORC 718, every person and business entity subject to City income tax shall, except as provided in the exceptions below, make and file with the Income Tax Division an annual return on the form provided by the City or a generic city income tax form whether or not tax is due. This process is also known as mandatory filing.

(b) 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.

(c) Partnerships:

.1 All resident partnerships will file a return. A complete Federal Form 1065 (U.S. Partnership Return of Income) must be included with the City return. Payment of any tax due will be paid by the partnership as an entity.

.2 Non-resident partnerships having net profits attributable to the City, will file a return as stated above and adjusted to the requirements of the Ordinance and ORC 718, but shall pay the tax due as an entity.

.3 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 via Schedule K-1.

(d) Corporations will include with the City return, 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 City return to the extent it is taxable to the Municipality.

(e) A City Income Tax return shall not be considered as filed until it is received complete with all the above listed applicable Federal Schedules by the Income Tax Division. 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. Any payment submitted with the incomplete return will be applied to the taxpayer's account as an estimated payment.

(f) A business may file the required City income tax return via the Ohio Business Gateway ~~This process is described in article XX Ohio Business Gateway, but the required supporting documentation for the return must either be mailed to the Income Tax Division, faxed to the Income Tax Division or submitted via the Secure Email link on the City's website. The tax return will be not considered complete until the required supporting documentation is received by the Income Tax Division.~~

ARTICLE VII GENERAL PROVISIONS FOR DIRECT ACCOUNTS

A. Extensions to File:

- (1) An extension to file is not an extension to pay and estimated taxes are due by the tax return filing deadline to avoid non-payment penalties and/or interest.
- (2) If the taxpayer attaches a copy of a timely filed Federal extension to file to their complete City tax return, no late-filing penalty shall be charged in those cases in which a complete City tax return is filed within the period as extended.
- (3) Taxpayers not filing a Federal extension to file that wish to file only an extension to file with the City may do so using the "Extension of Time to File Request" form available at the Income Tax Division office or on the City's website. To be considered, such requests must be postmarked or in our offices on or before the tax return filing deadline. The request for extension of time to file with the City may be denied if the individual taxpayer fails to timely file the request.
- (4) If a Federal extension to file or a City extension to file has been approved, the City tax return shall be due on the fifteenth (15th) day of the tenth (10th) month after the last day of the taxable year and no late-filing penalty shall be charged if a complete Xenia Income Tax return (including all required informational returns, schedules and statements needed to support the tax return along with a copy of the timely filed Federal or City extension to file) are filed within the extension period.
- (5) Businesses may also submit extension to file requests via the Ohio Business Gateway.

B. Net Operating Loss Carryforwards

- (1) Tax preparers should review ORC 718 for more information on net operating loss carryforwards as they relate to business filings.
- (2) Net operating losses cannot be used to offset qualifying city taxable wages.
- (3) Prior to taxable year 2018, net operating loss carryforwards are not permitted to reduce City taxable income.
- (4) For taxable years beginning 2018, 2019, 2020, 2021, or 2022, a taxpayer may deduct no more than fifty per cent (50%) of the amount of the net operating losses carried forward for tax year beginning 2017 or thereafter.
- (5) For taxable years beginning 2023 or thereafter, a taxpayer may deduct the full amount of any net operating losses available.
- (6) The amount of net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce City taxable income to zero with any remaining unused portion of the net operating loss carried forward to not more than five (5) consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

C. Income apportionment:

Taxpayers engaged in a business or profession in the City should review ORC 718.02 for apportionment factors. If the apportionment factors described in ORC 718.02 do not fairly represent the extent of a taxpayer's business activity in a municipal corporation, the taxpayer may request, or the tax administrator of the municipal corporation may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, one of the alternate apportionment methods described in ORC 718.02.

D. Rounding of amounts

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

E. Interest and penalties for late filing and payment of direct tax liability, in accordance with Ordinance Section 881.08:

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

(2) Interest: Except as provided in paragraphs (4) and (5) below all taxes imposed under the provisions of the Ordinance and the Xenia Income Tax Rules and Regulations 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 of the Federal short-term rate (rounded to the nearest whole number per cent) for July of the current year plus five percent (5%) for each month (or part thereof) there is a tax balance due. This rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined. Interest is imposed on only the unpaid tax portion of any balances due and is imposed at the time of filing and each month after filing at the beginning of the month.

