

**CITY OF XENIA, OHIO  
ORDINANCE 2020 – 10**

**AMENDING CHAPTER 881., TITLED “MUNICIPAL INCOME TAX,” AND REPEALING  
CHAPTER 288. OF THE CODIFIED ORDINANCES OF THE CITY OF XENIA, OHIO,  
AND DECLARING AN EMERGENCY**

**WHEREAS**, Ohio Revised Code Chapter 718., effective on January 1, 2016, dictated to Ohio’s municipalities the provisions required in a municipal Income Tax Code;

**WHEREAS**, this Council adopted the provisions required by ORC Chapter 718. by enacting Ordinance 15-33, adopted on July 23, 2015;

**WHEREAS**, the City desires to join and contract with the Regional Income Tax Authority (RITA), a regional council of governments that provides services to more than 300 municipalities in Ohio, for the administration and collection of City income taxes; and

**WHEREAS**, to assure the smooth transition to RITA, certain amendments are needed to the City’s Income Tax Code to reorganize the provisions required under ORC Chapter 718.

**NOW, THEREFORE, THE CITY OF XENIA HEREBY ORDAINS**, at least five (5) members of the City Council concurring, that:

**Section 1.** This Ordinance is an emergency for the reason that to assure the smooth transition to RITA in a timely manner and the continued and necessary daily operations of the City’s Income Tax Division, amendments to the City’s Income Tax Code for the purpose of reorganizing the Code need to be made immediately.

**Section 2.** Chapter 881. of Title Four: Taxation, of Part Eight – Business Regulation and Taxation Code of the City’s Codified Ordinances, which contains the City’s Income Tax Code, to be titled “Municipal Income Tax,” is hereby amended, and Sections 881.18 through 881.27 are hereby enacted, as set forth in the attached Exhibit A.

**Section 3.** Existing Chapter 881. is hereby repealed.

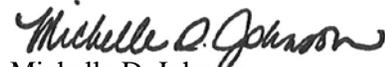
**Section 4.** Chapter 288. of Title Eight: Boards, Commissions and Committees, of Part Two – Administration Code, is hereby repealed in its entirety.

**Section 5.** It is found that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**Section 6.** In accordance with Section 5.04 of the City’s Charter, this Ordinance shall become effective upon its adoption.

ADOPTED: April 23, 2020

Attest:

  
Michelle D. Johnson  
City Clerk

  
Wesley E. Smith  
President, Xenia City Council

881.01 AUTHORITY TO LEVY; PURPOSE; **RATE**; APPLICABILITY.

(a) Authority to Levy. The tax on income and the withholding tax established by this Chapter are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax on income and the withholding tax established by this Chapter are deemed to be levied in accordance with, and to be consistent with, the provisions and limitations of ORC Chapter 718. This Chapter is adopted with the intent to conform to ORC Chapter 718. and is deemed to incorporate the provisions of ORC Chapter 718.

(b) Purpose. To provide funds for the purposes of capital improvements, general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities of the City, there shall be and is hereby levied an annual **municipal income tax levied on income, qualifying wages, commissions and other compensation, and on net profits as provided in this Chapter 881.** ~~every person residing in or earning or receiving municipal taxable income in the City of Xenia. "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. The City shall tax income at a uniform rate.~~

(c) ~~(d)~~ Rate of Tax. The rate of tax on income and the withholding tax established by this Chapter shall be two and one-quarter percent (2.25%), and shall continue at that rate until amended or repealed, as established by Ordinance 10-27, which was approved by the voters on November 2, 2010, and became effective on January 1, 2011. **The tax is levied at a uniform rate on all persons residing in or earning or receiving income in the City of Xenia. The tax is levied on income, qualifying wages, commissions and other compensation, and on net profits as provided in Section 881.03 of this Chapter and other sections as they may apply.**

(d) ~~(e)~~ Applicability.

- (1) Chapter 881., and corresponding changes to ORC Chapter 718. apply to municipal taxable years beginning on or after January 1, 2016. All provisions of this Chapter 881. apply to taxable years beginning 2016 and succeeding taxable years.
- (2) Enactment of this Chapter 881. does not repeal the existing sections of Chapter 880. for any taxable year prior to 2016. For municipal taxable years beginning before January 1, 2016, the City shall continue to administer, audit and enforce the income tax of the City under Chapter 880., ORC Chapter 718., and ordinances and resolutions of the City as those ORC Chapters, ordinances and resolutions existed before January 1, 2016.

(e) ~~881.14~~ Allocation of Funds. The funds collected under the provisions of this Chapter shall be allocated in such manner as prescribed by ordinances and policies adopted by the City Council.

**(Source: ORC 718.04)**

(Ord. 15-33. Passed 07/23/15; Ord. 2018-08. Passed 02/22/18; **Ord. 2020-\*\*. Passed \*\*/\*\*/20**)

881.02 **DEFINITIONS.**

**Any term used in this Chapter that is not otherwise defined in this Chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Ohio Revised Code, unless a different meaning is clearly required. Except as provided in ORC 718.81, if a term used in this Chapter that is not otherwise defined in this Chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Ohio Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code.**

For purposes of this section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

Except as otherwise provided in ORC 718.81, as used in this Chapter:

(a) Adjusted Federal Taxable Income. For a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division (x)(5) of this section, adjusted federal taxable income means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

- (1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.
- (2) Add an amount equal to five percent (5%) of intangible income deducted under division (a)(1) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in Section 1221 of the Internal Revenue Code.
- (3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code.
- (4) A. Except as provided in division (a)(4)B. of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;  
B. Division (a)(4)A. of this section does not apply to the extent the income or gain is income or gain described in Section 1245 or 1250 of the Internal Revenue Code.
- (5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.
- (6) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.
- (7) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under ORC 4313.02.
- (8) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.
- (9) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with Section 881.05(h)(5)C.(ii) of this Chapter.
- (10) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with Section 881.05(h)(5)C.(ii) of this Chapter.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (vv)(2) of this section, is not a publicly traded partnership that has made the election described in division (x)(5) of this section, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in

consideration for the use of capital and treated as payment of interest under Section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (a) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

**(b) Assessment.**

**(1) Assessment means a written finding by the Tax Administrator that a person has underpaid City income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the City that commences the person's time limitation for making an appeal to the Board of Tax Review pursuant to Section 881.21 of this Chapter, and has "ASSESSMENT" written in all capital letters at the top of such finding.**

**(2) "Assessment" does not include notice(s) denying a request for refund issued under Section 811.09(c)(3) of this Chapter, a billing statement notifying a taxpayer of current or past-due balances owed to the City, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (b)(1) of this section.**

**(c) Audit. The examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for City income tax.**

**(d) Board of Tax Review. "Board of Tax Review" or "Board of Review" or "Board of Tax Appeals," or other named local board constituted to hear appeals of municipal income tax matters, means the entity created under Section 881.21.**

**(e) Calendar Quarter. The three- (3) month period ending on the last day of March, June, September or December.**

**(f) Casino Operator and Casino Facility have the same meanings as in ORC 3772.01.**

**(g) Certified Mail, Express Mail, United States Mail, and/or Postal Service (and similar terms) include any delivery service authorized pursuant to ORC 5703.056.**

**(h) Disregarded Entity. A single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.**

**(i) Domicile. The true, fixed and permanent home of the taxpayer to which, whenever absent, the taxpayer intends to return. A taxpayer may have more than one residence but not more than one domicile.**

**(j) Employee. An individual who is an employee for federal income tax purposes.**

**(k) Employer. A person that is an employer for federal income tax purposes.**

**(l) Exempt Income. Exempt income includes all of the following:**

- (1) The 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.**
- (2) Intangible income.**
- (3) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, 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. As used in division (1)(3) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in Section 3402(o)(2) of the Internal Revenue Code.**
- (4) The income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.**
- (5) Compensation paid under ORC 3501.28 or 3501.36 to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars (\$1,000) for the taxable year. Such compensation in excess of one thousand dollars (\$1,000) for the taxable year may be subject to taxation by the City. The City shall not require the payer of such compensation to withhold any tax from that compensation.**
- (6) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations.**
- (7) Alimony and child support received.**
- (8) Awards for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages.**
- (9) Income of a public utility when that public utility is subject to the tax levied under ORC 5727.24 or 5727.30. Division (1)(9) of this section does not apply for purposes of ORC Chapter 5745.**
- (10) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business.**
- (11) Compensation or allowances excluded from federal gross income under Section 107 of the Internal Revenue Code.**
- (12) Employee compensation that is not qualifying wages as defined in division (ii) of this section.**
- (13) Compensation paid to a person employed within the boundaries of a United States Air Force base under the jurisdiction of the United States Air Force that is used for the housing of members of the United States Air Force and is a center for Air Force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.**
- (14) An S corporation shareholder's share of net profits of the S corporation, other than any part of the share of net profits that represents wages as defined in Section 3121(a) of**

- the Internal Revenue Code or net earnings from self-employment as defined in Section 1402(a) of the Internal Revenue Code.
- (15) All of the income of individuals or a class of individuals sixteen (16) years of age or older.
- (16) A. Except as provided in divisions (1)(16)B., C. and D. of this section, qualifying wages described in Section 881.04(b)(2) or (b)(5) of this Chapter to the extent the qualifying wages are not subject to withholding for the City under either of those divisions.
- B. The exemption provided in division (1)(16)A. of this section does not apply with respect to an employee who resided in the City at the time the employee earned the qualifying wages.
- C. The exemption provided in division (1)(16)A. of this section does not apply to qualifying wages that an employer elects to withhold under Section 881.04(b)(4)B. of this Chapter.
- D. The exemption provided in division (1)(16)A. of this section does not apply to qualifying wages if both of the following conditions apply:
- (i) For qualifying wages described in Section 881.04(b)(2) of this Chapter, the employee's employer withholds and remits tax on the qualifying wages to the City and the employee's principal place of work is situated in the City, or, for qualifying wages described in Section 881.04(b)(5) of this Chapter, the employee's employer withholds and remits tax on the qualifying wages to the City and the employer's fixed location is located in the City;
- (ii) The employee receives a refund of the tax described in division (1)(16)D.(i) of this section on the basis of the employee not performing services in the City.
- (17) A. Except as provided in division (1)(17)B. or C. of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the City on not more than twenty (20) days in a taxable year.
- B. The exemption provided in division (1)(17)A. of this section does not apply under either of the following circumstances:
- (i) The individual's base of operation is located in the City; or
- (ii) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (1)(17)B.(ii) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 881.04(b) of this Chapter.
- C. Compensation to which division (1)(17) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.
- D. For purposes of division (1)(17) of this section, "base of operation" means the location where an individual owns or rents an office, storefront or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.
- (18) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to the City pursuant to ORC 709.023 on or after March 27, 2013, unless the person is subject to such taxation because

of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.

(19) In the case of a tax administered, collected, and enforced by the City pursuant to an agreement with the board of directors of a joint economic development district under ORC 715.72, the net profits of a business and the income of the employees of that business exempted from the tax under ORC 715.72(Q).

(20) Income the taxation of which is prohibited by the constitution or laws of the United States.

Any item of income that is exempt income of a pass-through entity under division (l) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

(m) Form 2106. Internal Revenue Service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(n) Generic Form. An electronic or paper form that is not prescribed by the City and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability, including a request for refund.

(o) Gross Receipts. The total revenue derived from sales, work done, or services rendered.

(p) Income.

(1) Income means the following:

A. For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in division (x)(5) of this section.

B. For the purposes of division (p)(1)A. of this section:

(i) Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five (5) taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (p)(1)D. of this section;

(ii) The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.

C. Division (p)(1)B. of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (l)(14) of this section.

D. Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net

operating loss exceed the original amount of that net operating loss available to that taxpayer.

- (2) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the City, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.
- (3) For taxpayers that are not individuals, net profit of the taxpayer.
- (4) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. 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. Credit for tax withheld or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in Section 881.06 of this Chapter.

(q) Intangible Income. 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 ORC Chapter 5701., and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(r) Internal Revenue Code. Internal Revenue Code has the same meaning as in ORC 5747.01.

(s) Limited Liability Company. A limited liability company formed under ORC Chapter 1705 or under the laws of another state.

(t) Municipal Corporation.

- (1) In general terms, a status conferred upon a local government unit, by state law giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic development district or joint economic development zone that levies an income tax under ORC 715.691, 715.70, 715.71, or 715.74.
- (2) For the purposes of this Chapter "municipal corporation" includes the City of Xenia, Ohio, and "Municipality" or "City" means the City of Xenia, Ohio.

(u) Municipal Taxable Income.

- (1) Means the following:
  - A. For a person other than an individual, income apportioned or sitused to the City under Section 881.03 of this Chapter, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the City.
  - B. (i) For an individual who is a resident of the City, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (u)(2) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the City.
  - (ii) For an individual who is a nonresident of the City, income reduced by exempt income to the extent otherwise included in income and then, as

applicable, apportioned or situated to the City under Section 881.03 of this Chapter, then reduced as provided in division (u)(2) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the City.

- (2) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (u)(1)B.(i) or (ii) of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by Section 67 of the Internal Revenue Code.
- A. If the taxpayer is a resident of the City, the taxpayer may deduct all such expenses allowed for federal income tax purposes.
- B. If the taxpayer is not a resident of the City, 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.

(v) Municipality. The City of Xenia, Ohio. If the term "Municipality" or "City" is capitalized herein, the term refers to the City of Xenia. If the term "Municipality" or "City" is not capitalized, the term refers to a municipal corporation other than the City of Xenia.

(w) Net Operating Loss. A loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations or passive activity loss limitations.

(x) Net Profit.

- (1) For a person who is an individual, "net profit" means the individual's net profit required to be reported on IRS schedule C, schedule E or schedule F reduced by any net operating loss carried forward. For the purposes of division (x)(1) of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (x)(3) of this section.
- (2) "Net profit" for a person other than an individual means adjusted federal taxable income reduced by any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017, subject to the limitations of division (x)(3) of this section.
- (3) A. The amount of such net operating loss shall be deducted from net profit to the extent necessary to reduce municipal 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.
- B. No person shall use the deduction allowed by division (x)(3) of this section to offset qualifying wages.
- C. (i) For taxable years beginning in 2018, 2019, 2020, 2021 or 2022, a person may not deduct, for purposes of an income tax levied by the City, more than fifty percent (50%) of the amount of the deduction other allowed by division (x)(3) of this section.
- (ii) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by the City, the full amount allowed by division (x)(3) of this section without regard to the limitation of division (x)(3)C.(i) of this section.

**D. Any pre-2017 net operating loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to division (x)(3) of this section.**

**E. Nothing in division (x)(3)C.(i) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (x)(3)C.(i) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (x)(3)C.(i) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, 2022, the limitation described in division (x)(3)C.(i) of this section shall apply to the amount carried forward.**

**(4) For the purposes of this Chapter, and notwithstanding division (x)(2) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.**

**(5) A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is not subject to tax on its net profits by the City may elect to be treated as a C corporation for the City, and shall not be treated as the net profit or income of any owner of the partnership. The election shall be made on the annual return for the City. The City will treat the publicly traded partnership as a C corporation if the election is so made.**

**(y) Nonresident. An individual that is not a resident of the City.**

**(z) Ohio Business Gateway. The online, computer-network system created under ORC 125.30 that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.**

**(aa) Other Payer. Any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual. "Other payer" includes casino operators and video lottery terminal sales agents.**

**(bb) Pass-Through Entity. A partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. "Pass-through entity" does not include a trust, estate, grantor of a grantor trust, or disregarded entity.**

**(cc) Pension. Any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.**

**(dd) 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.**

**(ee) Postal Service. The United States postal service, or private delivery service delivering documents and packages within an agreed upon delivery schedule, or any other carrier service delivering the item.**

**(ff) Postmark Date or Date of Postmark (and similar terms) include the date recorded and marked by a delivery service and recorded electronically to a database kept in the regular course of its business and marked on the cover in which the payment or document is enclosed, the date on which the payment or document was given to the delivery service for delivery.**

**(gg) Pre-2017 Net Operating Loss Carryforward.**

- (1) Means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the City that was adopted by the City before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such City in future taxable years.**
- (2) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.**

**(hh) Publicly Traded Partnership. Any partnership, an interest in which is regularly traded on an established securities market. A publicly traded partnership may have any number of partners.**

**(ii) Qualifying Wages. Wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:**

**(1) Deduct the following amounts:**

- A. 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.**
- B. 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.**
- C. Any amount included in wages that is exempt income.**

**(2) Add the following amounts:**

- A. Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.**
- B. Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. Division (ii)(2)B. of this section applies only to those amounts constituting ordinary income.**
- C. Any amount not included in wages if the amount is an amount described in Section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (ii)(2)C. of this section applies only to employee contributions and employee deferrals.**
- D. Any amount that is supplemental unemployment compensation benefits described in Section 3402(o)(2) of the Internal Revenue Code and not included in wages.**
- E. Any amount received that is treated as self-employment income for federal tax purposes in accordance with Section 1402(a)(8) of the Internal Revenue Code.**
- F. Any amount not included in wages if all of the following apply:**
  - (i) For the taxable year, the amount is employee compensation that is earned outside of the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under Section 911 of the Internal Revenue Code;**

- (ii) For no preceding taxable year did the amount constitute wages as defined in Section 3121(a) of the Internal Revenue Code;
- (iii) For no succeeding taxable year will the amount constitute wages; and
- (iv) For any taxable year the amount has not otherwise been added to wages pursuant to either division (ii)(2) of this section or ORC 718.03, as that section existed before the effective date of HB 5 of the 130th General Assembly, March 23, 2015.

(jj) Related Entity. Any of the following:

- (1) An individual stockholder, or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;
- (2) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;
- (3) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (jj)(4) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent (50%) of the value of the corporation's outstanding stock; and/or
- (4) The attribution rules described in Section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (jj)(1) to (3) of this section have been met.

(kk) Related Member. A person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in Section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "twenty percent (20%)" shall be substituted for "five percent (5%)" wherever "five percent (5%)" appears in Section 1563(e) of the Internal Revenue Code.

(ll) Resident. An individual who is domiciled in the City as determined under Section 881.03(d) of this Chapter.

(mm) S Corporation. A person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

(nn) Schedule C. Internal Revenue Service Schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(oo) Schedule E. Internal Revenue Service Schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(pp) Schedule F. Internal Revenue Service Schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(qq) Single Member Limited Liability Company. A limited liability company that has one direct member.

**(rr) Small Employer.** Any employer that had total revenue of less than five hundred thousand dollars (\$500,000) during the preceding taxable year. For purposes of this division, "total revenue" means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. "Small employer" does not include the federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.

**(ss) Tax Administrator.**

**(1) The individual or entity charged with direct responsibility for administration and enforcement of the income tax levied by City in accordance with this Chapter, which may include the following:**

**A. A municipal corporation acting as the agent of the City;**

**B. A person retained by the City to administer the income tax levied by the City, but only if the City does not compensate the person in whole or in part on a contingency basis;**

**C. The Central Collection Agency (CCA) or the Regional Income Tax Agency (RITA) or their successors in interest, or another entity organized to perform functions similar to those performed by the Central Collection Agency and the Regional Income Tax Agency.**

**(2) "Tax Administrator" does not include Tax Commissioner. "Tax Commissioner" means the State Tax Commissioner appointed under ORC 121.03.**

**(tt) Tax Return Preparer.** Any individual described in Section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.

**(uu) Taxable Year.** The corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

**(vv) Taxpayer.**

**(1) A person subject to the tax levied on income by the City in accordance with this Chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (vv)(2)A. of this section, a disregarded entity.**

**(2) A. A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member if it either filed as a separate taxpayer with the City or did not file for its taxable year ending in 2003, if all of the following conditions are met:**

**(i) The limited liability company's single member is also a limited liability company;**

**(ii) The limited liability company and its single member were formed and doing business in one (1) or more Ohio municipal corporations for at least five (5) years before January 1, 2004;**

**(iii) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under ORC 718.01(L), as that section existed on December 31, 2004;**

- (iv) The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member; and
  - (v) The City that was the primary place of business of the sole member of the limited liability company and the City consented to the election.
- B. For purposes of division (vv)(2)A.(v) of this section, the City was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in the City than in any other municipal corporation in Ohio, and that tax liability to the City for its taxable year ending in 2003 was at least four hundred thousand dollars (\$400,000).

(ww) Taxpayers' Rights and Responsibilities. The rights provided to taxpayers under Sections 881.09, 881.12, 881.13, 881.19(b), 881.20 and 881.21 or under in ORC 718.11, 718.12, 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011 and 5717.03 and any corresponding ordinances of the City, and the responsibilities of taxpayers to file, report, withhold, remit and pay City income tax and otherwise comply with this Chapter 881. and resolutions, ordinances, and rules adopted by the City for the imposition and administration of the City income tax.

(xx) Video Lottery Terminal. Has the same meaning as in ORC 3770.21.

(yy) Video Lottery Terminal Sales Agent. A lottery sales agent licensed under ORC Chapter 3770. to conduct video lottery terminals on behalf of the state pursuant to ORC.  
*(Source: Most definitions can be found in ORC 718.01)*

(Ord. 2020-\*\*. Passed \*\*/\*\*/20)

### 881.03 IMPOSITION OF DIRECT TAX.

(a) **Imposition.** The annual tax for the purposes specified in Section 881.01 shall be imposed **at a uniform rate** on and after January 1, 2016, for tax year 2016 and beyond, at the rate of two and one-quarter percent (2.25%) per annum on **municipal** taxable income for every person residing in or earning or receiving income in the City of Xenia, ~~and that the tax shall be measured by municipal taxable income defined in ORC Chapter 718.~~

#### (b) Individuals.

- (1) For residents of the City, the income tax levied herein shall be on all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident. (This is further detailed in the definition of income (Section 881.02(p)).
- (2) For nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.
- (3) For residents and nonresidents, income can be reduced to "Municipal Taxable Income," as defined in Section 881.02(u). Exemptions which may apply are specified in Section 881.02(l).