(3) Penalties: In addition to interest as provided in paragraph (2) of this Article, penalties based on the un-filed returns and/or unpaid taxes are hereby imposed as follows:

(a) Non-filing Penalty: For failure to file a complete City tax return, together with all appropriate supporting Federal schedules, when due: twenty five dollars (\$25.00) per month (or part thereof), not to exceed one hundred fifty dollars (\$150.00) for each tax year.

(b) Non-Payment Penalty: For failure to remit the taxes due at the time of filing the City tax return: fifteen per cent (15%) of the tax not timely paid.

(4) Exceptions:

(a) No penalty shall be charged on additional taxes found on review 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 charged 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.

(5) Minimum charges: Penalty and interest charges shall not be levied when the total of such charges amounts to less than ten dollars (\$10.00). Additional interest calculated monthly on the tax balance due will not be levied when the total of such additional charges amounts to less than ten dollars (\$10.00).

(6) Effect on Extensions:

(a) No non-filing penalty will be charged if a tax return is filed and a balance due is paid within the extended period for filing that return when such extension was authorized by the Administrator as provided in these Rules and Regulations or if a timely filed Federal extension is provided with the tax filing.

(b) Non-filing penalty will be charged from the date the return was due when the return is not filed within the approved extended period.

(c) Non-payment penalty will be charged on tax not paid by the return filing deadline even though the time for filing the return has been extended.

F. Declaration -- requirement of filing:

(1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the either their Xenia income tax return for the prior tax year or on the declaration form available on our website (www.xeniacity.com) or at the Account Receivable Division, if the amount payable as estimated taxes is at least two hundred dollars (\$200). The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of the City tax return or on or before the fifteenth (15th) day of the fourth (4th) month after the taxpayer becomes subject to tax for the first time. Amended declarations may be filed at any time using the declaration form available on our website (www.xeniacity.com). The unpaid balance due on the amended declaration shall be paid in equal installments on or before the remaining payment dates.

(2) 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 ten dollars (\$10.00).

(3) On joint accounts, joint declarations are required.

G. Required dates for estimated payments and penalties for underpayment of estimated taxes:

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

- On or before the fifteenth (15th) day of the fourth (4th) month after the beginning of the taxable year, twenty-two and one-half per cent (22.5%) of the tax liability for the taxable year.
- On or before the fifteenth (15th) day of the sixth (6th) month after the beginning of the taxable year, forty-five per cent (45%) of the tax liability for the taxable year.
- On or before the fifteenth (15th) day of the ninth (9th) month after the beginning of the taxable year, sixty-seven and one-half per cent (67.5%) of the tax liability for the taxable year.
- On or before the fifteenth (15th) day of the twelfth (12th) month of the taxable year, ninety per cent (90%) of the tax liability for the taxable year.

(2) On or before the fifteenth (15th) day of the fourth (4th) month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid in accordance with ORC 718.05.

(3) In the case of any underpayment of any portion of the tax liability, penalty for underpayment of estimated taxes will be imposed. The amount of the underpayment shall be determined as follows:

- For the first (1st) payment of estimated taxes each year, twenty-two and one-half per cent (22.5%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment.
- For the second (2nd) payment of estimated taxes each year, forty-five per cent (45%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment.
- For the third (3rd) payment of the estimated taxes each year, sixty-seven and one-half per cent (67.5%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment.
- For the fourth (4th) payment of the estimated taxes per year, ninety per cent (90%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment.

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

(5) The penalty for underpayment of estimated taxes is fifteen per cent (15%) of the amount not timely paid for each required estimated payment date.

- (6) An underpayment of estimated taxes penalty will not be applied if:
- The amount of estimated taxes paid by the fifteenth (15th) day of the twelfth (12th) month of the taxable year equals at least ninety per cent (90%) of the tax liability for the current taxable year.
 - The amount of estimated taxes paid by the fifteenth (15th) day of the twelfth (12th) month of the taxable year equals at least one hundred per cent (100%) of the tax liability shown on the Xenia tax return for the preceding taxable year (provided that the immediately preceding taxable year reflected a period of twelve (12) months and a Xenia tax return was filed for the preceding year).
 - The taxpayer is an individual who resides in the City but was not domiciled here on the first (1st) day of January of the calendar year that includes the first day of the taxable year.

H. Delinquent Process for Direct Accounts

(1) Non-filing:

(a) If a complete tax return has not been filed by the due date of an extended return for that tax year, a "Non-filing Notice" will be mailed to the taxpayer's address on file at the Income Tax Division.

(b) If the taxpayer does not provide acceptable documentation stating why a tax return is not required for that tax year or does not file a tax return, 30 days after the "Non-filing Notice" was mailed, a "Second Non-filing Notice" will be mailed to the taxpayer's address on file at the Income Tax Division.

(c) If the taxpayer does not provide acceptable documentation stating why a tax return is not required for the tax year or does not file a tax return within 30 days after the "Second Non-filing Notice" was mailed, the taxpayer's failure to respond to this notice may result in a summons to Xenia Municipal Court for a criminal misdemeanor. Once a court summons has been issued, the summons will not be dismissed unless the taxpayer can provide proof of non-residency in compliance with ORC Revised Code Chapter 718 or written proof that no business was conducted within the City.

(2) Non-payment:

(a) If a tax return is reviewed and changed by the Income Tax Division, the taxpayer will receive a "Tax Return Change" notice from the Income Tax Division. The taxpayer may contact the Income Tax Division to discuss the return and may provide additional written documentation related to the return for the review of the tax administrator for possible modification of the filed tax return. A change or correction of a tax return or a request for missing information is not an assessment.

(b) If the taxpayer has an unpaid tax or penalty/interest balance, the taxpayer will receive a "Monthly Statement/Unpaid Balance Notice" notice from the Income Tax Division at the beginning of the month following the return filing (this date may be later during April 1-May 30). The taxpayer may contact the Income Tax Division to discuss the balance due and may provide additional written documentation related to the return for the review by the tax administrator for possible modification of the filed tax return and/or the taxpayer may request in writing an appealable assessment of any balances due. The appealable assessment will be sent to the taxpayer via certified mail or Secure Email if the taxpayer has given permission to receive correspondence from the Tax Division electronically and/or an individual taxpayer may submit to the Income Tax Division a completed "Hardship Payment Plan Request" to request a payment plan on the unpaid balance.

(c) If there remains an unpaid balance, approximately 30 days after "Monthly Statement/Unpaid Balance Notice" notice is mailed, the taxpayer will receive a "Monthly Statement/FINAL Unpaid Balance Notice". The taxpayer may request in writing within 30 days of the date of "Monthly Statement/FINAL Unpaid Balance Notice" an appealable assessment of any balances due. The appealable assessment will be sent to the taxpayer via certified mail or Secure Email if the taxpayer has given permission to receive correspondence from the Tax Division electronically and/or an individual taxpayer may submit to the Income Tax Division a completed "Hardship Payment Plan Request" to request a payment plan on the unpaid balance. If the taxpayer does not request an appealable assessment in writing within the 30 day period, the Tax Division will consider

any balances final and the account will be subject to collection via a Xenia Municipal court summons for a criminal misdemeanor, submission to a collection agency and/or a civil judgement.

(d) If the taxpayer requests an appealable assessment within 30 days of the date of the "Monthly Statement/FINAL Unpaid Balance Notice" the Tax Administrator will generate an assessment and attempt delivery via the means described previously under "Service of Assessment." Within 60 days of the service of the assessment, the taxpayer may contact the tax administrator in writing to request a compromise on this assessment or the taxpayer may submit an appeal to the local board of tax review. On the 61st day after the assessment has been served, the assessment is final and subject to collection.

(e) 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 Income Tax Division as required by the Ordinance, the Administrator need not issue an assessment but may proceed under the provisions of Sections 881.09 and 881.10 of the Ordinance.

(f) If a balance remains unpaid and the assessment has become final and collectible the taxpayer is subject to additional legal actions to attempt collection including submission to a collection agency and/or civil actions and/or a summons to Xenia Municipal Court for a criminal misdemeanor.

I. Credits

(1) Limitation: Where a resident of the City 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 the City 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.

(2) Credits to residents: Resident individuals of the City 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.

(3) Method of applying for credit:

(a) 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.

(b) A statement satisfactory to the Administrator from the taxing authority of the municipality to which the taxes are paid, that a City resident or his employer is paying the tax shall be considered as fulfilling the filing requirements of this Article.

(4) 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.

(5) Qualifying losses on non-qualified deferred compensation plan are covered in ORC 718.021.

ARTICLE VIII WITHHOLDING ACCOUNTS

A. General Requirements

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 881.03, 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 Ordinance Section 881.04 and these Rules and Regulations, earned in or from the City.

B. Duty of Withholding

(1) Except as otherwise provided herein, it is the duty of each employer within or doing business within or for the City, who employs one or more persons whether as an employee, officer, director or otherwise, to deduct each time any qualifying wages are paid on or after January 1, 2011, the tax of two and one-quarter percent (2.25%) in accordance with Ordinance Section 881.03. 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.