**(c) Refundable Credit for Nonqualified Deferred Compensation Plan.**

**(1) As used in this division:**

- A. "Nonqualified deferred compensation plan" means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.**
  - B. "Qualifying loss" means the amount of compensation attributable to a taxpayer's nonqualified deferred compensation plan, less the receipt of money and property attributable to distributions from the nonqualified deferred compensation plan. Full loss is sustained if no distribution of money and property is made by the nonqualified deferred compensation plan. The taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.**
  - C. (i) "Qualifying tax rate" means the applicable tax rate for the taxable year for which the taxpayer paid income tax to the City with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.**
    - (ii) If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the City each year with respect to the nonqualified deferred compensation plan.**
  - D. "Refundable credit" means the amount of City income tax that was paid on the nondistributed portion, if any, of a nonqualified deferred compensation plan.**
- (2) If, in addition to City income tax, a taxpayer has paid tax to other municipal corporations with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.**
- (3) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to the City for all taxable years with respect to the nonqualified deferred compensation plan.**
- (4) The credit allowed under this division is allowed only to the extent the taxpayer's qualifying loss is attributable to:**
- A. The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or**
  - B. The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.**
- (Source: ORC 718.021)**

**(d) Domicile.**

- (1) A. An individual is presumed to be domiciled in the City of Xenia for all or part of a taxable year if the individual was domiciled in the City on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in City for all or part of the taxable year.**
  - B. An individual may rebut the presumption of domicile described in division (d)(1)A. of this section if the individual establishes by a preponderance of evidence that the individual was not domiciled in the City of Xenia for all or part of the taxable year.**
- (2) For the purpose of determining whether an individual is domiciled in the City for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:**

- A. The individual's domicile in other taxable years;
  - B. The location at which the individual is registered to vote;
  - C. The address on the individual's driver's license;
  - D. The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;
  - E. The location and value of abodes owned or leased by the individual;
  - F. Declarations, written or oral, made by the individual regarding the individual's residency;
  - G. The primary location at which the individual is employed;
  - H. The location of educational institutions attended by the individual's dependents as defined in Section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation where the educational institution is located; and/or
  - I. The number of contact periods the individual has with the City. For the purposes of this division, an individual has one "contact period" with the City if the individual is away overnight from the individual's abode located outside of the City and while away overnight from that abode spends at least some portion, however minimal, of each of two (2) consecutive days in the City.
- (3) Additional applicable factors may be set forth in the Rules and Regulations.  
(Source: ORC 718.012)

(e) Businesses. This division applies to any taxpayer engaged in a business or profession in the City, unless the taxpayer is an individual who resides in the City or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under ORC Chapter 5745.

- (1) Except as otherwise provided in division (e)(2) of this section, net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for purposes of municipal income taxation in the same proportion as the average ratio of the following:
  - A. The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the City during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. As used in this division (e)(1)A., tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight (8);
  - B. Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the City to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under Section 881.04(b);
  - C. Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.
- (2) A. If the apportionment factors described in division (e)(1) of this section do not fairly represent the extent of a taxpayer's business activity in the City, the

- taxpayer may request, or the Tax Administrator may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:
- (i) Separate accounting;
  - (ii) The exclusion of one or more of the factors;
  - (iii) The inclusion of one or more additional factors that would provide for a fairer apportionment of the income of the taxpayer to the municipal corporation; or
  - (iv) Modification of one or more of the factors.
- B. A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by Section 881.12(a).
- C. The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (e)(2)A. of this section, but only by issuing an assessment to the taxpayer within the period prescribed by Section 881.12(a).
- D. Nothing in this division (e)(2) nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.
- (3) As used in division (e)(1)B. of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:
- A. A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
    - (i) The employer;
    - (ii) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
    - (iii) A vendor, customer, client, or patient of a person described in division (e)(3)A.(ii) of this section, or a related member of such a vendor, customer, client, or patient.
  - B. Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;
  - C. Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (e)(3)A. or B. of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.
- (4) For the purposes of division (e)(1)C. of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:
- A. Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation only if, regardless of where title passes, the property meets either of the following criteria:
    - (i) The property is shipped to or delivered within the City from a stock of goods located within the City.

- (ii) The property is delivered within the City from a location outside the City, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.
  - B. Gross receipts from the sale of services shall be situated to the City to the extent that such services are performed in the City.
  - C. To the extent included in income, gross receipts from the sale of real property located in the City shall be situated to the City.
  - D. To the extent included in income, gross receipts from rents and royalties from real property located in the City shall be situated to the City.
  - E. Gross receipts from rents and royalties from tangible personal property shall be situated to the City based upon the extent to which the tangible personal property is used in the City.
- (5) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual, or by a disregarded entity owned by the individual, shall be subject to the City's tax only if the property generating the net profit is located in the City or if the individual taxpayer that receives the net profit is a resident of the City. The City shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.
- (6) A. Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the City, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the City to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
- B. An individual who is a resident of the City shall report the individual's net profit from all real estate activity on the individual's annual tax return for the City. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under the City's income tax ordinance.
- (7) When calculating the ratios described in division (e)(1) of this section for the purposes of that division or division (e)(2) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.  
*(Source: ORC 718.02)*
- (8) Tax Credit for Businesses that Foster New Jobs in Ohio: The City, by ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer to foster job creation in the City. If a credit is granted under this section, it shall be measured as a percentage of the new income tax revenue the City derives from new employees of the taxpayer and shall be for a term not exceeding fifteen (15) years. Before the City passes an ordinance granting a credit, the City and the taxpayer shall enter into an agreement specifying all the conditions of the credit.  
*(Source: ORC 718.15)*
- (9) Tax Credit to Foster Job Retention: The City, by ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer for the purpose of fostering job retention in the City. If a credit is granted under this section, it shall be measured as a percentage of the income tax revenue the City derives from the retained employees of the taxpayer and shall be for a term not exceeding fifteen (15) years. Before the City

passes an ordinance allowing such a credit, the City and the taxpayer shall enter into an agreement specifying all the conditions of the credit.

(Source: ORC 718.151)

**(f) Exemption for Member or Employee of General Assembly and Certain Judges.**

**(1) The City shall be permitted to levy a tax on the income of any member or employee of the Ohio General Assembly, including the Lieutenant Governor, whose income is received as a result of services rendered as such member or employee and is paid from appropriated funds of the state, only if the City is the municipal corporation of residence for such member or employee.**

**(2) The City shall be permitted to levy a tax on the income of the Chief Justice or a Justice of the Supreme Court received as a result of services rendered as the Chief Justice or Justice only if the City is the municipal corporation of residence of such Justice. The City shall only be permitted to levy a tax on the income of a judge sitting by assignment of the Chief Justice or on the income of a district court of appeals judge sitting in multiple locations within the district, received as a result of services rendered as a judge, only if the City is the municipal corporation of residence of such judge.**

(Source: ORC 718.50)

(Ord. 15-33. Passed 07/23/15; Ord. 2018-08. Passed 02/22/18; **Ord. 2020-\*\*, Passed \*\*/\*\*/20**)

~~881.03 IMPOSITION OF WITHHOLDING TAX.—~~

~~— Subject to the provisions of Section 880.13, each employer shall, at the time of payment of any taxable income specified under “Withholding Accounts—Duty of Withholding” (Article VIII) of the Income Tax Rules and Regulations, deduct the tax of two and one quarter percent (2.25%), commencing January 1, 2016, of the qualifying wages due by such employer to his or her employees who are subject to the provisions of this Chapter. Each employer shall make returns and pay to the City of Xenia Income Tax Division, the tax withheld in accordance with “Withholding Accounts—Filing and payment requirements/deadlines for withholding businesses” (Article VIII), of the Income Tax Rules and Regulations.~~

~~(Ord. 15-33. Passed 07/23/15; Ord. 2018-08. Passed 02/22/18)~~

**881.04 COLLECTION AT THE SOURCE MUNICIPAL TAXABLE INCOME.**

**(a) Withholding Provisions.**

**(1) Each employer, agent of an employer, or other payer located or doing business in the City shall withhold an income tax from the qualifying wages earned and/or received by each employee in the City. Except for qualifying wages for which withholding is not required under 881.03 or division (a)(5) or (a)(7) of this section, the tax shall be withheld at the rate, specified in Section 881.01(c) of this Chapter, of two and one-quarter percent (2.25%). An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.**

**(2) Except as provided in division (a)(3) of this section, an employer, agent of an employer, or other payer shall remit to the Tax Administrator of the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer according to the following schedule:**

**A. Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the City in the preceding calendar year exceeded two thousand three hundred ninety-nine**

- dollars (\$2,399), or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the City in any month of the preceding calendar quarter exceeded two hundred dollars (\$200).
- B. Payments under division (a)(2)A. of this section shall be made to the Tax Administrator not later than fifteen (15) days after the last day of each month for which the tax was withheld.
- C. Any employer, agent of an employer, or other payer not required to make payments under division (a)(2)A. of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the last day of the month following the last day of each calendar quarter.
- (3) If the employer, agent of an employer, or other payer is required to make payments electronically for the purpose of paying federal taxes withheld on payments to employees under Section 6302 of the Internal Revenue Code, 26 C.F.R. 31.6302-1, or any other federal statute or regulation, the payment shall be made by electronic funds transfer to the Tax Administrator of all taxes deducted and withheld on behalf of the City. The payment of tax by electronic funds transfer under this division does not affect an employer's, agent's, or other payer's obligation to file any return as required under this section.
- (4) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by Tax Administrator and the City as the return required of a non-resident employee whose sole income subject to the tax under this Chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer.
- (5) An employer, agent of an employer, or other payer is not required to withhold the City income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.
- (6) A. 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 under this Chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.
- B. The failure of an employer, agent of an employer, or other payer to remit to the City the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.
- (7) Compensation deferred before June 26, 2003, is not subject to the City income tax or income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.
- (8) 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 Tax Administrator.
- (9) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Tax Administrator listing:
- A. The names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the City during the preceding calendar year;

- B. The amount of tax withheld, if any, from each such employee, the total amount of qualifying wages paid to such employee during the preceding calendar year;
  - C. The name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year;
  - D. Any other information required for federal income tax reporting purposes on Internal Revenue Service Form W-2 or its equivalent form with respect to such employee; and
  - E. Other information as may be required by the Tax Administrator.
- (10) 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 by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. 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.
- (11) An employer is required to deduct and withhold City income tax on tips and gratuities received by the employer's employees and constituting qualifying wages, but only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.
- (12) The Tax Administrator shall consider any tax withheld by an employer at the request of an employee, when such tax is not otherwise required to be withheld by this Chapter, to be tax required to be withheld and remitted for the purposes of this section.

*(Source: ORC 718.03)*

~~Other than Individual. For a taxpayer other than an individual, income reduced by exempt income, to the extent otherwise include in income and then, as applicable, apportioned or sitused to the City of Xenia under ORC 718.02. No loss carryforwards are permitted prior to tax year 2018. Loss carryforwards for tax years 2018 and beyond are covered in the Xenia Income Tax Rules and Regulations.~~

**(b) Occasional Entrant – Withholding.**

- (1) As used in this division:
- A. "Employer" includes a person that is a related member to or of an employer.
  - B. "Fixed location" means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.
  - C. "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two (2) or more municipal corporations in

which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (b)(2)A.(i) of this section among those two (2) or more municipal corporations. The allocation shall be made using any fair and reasonable method including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

For the purposes of this division, the location at which an employee spends a particular day shall be determined in accordance with division (b)(2)B. of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

- D. "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.
  - E. "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.
  - F. "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.
  - G. "Worksite location" means a construction site or other temporary worksite in this State at which the employer provides services for more than twenty (20) days during the calendar year. "Worksite location" does not include the home of an employee.
- (2) A. Subject to divisions (b)(3), (b)(5), and (b)(6) of this section, an employer is not required to withhold the City income tax on qualifying wages paid to an employee for the performance of personal services in the City if the employee performed such services in the City on twenty (20) or fewer days in a calendar year, unless one of the following conditions applies:
- (i) The employee's principal place of work is located in the City.
  - (ii) The employee performed services at one or more presumed worksite locations in the City. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in the City at which the employer provides or provided services that can reasonably be, or would have been, expected by the employer to last more than twenty (20) days in a calendar year. Services can "reasonably be expected by the employer to last more than twenty (20) days" if either of the following applies at the time the services commence:
    - 1. The nature of the services is such that it will require more than twenty (20) days of the services to complete the services;
    - 2. The agreement between the employer and its customer to perform services at a location requires the employer to perform the services at the location for more than twenty (20) days.
  - (iii) The employee is a resident of the City and has requested that the employer withhold tax from the employee's qualifying wages as provided in Section 881.04.
  - (iv) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in

the employee's capacity as a professional athlete, professional entertainer, or public figure.