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

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

(4) Employers and payroll services should review ORC 718.011 and ORC 718.03 for more information on withholding rules including the 20 day rule, definition of principal place of work and small employer withholding provisions. To determine whether an employer qualifies as a small employer for a taxable year, the employer must provide the tax administrator with their federal income tax return for the preceding tax year. Employers must be certified as small employers annually.

(5) Any business having employees who work within the City but does not withhold the full two and one-quarter percent (2.25%) from their employee's city taxable income must maintain detailed payroll records that include all work locations since the City maintains the right to review or audit any withholding account.

C. Identification of withholding businesses

(1) Except as otherwise provided herein, it is the duty of each employer doing business within or doing business with the City, who employs one (1) or more persons whether as an employee, officer, director or otherwise, to identify their business with the City's Income Tax Division within fifteen (15) working days of establishing their business within or for the City, through completion of a Business Questionnaire.

(2) Upon receipt of the questionnaire from the City, the questionnaire must be completed and returned within fifteen (15) working days, to the City's Income Tax Division.

D. Filing and payment requirements/deadlines for withholding businesses

(1) The deductions from qualifying wages required to be made by employers are to begin with the compensation earned on and after the effective date of the Ordinance.

(2) Quarterly filing/payments are required unless the employer meets the criteria for monthly payments. Monthly payments are required if either one of the following are applicable:

- The total City taxes deducted and withheld or required to be deducted and withheld in the preceding calendar year exceeds two thousand three hundred ninety-nine dollars (\$2,399)
- The total City taxes deducted and withheld or required to be deducted and withheld exceeds two hundred dollars (\$200) in any month of the preceding calendar quarter

(3) If the employer is required to make monthly payments under the criteria in this section, the employer (in addition to any return required to be filed with respect to his own earnings of net profits) shall by the fifteenth (15th) day of the month next following each withholding period, make a return and pay, to City Income Tax (c/o Income Tax Division), the full amount of the tax so deducted or withheld with respect to qualifying wages paid all of his employees subject to the tax under the Ordinance.

(4) If the employer is permitted to make quarterly payments under the criteria in this section, the employer (in addition to any return required to be filed with respect to his own earnings of net profits) shall by the last day of the month next following each withholding period, make a return and pay, to the City Income Tax (c/o Income Tax Division), the full amount of the tax so deducted or withheld with respect to qualifying wages paid all of his employees subject to the tax under the Ordinance.

(5) Under ORC 718.03 there are certain circumstances where larger withholders may be required to remit taxes semimonthly.

(6) The withholding return required to be filed shall be made on the Form W-1 available on the City's website or on a generic form that contains all the required information.

E. Interest and penalties for late filing and payment of withholding tax liability, in accordance with Ordinance Section 881.08:

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

(2) Interest: Except as provided in paragraph (4) below all withholding taxes collected (or should be collected) 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 of the Federal short-term rate (rounded to the nearest whole number per cent) for July of the current year plus five percent (5%) for each month (or part thereof) there is a tax balance due. This rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined. Interest is imposed on only the unpaid tax portion of any balances due and is imposed at the time of filing and each month after filing at the beginning of the month.

(3) Penalties: In addition to interest as provided in paragraph (1) of this Article, penalties based on the un-filed returns and/or unpaid withholding tax are hereby imposed as follows:

(a) Non-filing Penalty: For failure to file a complete City withholding tax return, when due: twenty five dollars (\$25.00) per month (or part thereof), not to exceed one hundred fifty dollars (\$150.00) for each failure to file.

(b) Non-Payment Penalty: For failure to remit the withholding taxes when due: fifty percent (50%) of the tax not timely paid.

(4) Minimum charges: Penalty and interest charges shall not be levied when the total of such charges amounts to less than ten dollars (\$10.00). Additional interest calculated monthly on the withholding balance due will not be levied when the total of such additional charges amounts to less than ten dollars (\$10.00).

F. Annual reconciliation required:

(1) On or before the 28th day of February, following any calendar year in which such deductions have been made by any employer, such employer shall file with the Income Tax Division, an informational return (a W-2 or facsimile or electronic file meeting City specifications) for each employee from whom this City's income tax has been withheld, showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of this City's income tax withheld from such employee. Employers with 250 or more reporting employees are required to submit this information in an electronic format (the specifications for the required text file are available on the City's website or by contacting the Income Tax Division).

(2) The gross compensation to be reported for each employee shall be for the full twelve (12) calendar months of the year or such portion thereof as the employee reported on was employed.