- B.** For the purposes of division (b)(2)A. of this section, an employee shall be considered to have spent a day performing services in the City only if the employee spent more time performing services for or on behalf of the employer in the City than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:
- (i) Traveling to the location at which the employee will first perform services for the employer for the day;
  - (ii) Traveling from a location at which the employee was performing services for the employer to any other location;
  - (iii) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;
  - (iv) Transporting or delivering property described in division (b)(2)B.(iii) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;
  - (v) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.
- (3)** If the principal place of work of an employee is located in another Ohio municipal corporation that imposes an income tax, the exception from withholding requirements described in division (b)(2)A. of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to that municipal corporation.
- (4)** **A.** Except as provided in division (b)(4)B. of this section, if, during a calendar year, the number of days an employee spends performing personal services in the City exceeds the twenty (20) day threshold, the employer shall withhold and remit tax to the City for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in the City.
- B.** An employer required to begin withholding tax for the City under division (b)(4)A. of this section may elect to withhold tax for the City for the first twenty (20) days on which the employer paid qualifying wages to the employee for personal services performed in the City.
- (5)** If an employer's fixed location is the City and the employer qualifies as a small employer as defined in Section 881.02, the employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the City, regardless of the number of days which the employee worked outside the corporate boundaries of the City.
- To determine whether an employer qualifies as a small employer for a taxable year, the employer will be required to provide the Tax Administrator with the employer's federal income tax return for the preceding taxable year.
- (6)** Divisions (b)(2)A. and (b)(4) of this section shall not apply to the extent that the Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of Section 881.04.

(Source: 718.011; 718.01)

~~City Resident.~~ For an individual who is a resident of the City of Xenia, income reduced by income exempted, and increased by deductions excluded. Exempt income and deductions excluded are covered in the Xenia Income Tax Rules and Regulations. No loss carryforwards are permitted prior to tax year 2018. Loss carryforwards for tax years 2018 and beyond are covered in the Xenia Income Tax Rules and Regulations.

~~(c) Non Resident.~~ For an individual who is a non resident of the City of Xenia, income reduced by exempt income to the extent otherwise included in the income and then, as applicable, apportioned situated to the City of Xenia under ORC 718.02. No loss carryforwards are permitted prior to tax year 2018. Loss carryforwards for tax years 2018 and beyond are covered in the Xenia Income Tax Rules and Regulations.

~~(d) Individual.~~ In computing the City of Xenia taxable income of a taxpayer who is an individual, the taxpayer may subtract federal 2106 expenses if the appropriate documentation is provided and the allowable deduction is reduced by two percent (2%) of the total City taxable income. Federal 2106 deductions are covered in the Xenia Income Tax Rules and Regulations.  
(Ord. 15-33. Passed 07/23/15; Ord. 2018-08. Passed 02/22/18. **Ord. 2020-\*\*. Passed \*\*/\*\*/20**)

#### 881.05 EFFECTIVE PERIOD.

~~(a) Effective Date.~~ The tax imposed by this Chapter shall be levied, collected and paid with respect to the municipal taxable income earned and received commencing January 1, 2016.

~~(b) Fiscal Year.~~ Where the fiscal year of the business, profession or other activity differs from the calendar year, the tax shall be applied to that part of the annual net profits for the fiscal year as shall be earned and accrued or received on and after January 1, 2016.  
(Ord. 15-33. Passed 07/23/15; Ord. 2018-08. Passed 02/22/18)

#### ANNUAL RETURN; FILING AND PAYMENT OF TAX.

(a) Mandatory Filing. On or before the date prescribed by ORC Chapter 718., **an annual income tax return shall be completed and filed by every individual taxpayer sixteen (16) years of age or older and any taxpayer that is not an individual for each taxable year for which the taxpayer is subject to the annual income tax, whether or not a tax is due thereon; provided, however, that individuals sixteen (16) years of age or older but less than eighteen (18) years shall not be required to file an annual return if all City tax is fully withheld by that individual's employer. Upon reaching the age of eighteen (18), every individual shall be required to file an annual return regardless of whether that individual's employer withholds City tax.** person and business entity subject to City of Xenia income tax shall, except as provided in the exceptions below, make and file with the Accounts Receivable Division an annual return on the form provided by the City of Xenia or a generic city income tax form, whether or not tax is due. This process is also known as mandatory filing. Additional rules related to the forms and other documentation required to be filed are included in the Xenia Income Tax Rules and Regulations.

- (1) The Tax Administrator may accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer under Section 881.04 of this Chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due the City.**
- (2) Retirees having no Municipal Taxable Income for the City income tax purposes may file with the Tax Administrator a written exemption from these filing requirements on a form prescribed by the Tax Administrator. The written exemption shall indicate the date of retirement and the entity from which retired. The exemption shall be in effect until such time as the retiree receives Municipal Taxable Income taxable to the City, at which time the retiree shall be required to comply with all applicable provisions of this Chapter.**

- (3) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.
- (4) If an individual is unable to complete and file a return or notice required by the City, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.
- (5) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust.
- (6) The City shall permit spouses to file a joint return.

**(b) Annual Return.**

- (1) Each return required to be filed under this Section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer. The return shall include the taxpayer's social security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.
- (2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return, and amended return, copies of the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040 or, in the case of a return or request required by a qualified municipal corporation, Ohio form IT-1040; and, with respect to an amended tax return, any other documentation necessary to support the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.
- (3) The Tax Administrator may require a taxpayer that is not an individual to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.

A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio Business Gateway or in some other manner shall either mail the documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio Business Gateway.

- (4) After a taxpayer files a tax return, the Tax Administrator may request, and the taxpayer shall provide, any information, statements, or documents required by the City to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under this division (b) apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.

**(c) Filing Dates.**

- (1) A. Except as otherwise provided in this Chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state

- individual income tax returns under ORC 5747.08(G). The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City. No remittance is required if the net amount due is ten dollars (\$10) or less.
- B.** Except as otherwise provided in this Chapter, each annual net profit return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth day (15<sup>th</sup>) of the fourth (4<sup>th</sup>) month following the end of the taxpayer's taxable year. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the City. No remittance is required if the net amount due is ten dollars (\$10) or less.
- (2)** Any taxpayer that has duly requested an automatic six- (6) month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of the City's income tax return. The extended due date of the City's income tax return shall be the fifteenth (15<sup>th</sup>) day of the tenth (10<sup>th</sup>) month after the last day of the taxable year to which the return relates. An extension of time to file under this division is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.
- A.** A copy of the federal extension request shall be included with the filing of the City's income tax return.
- B.** A taxpayer that has not requested or received a six- (6) month extension for filing the taxpayer's federal income tax return may submit a written request that the Tax Administrator grant the taxpayer a six- (6) month extension of the date for filing the taxpayer's the City income tax return. If the request is received by the Tax Administrator on or before the date the City income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.
- (3)** If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of ORC 5747.08(G), a taxpayer shall automatically receive an extension for the filing of the City's income tax return. The extended due date of the City's income tax return shall be the same as the extended due date of the state income tax return.
- (4)** If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the City, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this division, including taxpayers not otherwise required to file annual returns.
- (5)** To the extent that any provision in this division (c) of this section conflicts with any provision in Section 881.05(g), the provisions in Section 881.05(g) prevail.
- (d) Remittance of Tax Due.**
- (1)** For taxable years beginning after 2015, the City shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars (\$10) or less.
- (2)** Any taxpayer not required to remit tax to the City for a taxable year pursuant to division (d)(1) of this section shall file with the City an annual net profit return under division (b)(3) of this section, unless the provisions of division (d)(3) apply.
- (3)** **A.** A person may notify the Tax Administrator that the person does not expect to be a taxpayer subject to the City's income tax for a taxable year if both of the following apply:
- (i)** The person was required to file a tax return with the City for the immediately preceding taxable year because the person performed services at a worksite location (as defined in Section 881.04(b)(1)G.) within the City.

(ii) The person no longer provides services in the City and does not expect to be subject to the City income tax for the taxable year.

B. The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the City. The affidavit shall also include the following statement:

*"The affiant has no plans to perform any services within the City, make any sales in the City, or otherwise become subject to the tax levied by the City during the taxable year. If the affiant does become subject to the tax levied by the City for the taxable year, the affiant agrees to be considered a taxpayer and to properly comply as a taxpayer with the City income tax ordinance and rules and regulations."*

The person shall sign the affidavit under penalty of perjury.

C. If a person submits an affidavit described in division (d)(3)B. the Tax Administrator shall not require the person to file a tax return for the taxable year unless the Tax Administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change.

D. Nothing in this division (d)(3) prohibits the Tax Administrator from performing an audit of the person.

(4) If a payment under this Chapter is made by electronic funds transfer, the payment shall be considered to be made on the date of the timestamp assigned by the first electronic system receiving the payment.

(5) Taxes withheld for the City by an employer, the agent of an employer, or other payer as described in Section 881.04 of this Chapter shall be allowed to the taxpayer as credits against payment of the tax imposed on the taxpayer by the City, unless the amounts withheld are not remitted to the City and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.

(Source: ORC 718.05)

(e) Duties of Tax Administrator.

(1) Each return required by the City to be filed in accordance with this division shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return.

(2) The Tax Administrator shall accept for filing a generic form of any income tax return, report, or document required by the City, provided that the generic form, once completed and filed, contains all of the information required by ordinance, resolution, or rules and regulations adopted by the City or the Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this Chapter and of the City's ordinance, resolution, or rules and regulations governing the filing of returns, reports, or documents.

(f) Filing Via Ohio Business Gateway.

(1) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file the City's income tax return, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio Business Gateway.

- (2) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.**
- (3) Nothing in this section affects the due dates for filing employer withholding tax returns.**  
**(Source: ORC 718.051)**

**(g) Extension for Service in or for the Armed Forces.**

- (1) Each member of the National Guard of any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the president of the United States or an act of the Congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces, may apply to the Tax Administrator for both an extension of time for filing of the return and an extension of time for payment of taxes required by the City during the period of the member's or civilian's duty service, and for one hundred eighty (180) days thereafter. The application shall be filed on or before the one hundred eightieth (180<sup>th</sup>) day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.**
- (2) A. If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the one hundred eighty-first (181<sup>st</sup>) day after the applicant's active duty or service terminates. The Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate.**
- B. If the Tax Administrator determines that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the City before the one hundred eighty-first (181<sup>st</sup>) day after the applicant's active duty or service terminates.**
- C. Taxes paid pursuant to a contract entered into under division (g)(2)A. of this section are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.**
- (3) A. Nothing in this division denies to any person described in this division the application of divisions (g)(1) and (g)(2) of this section.**
- B. (i) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by the City in accordance with this Chapter. The length of any extension granted under division (g)(3)B.(i) of this section shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this division, "qualifying taxpayer" means a member of the National Guard or a member of a reserve component of the armed forces of the United States called to active duty pursuant to either an executive order issued by the president of the United States or an act of the Congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces.**
- (ii) Taxes whose payment is extended in accordance with division (g)(3)B.(i) of this section are not delinquent during the extension period. Such taxes**

become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (g) of this section in calculating the penalty or interest due on any unpaid tax.

- (4) For each taxable year to which division (g)(1), (g)(2) or (g)(3) of this section applies to a taxpayer, the provisions of divisions (g)(2)B. and C. of this section, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

(Source: ORC 718.052)

(h) Consolidated Municipal Income Tax Return.

- (1) As used in this division:

A. "Affiliated group of corporations" means an affiliated group as defined in Section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

B. "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code.

C. "Consolidated federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. "Consolidated federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (h)(1)A. of this section.

D. "Incumbent local exchange carrier" has the same meaning as in ORC 4927.01.

E. "Local exchange telephone service" has the same meaning as in ORC 5727.01.

- (2) A. For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the City's income tax in that taxable year, and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five- (5) year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five- (5) year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (h)(2)B. of this section or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

B. An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five- (5) year consolidated municipal income tax return election period in effect under division (h)(2)A. of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five- (5) year period beginning with the first taxable year of the election.

- C. An election made under division (h)(2)A. or B. of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.
- D. When a taxpayer makes the election allowed under ORC 718.80, a valid election made by a taxpayer under division (h)(2)A. or B. of this section is binding upon the Tax Commissioner for the remainder of the five- (5) year period.
- E. When an election made under ORC 718.80 is terminated, a valid election made under ORC 718.86 is binding upon the Tax Administrator for the remainder of the five- (5) year period.
- (3) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated the City income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the City. A taxpayer that is required to file a consolidated City income tax return for a taxable year shall file a consolidated City income tax return for all subsequent taxable years, unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.
- (4) A taxpayer shall prepare a consolidated City income tax return in the same manner as is required under the United States Department of the Treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.
- (5) A. Except as otherwise provided in divisions (h)(5)B., C. and D. of this section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in Section 881.02, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

  - B. No corporation filing a consolidated City income tax return shall make any adjustment otherwise required under Section 881.02(a) to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.
  - C. If the net profit or loss of a pass-through entity having at least eighty percent (80%) of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated City income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:
  - (i) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 881.05(h), exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the City. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

- (ii) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 881.05(h), include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to the City. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.
- D. If the net profit or loss of a pass-through entity having less than eighty percent (80%) of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:
- (i) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in Section 881.05(h), exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to the City;
- (ii) The pass-through entity shall be subject to the City's income taxation as a separate taxpayer in accordance with this Chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.
- (6) Corporations filing a consolidated City income tax return shall make the computations required under Section 881.05(h) by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.
- (7) Each corporation filing a consolidated City income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by the City in accordance with this Chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.
- (8) Corporations and their affiliates that made an election or entered into an agreement with the City before January 1, 2016, to file a consolidated or combined tax return with the City may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.  
(Source: ORC 718.06)

Withholding Employers. Withholding employers (in addition to any return required to be filed with respect to their own earnings or net profits) shall, on or before the date specified in the Income Tax Rules and Regulations, make a return and pay, to City of Xenia Income Tax Division, the full amount of the tax so deducted or withheld with respect to qualifying wages paid all of their employees subject to the tax under this Chapter. Additional rules related to form and payment deadlines are included in the Xenia Income Tax Rules and Regulations.

(Ord. 15-33. Passed 07/23/15; Ord. 16-54. Passed 11/22/16; Ord. 2018-08. Passed 02/22/18; **Ord. 2020-\*\*, Passed \*\*/\*\*/20**)

**881.06 881.12 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY OR JOINT ECONOMIC DEVELOPMENT DISTRICT.**

(a) **Credit for Tax Paid to Other Municipality.** ~~Every individual taxpayer domiciled in the Reciprocity on Income. Where a resident of the City of Xenia who is required subject to and does pay, or has acknowledged liability for, a municipal tax to another municipality or joint economic development district tax (JEDD), on or measured by the same income, qualifying wages, commissions, net profits or other compensation taxable under this Chapter, may claim a nonrefundable in another municipality or JEDD either located within or without the State of Ohio, he shall receive credit of the tax upon satisfactory evidence of the tax paid to the other municipality. Subject to division (c) of this section, the credit shall paid, not exceed one hundred percent (100%) of the amount obtained by multiplying the income, qualifying wages, commissions, net profits or other compensation subject to tax in the other municipality by the lower of the tax rate in such other municipality or the rate of one and one-half percent (1.5%), against the tax imposed by this Chapter, of the earnings taxed by such municipality or JEDD with the exception of the Xenia Township - City of Xenia JEDD-1 tax. Residents of Xenia shall receive a credit of not to exceed two and one-quarter percent (2.25%) of the earnings taxed by the Xenia Township - City of Xenia JEDD-1 against the tax imposed by this Chapter.~~

(b) **Credit for Tax Paid to a JEDD.** ~~The City shall grant a credit against its tax on income to a resident of the City who works in a joint economic development zone created under ORC 715.691 or a joint economic development district (JEDD) created under ORC 715.70, 715.71 or 715.72 to the same extent that it grants a credit against its tax on income to residents who are employed in another municipality, Reciprocity on Other Compensation. Resident individuals of the City of Xenia who are required to pay and do pay a tax to another municipality or joint economic development district tax (JEDD) on qualifying wages, commissions or other compensation, for work done or services performed in such other municipality, may claim a credit of the amount of tax paid by them or on their behalf to such other municipality or JEDD but not to exceed one and one-half percent (1.5%) of such income earned and taxed by the other municipality or JEDD with the exception of the Xenia Township - City of Xenia JEDD-1 tax. Credit for taxes paid to the Xenia Township - City of Xenia JEDD-1 shall not exceed two and one-quarter percent (2.25%) of the income taxed by the Xenia Township - City of Xenia JEDD-1.~~

**(Source: ORC 718.16)**

(c) **Limitation.** ~~If the amount of tax withheld or paid to the other municipality is less than the amount of tax required to be withheld or paid to the other municipality, then for the purposes of division (a) of this section, “the income, qualifying wages, commissions, net profits or other compensation” subject to tax in the other municipality shall be limited to the amount computed by dividing the tax withheld or paid to the other municipality by the tax rate for that municipality.~~

~~Credits. 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.~~

(d) ~~Rules and Regulations. Additional information about credits is included in the Xenia Income Tax Rules and Regulations.~~

(Ord. 15-33. Passed 07/23/15; Ord. 2018-08. Passed 02/22/18; **Ord. 2020-\*\*, Passed \*\*/\*\*/20**)

881.07 **ESTIMATED TAXES.**

**(a) Definitions. As used in this section:**

- (1) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for the City's income tax for the current taxable year.**
- (2) "Tax liability" means the total taxes due to a City for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment or credit from another taxable year.**

**(b) Declaration of Estimated Taxes.**

- (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least two hundred dollars (\$200). For the purposes of this section:**
  - A. City income taxes withheld from qualifying wages shall be considered as paid to the City in equal amounts on each payment date, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case they shall be considered as paid on the dates on which the amounts were actually withheld.**
  - B. An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the 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.**
- (2) Taxpayers filing joint returns shall file joint declarations of estimated taxes. A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. A taxpayer having a taxable year of less than twelve (12) months shall make a declaration under rules prescribed by the Tax Administrator.**
- (3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of municipal income tax returns under Section 881.05(c) of this Chapter or on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month of the first taxable year after the taxpayer becomes subject to tax for the first time.**
- (4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month after the beginning of each fiscal year or period.**
- (5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.**

**(c) Tax Liability.**

- (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 tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:**
  - A. On or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month after the beginning of the taxable year, twenty-two and one-half percent (22½%) of the tax liability for the taxable year;**
  - B. On or before the fifteenth (15<sup>th</sup>) day of the sixth (6<sup>th</sup>) month after the beginning of the taxable year, forty-five percent (45%) of the tax liability for the taxable year;**
  - C. On or before the fifteenth (15<sup>th</sup>) day of the ninth (9<sup>th</sup>) month after the beginning of the taxable year, sixty-seven and one-half percent (67½%) of the tax liability for the taxable year;**
  - D. For an individual, on or before the fifteenth (15<sup>th</sup>) day of the first month of the**

following taxable year, ninety percent (90%) of the tax liability for the taxable year. For a person other than an individual, on or before the fifteenth (15<sup>th</sup>) day of the twelfth (12<sup>th</sup>) month of the taxable year, ninety percent (90%) of the tax liability for the taxable year.

- (2) When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates.
- (3) On or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) 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 with the return in accordance with Section 881.05 of this Chapter.

(d) Underpayments.

- (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to section 881.18 of this Chapter upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (e) of this section. The amount of the underpayment shall be determined as follows:
  - A. For the first payment of estimated taxes each year, twenty-two and one-half percent (22½%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
  - B. For the second payment of estimated taxes each year, forty-five percent (45%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
  - C. For the third payment of estimated taxes each year, sixty-seven and one-half percent (67½%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment;
  - D. For the fourth payment of estimated taxes each year, ninety percent (90%) of the tax liability, less the amount of taxes paid by the date prescribed for that payment.
- (2) 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 any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.

(e) Exception to the Imposition of Penalty for Underpayments. An underpayment of any portion of tax liability determined under division (d) of this section shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:

- (1) The amount of estimated taxes that were paid equals at least ninety percent (90%) of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.
- (2) The amount of estimated taxes that were paid equals at least one hundred percent (100%) of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve (12) months and the taxpayer filed a return with the City under Section 881.05 of this Chapter for that year.
- (3) The taxpayer is an individual who resides in the City but was not domiciled there on the first day of January of the calendar year that includes the first day of the taxable

year.

**(f) Authority of Tax Administrator. The Tax Administrator may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors.**

*(Source: ORC 718.08)*

**(Ord. 2020-\*\*. Passed \*\*/\*\*/20)**

**TAXPAYER'S RIGHTS AND RESPONSIBILITIES.**

—“Taxpayer’s rights and responsibilities” means the rights provided to taxpayers in ORC 718.11, 718.12, 718.19, 718.23, 718.36, 718.37, 5717.011 and 5717.03 and the responsibilities of taxpayers to file, report, withhold, remit and pay City of Xenia income taxes and otherwise comply with ORC Chapter 718., Xenia Ordinances and the Xenia Income Tax Rules and Regulations. The Xenia Income Tax Rules and Regulations define the delinquent processes for both direct and withholding accounts along with the process for taxpayers to protest or appeal any decision of the Tax Administrator.