(3) In addition to these annual information returns, and at the time the same are filed, such employer shall file with the Income Tax Division, a reconciliation of returns (Form W-3) to enable the Income Tax Division to reconcile the sum total of compensation paid and the taxes withheld as disclosed by information return W-2, or list of employees, and prior returns and remittances made pursuant to the Ordinance and these Regulations.

G. Refunds and adjustments for withholding accounts:

(1) 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 Income Tax Division, depending upon the circumstances and the time when the over-withholding is determined as follows:

(a) Resident current employees:

.1 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 withholding return as withheld shall be the correct amount.

.2 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 W-1 and the amount of the adjustment with an explanation.

.3 If the over-withholding is discovered in the following year, the employee shall complete the "Refund Request Form" that is available at the City's website or at the Income Tax Division. This form must be completed by the employee and their employer and a W-2 showing the total Xenia tax withheld must be attached. The completed "Refund Request Form" must be attached to a signed City of Xenia tax return for the refund to be processed.

(b) Resident former employees:

.1 If the over-withholding is discovered in the current year and employee who is no longer employed by the employer, the employer shall notify the Income Tax Division of the amount and circumstances of such over-withholding in writing, and the Administrator shall then refund to the employer the amount of such excess withholding and it is the responsibility of the employer to refund these funds to their prior employee.

.2 If the over-withholding is discovered in the following year, the employee shall complete the "Refund Request Form" that is available at the City's website or at the Income Tax Division. This form must be completed by the employee and their employer and a W-2 showing the total Xenia tax withheld must be attached. The completed "Refund Request Form" must be attached to a signed City of Xenia tax return for the refund to be processed.

(c) Non-residents employed outside the City: Where an employer has withheld the Xenia tax from the qualified wages of a non-resident of this City, and such non-resident has not worked within the City for all or part of the time, the non-resident shall complete the "Refund Request Form" that is available at the City's website or at the Income Tax Division. This form must be completed by the employee and their employer and a W-2 showing the total Xenia tax withheld must be attached. The completed "Refund Request Form" must be attached to a signed City of Xenia tax return for the refund to be processed.

(2) Limitations: Where the total amount due or refund claimed for a tax year is less than ten dollars (\$10.00), such amount shall not be collected or refunded.

(3) 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.

(4) Exceptions:

(a) An employer whose records show that an employee is a non-resident of the City 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 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. All employees are required to notify the employer of any change of residence and the date thereof.

(b) 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 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 Income Tax Division.

(c) 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.

H. Delinquent Process for Withholding Accounts

(1) Non-filing:

(a) If a withholding return has not been filed by the due date, a "Withholding **First** Non-filing Notice" will be mailed to the taxpayer's address on file at the Income Tax Division.

(b) If the taxpayer does not provide acceptable documentation stating why a withholding return is not required for that period or does not file a withholding return, approximately 30 days after the "Withholding **First** Non-filing Notice" was mailed, a "Withholding **FINAL** Non-filing Notice" will be mailed to the taxpayer's address on file at the Income Tax Division.

(c) Failure to respond to the "Withholding **FINAL** Non-filing Notice" within 30 days of the date of the notice may result in a summons to Xenia Municipal Court for a criminal misdemeanor. This summons can be issued to the officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required since this person is personally liable for a failure to file a report or pay the tax due.

(2) Non-payment:

(a) If a withholding account has an unpaid tax or penalty/interest balance, the taxpayer will be mailed a "Withholding Account **First** Delinquent Notice" from the Income Tax Division. The taxpayer may contact the Income Tax Division to discuss the balance due and/or request in writing within 30 days of the date of "Withholding Account **First** Delinquent Notice" an appealable assessment of any balances due. The appealable assessment will be sent to the taxpayer (or their authorized agent) via certified mail or Secure Email if the taxpayer has given permission to receive correspondence from the Tax Division electronically

(b) If there remains an unpaid balance, approximately 30 days after the "Withholding Account Delinquent Notice" has been mailed, the taxpayer will be mailed a "Withholding Account FINAL Delinquent Notice. The taxpayer may request in writing within 30 days of the date of "Monthly Statement/FINAL Unpaid Balance Notice" an appealable assessment of any balances due. The appealable assessment will be sent to the taxpayer via certified mail or Secure Email if the taxpayer has given permission to receive correspondence from the Tax Division electronically. If the taxpayer does not request an appealable assessment in writing within the 30 day period, the Tax Division will consider any balances final and the account will be subject to collection via a Xenia Municipal court summons for a criminal misdemeanor, submission to a collection agency and/or a civil judgement.