*(Ord. 15-33. Passed 07/23/15; Ord. 2018-08. Passed 02/22/18)*

**881.08 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 (\$0.50) shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than fifty cents (\$0.50) shall be dropped, rounding down to the nearest whole dollar. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.**

*(Source: ORC 718.25)*

**(Ord. 2020-\*\*. Passed \*\*/\*\*/20)**

**881.09 REQUESTS FOR COLLECTION OF UNPAID TAXES; REFUNDS OF OVERPAYMENTS.**

**(a) Definitions. As used in this section, “withholding tax” has the same meaning as in Section 881.18.**

**(b) Request for Refund. Upon receipt of a request for a refund, the Tax Administrator, in accordance with this section, shall refund to employers, agents of employers, other payers or taxpayers with respect to any income or withholding tax levied by the City:**

- (1) Overpayments of more than ten dollars (\$10);**
- (2) Amounts paid erroneously if the refund requested exceeds ten dollars (\$10).**

**(c) Filing Request.**

- (1) Except as otherwise provided in this Chapter, requests for refund shall be 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) On filing of the refund request, the Tax Administrator shall determine the amount of refund due and certify such amount for payment. Except as provided in division (c)(3) of this section, the Tax Administrator shall issue an Assessment to any taxpayer whose request for refund is fully or partially denied. The Assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the Assessment.**

**(3) If a Tax Administrator denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the Tax Administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an Assessment that may be appealed under Section 881.21 of this Chapter.**

**(d) Timely Filing. A request for a refund that is received after the last day for filing specified in division (c) of this section shall be considered to have been filed in a timely manner if any of the following situations exist:**

- (1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request;**
- (2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven days (7) of such last day;**
- (3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven (7) days of the last day for making the request.**

**(e) Interest on Refunds. Interest shall be allowed and paid on any overpayment by a taxpayer of any City income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety (90) days after the final filing date of the annual City income tax return or ninety days (90) after the completed return is 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 City income tax return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in Section 881.18(a)(4) of this Chapter.**

**(Source: ORC 718.19)**

~~Collections. Collection of unpaid sums will follow the rules defined in the Xenia Income Tax Rules and Regulations.~~

~~(b) Refunds. Refunds of overpayments will follow the rules defined in the Xenia Income Tax Rules and Regulations. 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.~~

~~(Ord. 15-33. Passed 07/23/15; Ord. 2018-08. Passed 02/22/18; **Ord. 20-\*\*. Passed \*\*/\*\*/20**)~~

#### **881.10 SECOND MUNICIPALITY IMPOSING TAX AFTER TIME PERIOD ALLOWED FOR REFUND.**

**(a) Allowable Refund. Income tax that has been deposited or paid to the City, but should have been deposited or paid to another municipality, is allowable by the City as a refund, but is subject to the three- (3) year limitation on refunds.**

**(b) Collection. Income tax that should have been deposited or paid to the City, but was deposited or paid to another municipal corporation, shall be subject to collection and recovery by the City. If the City's tax on income is imposed after the time period allowed for a refund of the tax or withholding paid to the other municipality the City shall allow a nonrefundable credit against the tax or withholding the City claims is due with respect to such income or wages, equal to the tax or withholding paid to the other municipality with respect to such income or wages.**

**(c) Tax Rates. If the City's tax rate is less than the tax rate of the other municipality, then the nonrefundable credit shall be calculated using the City's tax rate; however, if the City's tax rate is greater than the tax rate of the other municipality, the tax due in excess of the nonrefundable credit is to be paid to the City, along with any penalty and interest that accrued during the period of nonpayment.**

**(d) Carryforward. Nothing in this section permits any credit carryforward.**  
**(Source: ORC 718.121)**  
**(Ord. 2020-\*\*. Passed \*\*/\*\*/20)**

**VIOLATIONS; STATUTE OF LIMITATIONS.**

~~— (a) Limitations. Actions upon violations of ORC Chapter 718. or the Xenia Ordinances or the Xenia Income Tax Rules and Regulations will be made in accordance with the limitations imposed under ORC 718.12. The Xenia Income Tax Rules and Regulations define the delinquent processes for both direct and withholding accounts along with the penalties for noncompliance.~~

~~— (b) Violations. No person shall:~~

- ~~(1) — Fail, neglect or refuse to make any return or declaration required by this Chapter;~~
- ~~(2) — Make any incomplete, false or fraudulent return;~~
- ~~(3) — Knowingly fail or refuse to pay the tax, penalties or interest imposed by this Chapter;~~
- ~~(4) — Knowingly fail or refuse to withhold the tax from his or her employees or remit such withholding, penalties or interest imposed by this Chapter to the Accounts Receivable Division;~~
- ~~(5) — Refuse to permit the Administrator or any duly authorized agent or employee to examine his or her employer's books, records, papers and copies of federal income tax returns relating to the income or net profits of a taxpayer;~~
- ~~(6) — Fail to appear before the Administrator and to produce his or her or his or her employer's books, records, papers or copies of federal income tax returns relating to the income or net profits of a taxpayer under order of subpoena of the Accounts Receivable Division;~~
- ~~(7) — Refuse to disclose to the Administrator or any duly authorized agent or employee any information with respect to the income or net profits of a taxpayer;~~
- ~~(8) — Fail to comply with the provisions of this Chapter or any order or subpoena of the Accounts Receivable Division; 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.~~

~~(Ord. 15-33. Passed 07/23/15; Ord. 2018-08. Passed 02/22/18)~~

**881.11 AMENDED RETURNS.**

**(a) Amended Return.**

- (1) If a taxpayer's tax liability shown on the annual tax return for the City changes as a result of an adjustment to the taxpayer's federal or state income tax return, the taxpayer shall file an amended return with the City. The amended return shall be filed on a form required by the Tax Administrator.**
- (2) If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the Tax Administrator before filing the amended return.**

**(b) Underpayment.**

- (1) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. If**

the combined tax shown to be due is ten dollars (\$10) or less, no payment need be made. The amended return shall reopen those facts, figures, computations or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return only:

- A. To determine the amount of tax that would be due if all facts, figures, computations and attachments were reopened; and
  - B. If the applicable statute of limitations for civil actions or prosecutions under Section 881.12 of this Chapter has not expired for a previously filed return.
- (2) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations, and attachments were reopened.

(c) Overpayment.

- (1) In the case of an overpayment, a request for refund may be filed under this division within the period prescribed by division (d) of this section for filing the amended return even if it is filed beyond the period prescribed in that division if it otherwise conforms to the requirements of that division. If the amount of the refund is less than ten dollars (\$10), no refund need be paid by the City to the taxpayer. A request filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations or attachments required in the taxpayer's annual income tax return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return and provided it is also filed within the time prescribed in Section 881.09 of this Chapter.
- (2) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations, and attachments were reopened. All facts, figures, computations, and attachments may be reopened to determine the refund amount due by inclusion of all facts, figures, computations, and attachments.

(d) Time for Filing. Within sixty (60) days after the final determination of any federal or state tax liability affecting the taxpayer's City income tax liability, that taxpayer shall make and file an amended City return showing income subject to City income tax based upon such final determination of federal or state tax liability. The taxpayer shall pay any additional City income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is less than ten dollars (\$10).

(Source: ORC 718.12, 718.41)

(Ord. 2020-\*\*. Passed \*\*/\*\*/20)

881.12 LIMITATIONS.

(a) Civil Actions.

- (1) A. Civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within the later of:
- (i) Three (3) years after the tax was due or the return was filed, whichever is later; or
  - (ii) One (1) year after the conclusion of the qualifying deferral period, if any.
- B. The time limit described in division (a)(1)A. of this section may be extended at any time if both the Tax Administrator and the employer, agent of the employer, other payer or taxpayer consent in writing to the extension. Any extension shall also extend for the same period of time the time limit described in division (c) of this section.
- (2) As used in this section, "qualifying deferral period" means a period of time beginning and ending as follows:

- A. Beginning on the date a person who is aggrieved by an Assessment files with the Board of Tax Review the request described in Section 881.21 of this Chapter. That date shall not be affected by any subsequent decision, finding or holding by any administrative body or court that the Board of Tax Review with which the aggrieved person filed the request did not have jurisdiction to affirm, reverse or modify the Assessment or any part of that Assessment.
- B. Ending the later of the sixtieth (60<sup>th</sup>) day after the date on which the final determination of the Board of Tax Review becomes final or, if any party appeals from the determination of the Board of Tax Review, the sixtieth (60<sup>th</sup>) day after the date on which the final determination of the Board of Tax Review is either ultimately affirmed in whole or in part or ultimately reversed and no further appeal of either that affirmation, in whole or in part, or that reversal is available or taken.

(b) Criminal Actions. Prosecutions for an offense made punishable under this Chapter shall be commenced within three (3) years after the commission of the offense; provided, however, that in the case of fraud, failure to file a return or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) years after the commission of the offense.

(c) Claims for Refunds. A claim for a refund of City income taxes shall be brought within the time limitation provided in Section 881.09 of this Chapter.

(d) Effect of Pending Appeal.

- (1) Notwithstanding the fact that an appeal is pending, the taxpayer may pay all or a portion of the Assessment that is the subject of the appeal. The acceptance of a payment by the City does not prejudice any claim for refund upon final determination of the appeal.
- (2) If, upon final determination of the appeal, an error in the Assessment is corrected by the Tax Administrator, upon an appeal so filed or pursuant to a final determination of the Board of Tax Review, of the Ohio Board of Tax Appeals or any court to which the decision of the Ohio Board of Tax Appeals has been appealed, so that the resultant amount due from the taxpayer is less than the amount paid, a refund will be paid in the amount of the overpayment as provided by Section 881.09 of this Chapter, with interest on that amount as provided by 881.09(e).

(e) Limitation on Civil Actions. No civil action to recover municipal income tax or related penalties or interest shall be brought during either of the following time periods:

- (1) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties;
- (2) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

*(Source: ORC 718.12)*

(Ord. 2020-\*\*, Passed \*\*/\*\*/20)

### 881.13 AUDITS.

(a) Notice to Taxpayer. 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 tax. At or before the commencement of an audit, the Tax Administrator shall inform the taxpayer when the audit is considered to have commenced.

(b) Audit. 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.

(c) Authorized Representative of the Taxpayer.

(1) 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.

(2) A taxpayer may refuse to answer any questions asked by Tax Administrator or other authorized 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.

(d) Recording of Audit. A taxpayer may record, electronically or otherwise, the audit examination.

(e) Effect of Audit on Taxes Due. 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.

(f) Effect of Audit on Penalties and Interest. 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.

(Source: ORC 718.36)

(Ord. 2020-\*\*. Passed \*\*/\*\*/\*\*)

#### 881.14 SERVICE OF ASSESSMENT.

(a) Definitions. As used in this section:

(1) "Last known address" means the address the Tax Administrator has at the time a document is originally sent by certified mail, or any address the Tax Administrator can ascertain using reasonable means such as the use of a change of address service offered by the postal service or an authorized delivery service under ORC 5703.056.

(2) "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.

(b) Service. Subject to division (c) of this section, 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. With the permission of the person affected by an Assessment, the

**Tax Administrator may deliver the Assessment through alternative means as provided in this section, including, but not limited to, delivery by secure electronic mail.**

**(c) Return of Certified Mail.**

**(1) A. If certified mail is returned because of an undeliverable address, the Tax Administrator shall utilize reasonable means to ascertain a new last known address, including the use of a change of address service offered by the postal service or an authorized delivery service under ORC 5703.056. If 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.**

**B. Once the Tax Administrator or other City official, or the designee of either, serves an Assessment on the person to whom the Assessment is directed, the person may protest the ruling of that Assessment by filing an appeal with the Board of Tax Review within sixty (60) days after the receipt of service. The delivery of an Assessment of the Tax Administrator under division (c)(1)A. of this section is prima facie evidence that delivery is complete and that the Assessment is served.**

**(2) If mailing of an Assessment by the Tax Administrator 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.**

**(3) If the ordinary mail is subsequently returned because of an undeliverable address, the Tax Administrator shall proceed under division (c)(1)A. of this section. A person may challenge the presumption of delivery and service under this division in accordance with division (d) of this section.**

**(d) Appeal Based on Presumption of Delivery.**

**(1) A person disputing the presumption of delivery and service under division (c) of this section bears the burden of proving by a preponderance of the evidence that the address to which the Assessment was sent by certified mail was not an address with which the person was associated at the time the Tax Administrator originally mailed the assessment. 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 had conducted business at the address and, when the Assessment was mailed, the person's agent or the person's affiliate was conducting business at the address. For the 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 percent (20%), as determined by voting rights, of the addressee's business.**

(2) If a person elects to appeal an Assessment on the basis described in division (d)(1) of this section, and if that 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 City official, or the designee of either, with the person. Nothing in this division prevents the Tax Administrator or other official from entering into a compromise with the person if the person does not actually file such an appeal with the Board of Tax Review.

(e) Personal Service. Nothing in this section prohibits the Tax Administrator or the Tax Administrator's designee from delivering an Assessment by personal service.

(f) Stay of Collection Action. Collection actions taken upon any assessment being appealed under division (C)(1)(b) of this section, including those on which a claim has been delivered for collection, shall be stayed upon the pendency of an appeal under this section.

(g) Additional Rules. Additional regulations as detailed in the Rules and Regulations shall apply. (Source: ORC 718.18)

(Ord. 2020-\*\*, Passed \*\*/\*\*/20)

#### 881.15 ADMINISTRATION OF CLAIMS.

(a) Definitions. As used in this section, "claim" means a claim for an amount payable to the City that arises pursuant to the City's income tax imposed in accordance with this Chapter.

(b) Authority of Tax Administrator. Nothing in this Chapter prohibits the Tax Administrator from doing either of the following if such action is in the best interests of the City:

- (1) Compromise a claim;
- (2) Extend for a reasonable period the time for payment of a claim by agreeing to accept monthly or other periodic payments.

(c) No Appeal. The Tax Administrator's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable.

(d) Compromise; Payment-Over-Time Agreement.

- (1) A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall be to the benefit of only the parties to the compromise or agreement, and shall not eliminate or otherwise affect the liability of any other person.
- (2) A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due.

(Source: ORC 718.28)

(Ord. 2020-\*\*, Passed \*\*/\*\*/20)

#### 881.16 TAX INFORMATION CONFIDENTIAL.

(a) Confidentiality of Income Tax Information. Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this Chapter, the City's Charter, other ordinance or resolution, or any rule or regulation adopted pursuant to this Chapter or ORC

Chapter 718. 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 City as authorized by this Chapter, the City's Charter, other ordinance or resolution, or any rule or regulation adopted pursuant to this Chapter or ORC Chapter 718. The Tax Administrator, 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 State Tax Commissioner and Tax Administrators of other municipal corporations.

(b) Income Tax Statistics. This section does not prohibit the City from publishing or disclosing statistics in a form that does not disclose information with respect to particular taxpayers.

(Source: ORC 718.13)

(Ord. 2020-\*\*. Passed \*\*/\*\*/20)

#### 881.17 FRAUD.

No person shall knowingly make, present, aid or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim and/or document authorized or required by this Chapter or state law to be filed with the Tax Administrator, or knowingly procure, counsel or advise the preparation or presentation of such report, return, schedule, statement, claim or document, or knowingly change, alter, or amend or knowingly procure, counsel or advise such change, alteration or amendment of the records upon which such report, return, schedule, statement, claim and/or document is based with intent to defraud the City.

(Source: ORC 718.35)

(Ord. 2020-\*\*. Passed \*\*/\*\*/20)

#### 881.18 ~~881.08~~ INTEREST AND PENALTIES.

(a) Definitions. As used in this section:

- (1) "Applicable Law" means this Chapter, the resolutions, ordinances, codes, directives, instructions and rules adopted by the City and/or the Tax Administrator, provided such resolutions, ordinances, codes, directives, instructions and rules impose or directly or indirectly address the levy, payment, remittance or filing requirements of the City income tax.
- (2) "Federal Short-Term Rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three (3) years or less, as determined under Section 1274 of the Internal Revenue Code, for July of the current year.
- (3) "Income Tax," "Estimated Income Tax," and "Withholding Tax" mean any income tax, estimated income tax and withholding tax imposed by the City pursuant to this Chapter or other applicable law, including at any time before January 1, 2016.
- (4) "Interest Rate" means the federal short-term rate, rounded to the nearest whole number per cent, plus five percent (5%). The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance with division (a)(2) of this section.
- (5) "Return" includes any tax return, report, reconciliation, schedule and other document required to be filed with the Tax Administrator or the City by a taxpayer, employer, any agent of the employer or any other payer pursuant to this Chapter or other applicable law, including at any time before January 1, 2016.
- (6) "Unpaid Estimated Income Tax" means estimated income tax due but not paid by the date the tax is required to be paid under this Chapter or other applicable law.
- (7) "Unpaid Income Tax" means income tax due but not paid by the date the income tax is required to be paid under this Chapter or other applicable law.

- (8) "Unpaid Withholding Tax" means withholding tax due but not paid by the date the withholding tax is required to be paid under this Chapter or other applicable law.
- (9) "Withholding Tax" includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that the employer, employer's agent or other payer is required to withhold from an employee's qualifying wages under this Chapter or other applicable law.  
*(Source: ORC 718.27)*

~~Penalties.~~ Penalties for underpayment of estimated taxes, non-filing, and non-payment shall be applied as defined in the Xenia Income Tax Rules and Regulations.

**(b) Application of Section.**

- (1) This section shall apply to the following:
- A. Any City income tax return required to be filed under this Chapter for taxable years beginning on or after January 1, 2016;
  - B. Income tax, estimated income tax and withholding tax required to be paid or remitted to the City on or after January 1, 2016, for taxable years beginning on or after January 1, 2016.
- (2) This section does not apply to City income tax 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 before January 1, 2016, but filed or paid after that date shall be subject to Chapter 880. of the Codified Ordinances.

~~Interest.~~ Interest for unpaid balances shall be applied as defined in the Xenia Income Tax Rules and Regulations.

**(c) Penalties and Interest.** Should any taxpayer, employer, any agent of the employer or other payer for any reason fail, in whole or in part, to make timely and full payment or remittance of City income tax, estimated income tax or withholding tax or to file timely with the City any return required to be filed, the following penalties and interest shall apply:

- (1) Interest shall be imposed at the Interest Rate, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax.
- (2) A. With respect to unpaid income tax and unpaid estimated income tax, the City may impose a penalty equal to fifteen percent (15%) of the amount not timely paid.  
B. With respect to any unpaid withholding tax, the City may impose a penalty not exceeding fifty percent (50%) of the amount not timely paid.
- (3) With respect to returns other than estimated income tax returns, the City may impose a monthly penalty of twenty-five dollars (\$25) for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed a total of one hundred fifty dollars (\$150) in assessed penalty for each failure to timely file a return.

**(d) Limitations.**

- (1) Nothing in this section requires the City to refund or credit any penalty, amount of interest, charges, or additional fees the City has properly imposed or collected before January 1, 2016.
- (2) Nothing in this section limits the authority of the City to abate or partially abate penalties or interest imposed under this section when the Tax Administrator determines, in the Tax Administrator's sole discretion, that such abatement is appropriate.

**(e) Publication of Interest Rate.** By the thirty-first (31<sup>st</sup>) day of October of each year, the City shall publish the Interest Rate applicable to the next succeeding calendar year.

**(f) Collection of Post-Judgment Collection Costs and Fees.** The City may impose on the taxpayer, employer, any agent of the employer or any other payer the City's post-judgment collection costs and fees, including attorney's fees.

*(Source: 718.27)*

(Ord. 15-33. Passed 07/23/15; Ord. 2018-08. Passed 02/22/18; **Ord. 2020-\*\*. Passed \*\*/\*\*/20**)

**881.19 AUTHORITY OF TAX ADMINISTRATOR; VERIFICATION OF INFORMATION.**

**(a) Administrative Powers of the Tax Administrator.** Nothing in this Chapter shall limit the authority of the Tax Administrator to perform any of the following duties and functions, unless the performance of such duties or functions is expressly limited by a provision of the Ohio Revised Code:

- (1) A.** Exercise all powers whatsoever of an inquisitorial nature as provided by this Chapter or other 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.
- B.** The powers referred to in this division shall be exercised by the Tax Administrator only in connection with the performance of the duties respectively assigned to the Tax Administrator under the Charter, this Chapter, or other ordinance or resolution adopted in accordance with this Chapter.
- (2)** Appoint agents and prescribe their powers and duties.
- (3)** 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 this Chapter or other law.
- (4)** Exercise the authority provided by this Chapter or other 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. 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.
- (5)** Exercise the authority provided by this Chapter or other law relative to consenting to the compromise and settlement of tax claims.
- (6)** Exercise the authority provided by this Chapter or other law relative to the use of alternative apportionment methods by taxpayers in accordance with Section 881.03 of this Chapter.
- (7) A.** Make all tax findings, determinations, computations, Assessments and orders the Tax Administrator is by this Chapter or other law authorized and required to make and, pursuant to the time limitations provided by this Chapter or other law, on the Tax Administrator's own motion, review, redetermine or correct any tax findings, determinations, computations, Assessments or orders the Tax Administrator has made.
- B.** If an appeal has been filed with the Board of Tax Review or other appropriate tribunal, the Tax Administrator shall not review, redetermine or correct any tax finding, determination, computation, Assessment or order which the Tax

Administrator has made unless such appeal or application is withdrawn by the appellant or applicant, is dismissed or is otherwise final.

- (8) Destroy any or all returns or other tax documents in the manner authorized by this Chapter or other law.
- (9) Enter into an agreement with a taxpayer to simplify the withholding obligations described in Section 881.04 of this Chapter.  
*(Source: ORC 718.24)*

**(b) Verification of Accuracy of Returns and Determinations of Liability.**

- (1) The Tax Administrator, or any authorized agent or employee thereof, may examine the books, papers, records and federal and state income tax returns of any employer, taxpayer or other person that is subject to, or that the Tax Administrator believes is subject to, the provisions of this Chapter for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due under this Chapter. Upon written request by the Tax Administrator, or a duly authorized agent or employee thereof, every employer, taxpayer or other person subject to this section is required to furnish the opportunity for the Tax Administrator, or any authorized agent or employee, to investigate and examine such books, papers, records and/or federal and state income tax returns at a reasonable time and place designated in the request.
- (2) The records and other documents of any taxpayer, employer or other person that is subject to, or that a Tax Administrator believes is subject to, the provisions of this Chapter shall be open to the Tax Administrator's inspection during business hours and shall be preserved for a period of six (6) years following the end of the taxable year to which the records or documents relate, unless the Tax Administrator, in writing, consents to their destruction within that period or by order requires that they be kept longer. The Tax Administrator may require any person, by notice served on that person, to keep such records as the Tax Administrator determines necessary to show whether or not that person is liable and the extent of such liability for the income tax levied by the City or for the withholding of such tax.
- (3) The Tax Administrator may examine, under oath, any person that the Tax Administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Tax Administrator may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records and/or federal and state income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.
- (4) No person issued written notice by the Tax Administrator compelling attendance at a hearing or examination or the production of books, papers, records and/or federal and state income tax returns under this section shall fail to comply.  
*(Source: ORC 718.23)*

**(c) Identifying Information.**

- (1) Nothing in this Chapter prohibits the Tax Administrator from requiring any person filing a tax document with the Tax Administrator to provide identifying information, which may include the person's social security number, federal employer identification number or other identification number requested by the Tax Administrator. A person required by the Tax Administrator to provide identifying information that has experienced any change with respect to that information shall notify the Tax Administrator of the change before, or upon, filing the next tax

document requiring the identifying information.