(c) If the taxpayer requests an appealable assessment within 30 days of the date of the "Withholding Account FINAL Delinquent Notice" the Tax Administrator will generate an assessment and attempt delivery via the means described previously under "Service of Assessment." Within 60 days of the service of the assessment, the taxpayer may contact the tax administrator in writing to request a compromise on this assessment or the taxpayer may submit an appeal to the local board of tax review. On the 61st day after the assessment has been served, the assessment is final and subject to collection.

(d) When any taxpayer subject to the provisions of the Ordinance has filed a withholding return indicating the amount of withholding tax due and has failed to pay said tax to the Income Tax Division as required by the Ordinance, the Administrator need not issue an assessment but may proceed under the provisions of Sections 881.09 and 881.10 of the Ordinance.

(e) If a balance remains unpaid and the assessment has become final and collectible the taxpayer is subject to additional legal actions to attempt collection including civil actions, submission to a collection agency and/or a summons to Xenia Municipal Court for a criminal misdemeanor. This summons can be issued to the officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required since this person is personally liable for a failure to file a report or pay the tax due.

ARTICLE IX POSTMARKS AND EFFECTIVE DATES

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

B. For a document filed or sent electronically or a payment made electronically, the date on the timestamp assigned by the first electronic system receiving that payment or document.

ARTICLE X SERVICE OF ASSESSMENT

A. A copy of each assessment shall be served upon the person affected thereby either by personal service, by certified mail or by a delivery service authorized under ORC 5703.056.

B. With the permission of the person affected by the assessment, assessments may be delivered through alternate means as provided in this section, including, but not limited to, delivery by secure electronic mail. Delivery by such means satisfies the requirements for delivery under this section. Once a taxpayer gives permission for delivery via secure electronic mail, this delivery method will remain in effect until the taxpayer notifies the tax administrator in writing that they wish to change the way they receive assessment and other information from the tax administrator.

C. If certified mail is returned because of an undeliverable address, the tax administrator will use reasonable means to ascertain a new last known address, including the use of a change address service offered by the postal service or authorized delivery service under ORC 5703.056. If, after using reasonable means, the tax administrator is unable to ascertain a new last known address, the assessment shall be sent by ordinary mail and considered served. If the ordinary mail is subsequently returned because of an undeliverable address, the assessment remains appealable within sixty (60) days after the assessment's postmark.

D. Once an assessment has been served on the person to whom the assessment is directed, the person may protest the ruling of that assessment by filing an appeal with the local board of tax review within sixty (60) days after the receipt of service. The delivery of an assessment as described in this section is prima facie evidence that delivery is complete and that the assessment is served.

E. If mailing of an assessment by certified mail is returned for some cause other than an undeliverable address, the tax administrator shall resend the assessment by ordinary mail. The assessment shall show the date the tax administrator sends the assessment and include the following statement:

"This assessment is deemed to be served on the addressee under applicable law ten (10) days from the date this assessment was mailed by the tax administrator as shown on the assessment, and all periods within which an appeal may be filed apply from and after that date."

Unless the mailing is returned because of an undeliverable address, the mailing of that information is prima facie evidence that delivery of the assessment was completed ten (10) days after the tax administrator sent the assessment by ordinary mail and that the assessment was served. If the ordinary mail is subsequently returned because of an undeliverable address, the assessment remains appealable within sixty (60) days after the assessment's postmark.

F. A person may challenge the presumption of delivery and service. A person disputing the presumption of delivery and service bears the burden of proving by a preponderance of the evidence that the address to which the assessment was sent was not an address with which the person was associated at the time the tax administrator originally mailed the assessment by certified mail. For the purposes of this section, a person is associated with an address at the time the tax administrator originally mailed the assessment if, at that time, the person was residing, receiving legal documents, or conducting business at the address; or if, before that time, the person's agent or the person's affiliate was conducting business at the address. For purposes of this section, a person's affiliate is any other person that, at the time the assessment was mailed, owned or controlled at least twenty per cent (20%), as determined by voting rights, of the addressee's business. If a person elects to appeal an assessment on the basis of delivery and service and if the assessment is subject to collection and is not otherwise appealable, the person must do so within sixty (60) days after the initial contact by the tax administrator or other municipal official, or the designee of either, with the person.

G. As used in this section:

- "Last known address" means the address the tax administrator has at the time a document is originally sent by certified mail, or any address that tax administrator can ascertain using reasonable means such as the user of a change of address service offered by the post office or other authorized delivery service under ORC 5703.056.
- "Undeliverable address" means an address to which the postal service or an authorized delivery service under ORC 5703.056 is not able to deliver an assessment of the tax administrator, except when the reason for non-delivery is because the addressee fails to acknowledge or accept the assessment.

ARTICLE XI CONFIDENTIALITY

A. Per ORC 718.13:

"A) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this chapter or by a charter or ordinance of a municipal corporation levying an income tax pursuant to this chapter is confidential, and no person shall access or disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the municipal corporation as authorized by this chapter or the charter or ordinance authorizing the levy. The tax administrator of the municipal corporation or a designee thereof may furnish copies of returns filed or otherwise received under this chapter and other related tax information to the internal revenue service, the tax commissioner, and tax administrators of other municipal corporations.

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

B. 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).

C. 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.

D. 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.

E. 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.

F. If the taxpayer has previously granted permission for contact about their tax account to be made via Secure Email, the emailing of information to the email address on file at the Tax Division shall not be deemed a breach of confidentiality as long as the email was sent using the Secure Email process.

ARTICLE XII 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, 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, these Rules and Regulations or ORC 718.

(2) Any taxpayer or employer desiring a special ruling on any matter pertaining to the Ordinance or these Rules and Regulations or ORC 718, should submit to the Administrator in writing, all the facts involved for a final ruling.

(3) These Rules and 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 follow the steps previously defined under "Delinquent Process for Direct Accounts".

(b) 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 Income Tax Division as required by the Ordinance, the Administrator need not issue an assessment but may proceed under the provisions of Ordinance Sections 881.09 and 881.10.

(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 Income Tax Division the full amount of said taxes, the Administrator shall follow the steps detailed in "Delinquent Process for Withholding Accounts" to generate an assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon and the provisions of interest and penalties for late filing and payment of withholding tax liability, in accordance with these Rules and 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 notice showing the tax due, together with any penalties and interest that may have accrued thereon and the provisions of "Interest and penalties for late filing and payment of withholding tax liability, in accordance with Ordinance Section 881.08" 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 Income Tax Division as required by the Ordinance, the Administrator need not issue an assessment but may proceed under the provisions of Ordinance Sections 881.09 and 881.10.

D. Authority of the Tax Administrator under ORC 718.24

(1) Per ORC 718.24:

"Nothing in this chapter (ORC 718) shall limit the authority of a tax administrator to perform any of the following duties or functions, unless the performance of such duties or functions is expressly limited by a provision of the Revised Code or the charter or ordinances of the municipal corporation:

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

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

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

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

- (e) Exercise the authority provided by law relative to consenting to the compromise and settlement of tax claims;
- (f) Exercise the authority provided by law relative to the use of alternative apportionment methods by taxpayers in accordance with ORC 718.02.
- (g) Make all tax findings, determinations, computations, and orders the tax administrator is by law authorized and required to make and, pursuant to time limitations provided by law, on the tax administrator's own motion, review, redetermine, or correct any tax findings, determinations, computations, or orders the tax administrator has made, but the tax administrator shall not review, redetermine, or correct any tax finding, determination, computation, or order which the tax administrator has made as to which an appeal has been filed with the local board of tax review or other appropriate tribunal, unless such appeal or application is withdrawn by the appellant or applicant, is dismissed, or is otherwise final;
- (h) Destroy any or all returns or other tax documents in the manner authorized by law;
- (i) Enter into an agreement with a taxpayer to simplify the withholding obligations described in ORC 718.03.”

ARTICLE XIII 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 881.03 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 charges 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 charges 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) No civil action to recover municipal income tax or related penalties or interest shall be brought during either of the following time periods:
 - (a) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties.
 - (b) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

B. Refunds and Overpayments:

- (1) Taxes erroneously paid shall not be refunded unless a claim for refund is filed with the tax administrator on the form prescribed by the tax administrator within three (3) years after the tax was due or paid, whichever is later. The tax administrator may require the requestor to file with the request any documentation that substantiates the requestor's claim for a refund.
- (2) 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 the taxpayer's current estimated tax liability.

(3) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, 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 completed return if filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time of filing that return. Interest shall be paid at the interest rate described in ORC 718.27.

C. Limitations:

Where the total amount due or refund claimed for a tax year is less than ten dollars (\$10.00), such amount shall not be collected or refunded.

**ARTICLE XIV
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 Income Tax Division; or
- (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.

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

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 XV LOCAL BOARD OF TAX REVIEW

A. The full requirements for the local board of tax review are included in ORC 718.11.

B. Review process:

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

(2) The local board of tax review shall schedule a hearing to be held within sixty days after receiving an appeal of an assessment unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the board and may be represented by an attorney at law, certified public accountant, or other representative. The board may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within one hundred twenty days after the first day of the hearing unless the parties agree otherwise.

(3) The board may affirm, reverse, or modify the tax administrator's assessment or any part of that assessment. The board shall issue a final determination on the appeal within ninety days after the board's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen days after issuing the final determination. The taxpayer or the tax administrator may appeal the board's final determination as provided in ORC 5717.011.

(4) The local board of tax review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Ohio Revised Code Chapter 149.43. Hearings requested by a taxpayer before a local board of tax review created pursuant to this section are not meetings of a public body subject to ORC 121.22.

ARTICLE XVI 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 Rules 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. The stated purpose of the Rules and Regulations is compliance with ORC 718 and any deviations from this compliance are unintentional.

ARTICLE XVII 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 881.09 and 881.10..

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 881.06 as though the same were continuing.

ARTICLE XVIII AUDITS

A. A review of a filing for accuracy or completeness, a correction of a return or a request for additional information from a taxpayer is not an audit.

B. Per ORC 718.36:

“(1) At or before the commencement of an audit, the tax administrator shall provide to the taxpayer a written description of the roles of the tax administrator and of the taxpayer during an audit and a statement of the taxpayer's rights, including any right to obtain a refund of an overpayment of a tax. At or before the commencement of an audit, the tax administrator shall inform the taxpayer when the audit is considered to have commenced.

(2) Except in cases involving suspected criminal activity, the tax administrator shall conduct an audit of a taxpayer during regular business hours and after providing reasonable notice to the taxpayer. A taxpayer who is unable to comply with a proposed time for an audit on the grounds that the proposed time would cause inconvenience or hardship must offer reasonable alternative dates for the audit.

(3) At all stages of an audit by the tax administrator, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. The tax administrator shall prescribe a form by which a taxpayer may designate such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the tax administrator. If a taxpayer has not submitted such a form, the tax administrator may accept other evidence, as the tax administrator considers appropriate, that a person is the authorized representative of a taxpayer. A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner. This division does not authorize the practice of law by a person who is not an attorney.

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

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

(6) If the tax administrator fails to substantially comply with the provisions of this section, the tax administrator, upon application by the taxpayer, shall excuse the taxpayer from penalties and interest arising from the audit.”

ARTICLE XIX ROSTER OF TENANTS

Every owner of one or more rental units and every owner or operator of a mobile home park shall furnish to the Income Tax Division, 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 shall be filed with the Income Tax Division on or before January 31 and July 31 of each year.

ARTICLE XX OHIO BUSINESS GATEWAY

A. A Taxpayer may elect to be subject to ORC 718.80 to 718.95 in lieu of the provisions set forth in the rest of the City of Xenia's Income Tax Rules and Regulations when eligible to do so under State statute. The State Tax Commissioner shall administer the tax pursuant to ORC 718.80 to 718.95 and any applicable provision of ORC Chapter 5703.

B. Elections can be made pursuant to ORC 718.80(B).

C. The City, within (90) days of receiving a taxpayer's notification of election under ORC 718.80, shall submit the following information to the Tax Commissioner regarding the taxpayer:

1. The amount of any net operating loss that the taxpayer is entitled to carry forward to a future tax year.
2. The amount of any net operating loss carryforward utilized by the taxpayer in prior years.
3. Any credits granted by the City to which the taxpayer is entitled, the amount of such such credits, whether the credits may be carried forward to the future tax years, and, if the credits may be carried forward; the duration of any such carryforward.
4. Any overpayments of tax that the taxpayer has elected to carry forward to a subsequent tax year.
5. Any other information the City deems relevant in order to effectuate the Tax Commissioner's efficient administration of the tax on the City's behalf.

~~D. Any employer may report the amount of City income tax withheld from qualifying wages and may make remittance amounts, by using the Ohio Business Gateway.~~

ARTICLE XXI ADDITIONAL FEES RELATED TO LEGAL ACTIONS

As permitted under ORC 718.27, the City of Xenia shall impose on the taxpayer, employer, any agent of the employer, or any other payer the City of Xenia's civil post-judgment collection costs and fees, including attorney's fees.

For taxpayers appearing before the Xenia Municipal Court on criminal misdemeanors under Chapter 881 of the City of Xenia Ordinances, the costs and fines charged are strictly at the discretion of the Xenia Municipal court.

**Amended by the City Council:
November 12, 2015
September 14, 2016**

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