- (2) A. If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within thirty (30) days of making the request, nothing in this Chapter prohibits the Tax Administrator from imposing a penalty upon the person to whom the request was directed pursuant to Section 881.18 of this Chapter, in addition to any applicable penalty described in section 881.99 of this Chapter.
- B. If a person required by the Tax Administrator to provide identifying information does not notify the Tax Administrator of a change with respect to that information as required under division (c)(1) of this section within thirty (30) days after filing the next tax document requiring such identifying information, nothing in this Chapter prohibits the Tax Administrator from imposing a penalty pursuant to Section 881.18 of this Chapter.
- C. The penalties provided for under divisions (c)(2)A. and B. of this section may be billed and imposed in the same manner as the tax or fee with respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in Section 881.99 of this Chapter for a violation of 881.17 of this Chapter and any other penalties that may be imposed by the Tax Administrator under this Chapter or other applicable law.  
*(Source: ORC 718.26)*

(Ord. 2020-\*\*. Passed \*\*/\*\*/20)

**881.20 REQUEST FOR OPINION OF THE TAX ADMINISTRATOR.**

(a) Definition. An "opinion of the Tax Administrator" means an opinion issued under this section with respect to prospective City income tax liability; it does not include ordinary correspondence of the Tax Administrator.

(b) Taxpayer's Request for an Opinion of the Tax Administrator. A taxpayer may submit a written request for an opinion of the Tax Administrator in accordance with the Rules and Regulations.

(c) Effect of Taxpayer Misrepresentation on Opinion of the Tax Administrator.

- (1) A taxpayer is not relieved of tax liability for any activity or transaction related to a request for an opinion that contained any misrepresentation or omission of one or more material facts.
- (2) If the taxpayer knowingly has misrepresented the pertinent facts or omitted material facts with intent to defraud the City in order to obtain a more favorable opinion, the taxpayer may be in violation of Section 881.17 of this Chapter.

(d) Right of the Tax Administrator to Refuse to Issue Opinion. The Tax Administrator may refuse to offer an opinion on any request received under this section. Such refusal is not subject to appeal.

(e) Binding only to Taxpayer Who Requested Opinion. An opinion of the Tax Administrator binds the Tax Administrator only with respect to the taxpayer for whom the opinion was prepared and does not bind the Tax Administrator of any other municipal corporation.

(f) No Appeals. An opinion of the Tax Administrator issued under this section is not subject to appeal.

*(Source: ORC 718.38)*

(Ord. 2020-\*\*. Passed \*\*/\*\*/20)

**881.21 BOARD OF TAX REVIEW.**

**(a) Board of Tax Review.**

- (1) The Board of Tax Review shall consist of three (3) members.**
  - A. Two (2) members shall be appointed by the legislative authority of the City and may not be employees of, elected officials of or contractors with the City at any time during their term or in the five (5) years immediately preceding the date of appointment.**
  - B. One (1) member shall be appointed by the City Manager. This member may be an employee of the City but may not be the Director of Finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in City tax matters, or any direct subordinate thereof.**
- (2) The term for members of the Board of Tax Review appointed by the legislative authority of the Municipality shall be two (2) years. There is no limit on the number of terms that a member may serve should the member be reappointed by the legislative authority. The Board member appointed by the City Manager shall serve at the discretion of the City Manager.**
- (3) Members of the Board of Tax Review appointed by the legislative authority may be removed by the legislative authority by majority vote for malfeasance, misfeasance, or nonfeasance in office. To remove such a member, the legislative authority must give the member a copy of the charges against the member and afford the member an opportunity to be publicly heard in person or by counsel in the member's own defense upon not less than ten days' notice. The decision by the legislative authority on the charges is final and not appealable.**
- (4) A member of the Board who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.**
- (5) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty (60) days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the Board shall impair the power and authority of the remaining members to exercise all the powers of the Board.**
- (6) If a member is temporarily unable to serve on the Board due to a conflict of interest, illness, absence or similar reason, the legislative authority or City Manager that appointed the member shall appoint another individual to temporarily serve on the Board in the member's place. This appointment shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.**
- (7) No member of the Board of Tax Review shall receive compensation, fee, or reimbursement of expenses for service on the Board.**

**(b) Notice of Right to Appeal an Assessment. Whenever the Tax Administrator issues an Assessment, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the Assessment, the manner in which the taxpayer may appeal the Assessment, and the address to which the appeal should be directed, and to whom the appeal should be directed.**

**(c) Appeal. Any person who has been issued an Assessment may appeal the assessment to the Board of Review 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 (60) days after the taxpayer receives the Assessment.

(d) Hearing. The Board of Tax Review shall schedule a hearing to be held within sixty (60) days after receiving an appeal of an Assessment under division (c) of this section, 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 (120) days after the first day of the hearing, unless the parties agree otherwise.

(e) Determination by the Board of Review. The Board of Review 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 (90) days after the Board's final hearing on the appeal, and shall send a copy of its final determination, by ordinary mail, to all of the parties to the appeal within fifteen (15) 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.

(f) Rules and Regulations of the Board of Review.

- (1) The Local Board of Tax Review created pursuant to this section shall adopt rules governing its procedures, including a schedule of related costs, and shall keep a record of its transactions. The rules governing the Local Board of Tax Review procedures shall be in writing and may be amended as needed by the Board.
- (2) Records of transactions of the Board are not public records available for inspection under ORC 149.43. For this reason, any documentation, copies of returns or reports, final determinations or working papers for each case must be maintained in a secure location under the control of the Tax Administrator. No member of the Board of Tax Review may remove such documentation, copies of returns or reports, final determinations or working papers from the hearing.
- (3) Hearings requested by a taxpayer before the Board of Tax Review created pursuant to this section are not meetings of a public body subject to ORC 121.22. For this reason, such hearings shall not be open to the public, and only those parties to the case may be present during the hearing.

*(Source: ORC 718.11)*

(Ord. 2020-\*\*. Passed \*\*/\*\*/20)

881.22 881.14 RULES AND REGULATIONS.

(a) Authority for Adoption. Nothing in this Chapter prohibits the City Council or the Tax Administrator, pursuant to authority granted to the Tax Administrator by resolution or ordinance, to adopt rules to administer the City's income tax in accordance with this Chapter. Such rules shall not conflict with or be inconsistent with any provision of this Chapter. All rules adopted under this section shall be published and posted on the City's website.

*(Source: ORC 718.20)*

(b) Adoption of RITA Rules and Regulations. The City hereby adopts the Regional Income Tax Agency (RITA) Rules & Regulations, including amendments that may be made from time to time, for use as the City's Income Tax Rules and Regulations. In the event of a conflict with any provision(s) of this Chapter and the Rules & Regulations, the provisions of this Chapter shall supersede. Until and if the contractual relationship between the City and RITA ceases, this division

**(b) shall supersede division (a) of this section regarding promulgation of rules and regulations by the Tax Administrator.**

**(c) Duty of Taxpayers. Taxpayers subject to the City's income tax are hereby required to comply not only with the requirements of this Chapter, but also to comply with the Rules and Regulations herein adopted.**

—The provisions of the Rules and Regulations referred to in this Chapter, known officially as the Xenia Income Tax Rules and Regulations, are hereby approved, adopted, and incorporated herein by reference and made a part of this Chapter along with any supplements or amendments thereto hereafter approved by the City Council by ordinance, resolution, or administrative motion. The Rules and Regulations applicable to each tax year shall govern the application and administration of rules and regulations for that tax year. The Tax Administrator is directed to carry out the administration of his or her office in conformity with the provisions of this Chapter, ORC Chapter 718, and the Xenia Income Tax Rules and Regulations. (Ord. 15-33. Passed 07/23/15; Ord. 15-61. Passed 11/24/15; Ord. 2018-08. Passed 02/22/18; **Ord. 2020-\*\*. Passed \*\*/\*\*/20**)

### **881.23 RENTAL AND LEASED PROPERTY.**

**(a) Roster of Tenants. All property owners of real property located in the City who rent or otherwise lease the same, or any part thereof, to any person for residential dwelling purposes, including apartments, rooms and other rental accommodations, and every owner of a mobile home park, shall file with the Tax Administrator a semi-annual roster of the names and addresses of all persons residing in such rental, leased unit or premises, or mobile home park. Such semi-annual statement shall be filed on or before January 31<sup>st</sup> and July 31<sup>st</sup> of each year. In addition, every owner of one or more rental units, leased unit or premises, or mobile home park shall file a statement of any changes in the names or addresses on the last submitted semi-annual roster at the end of each month.**

**(b) Authority of Tax Administrator. The Tax Administrator may order the appearance before him or her, or his or her duly authorized agent, of any person whom the Tax Administrator believes to have any knowledge of the name, address and telephone number of any tenant of residential rental real property in the City. The Tax Administrator, or his or her duly authorized agent, is authorized to examine any person, under oath, concerning the name, address and telephone number of any tenant of residential real property located in the City. The Tax Administrator, or his or her duly authorized agent, may compel the production of papers and records and the attendance of all persons before him or her, whether as parties or witnesses, whenever he or she believes such person has knowledge of the name, address and telephone number of any tenant of residential real property in the City.**

**(c) Violations. Any property owner or person that violates one or more of the following shall be subject to Section 881.99 of this Chapter:**

- (1) Fails, refuses or neglects to timely file a written report required by division (a) hereof; or**
- (2) Makes an incomplete or intentionally false written report required by division (a) hereof; or**
- (3) Fails to appear before the Tax Administrator or any duly authorized agent and to produce and disclose any tenant information pursuant to any order or subpoena of the Tax Administrator as authorized in this section; or**
- (4) Fails to comply with the provisions of this section or any order or subpoena of the Tax Administrator.**

**(Ord. 2020-\*\*, Passed \*\*/\*\*/20)**

**881.24 SAVINGS CLAUSE.**

**This Chapter shall not apply to any person, firm or corporation, or to any property as to whom or which it is beyond the power of the City's Council to impose the income tax herein provided for. Any sentence, clause, section or part of this Chapter or any tax against or exception granted any individual or any of the several groups of persons, or forms of income specified herein if found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this Chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this Chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, or part hereof, not been included therein.**  
**(Ord. 2020-\*\*. Passed \*\*/\*\*/20)**

**881.25 881.13 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.**

(a) Levy and Collection of Tax. 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 have been fully terminated, subject to the limitations contained in Sections 881.12 and 881.99 of this Chapter.

(b) Returns. Annual returns due for all or any part of the last effective year of this Chapter shall be due on the date provided in Sections 881.04 and 881.05 (ORC Chapter 718.) as though the same were continuing.  
(Ord. 15-33. Passed 07/23/15; Ord. 2018-08. Passed 02/22/18; **Ord. 2020-\*\*. Passed \*\*/\*\*/20)**

**881.26 881.16 INCOME TAX REBATE PROGRAM.**

(a) Eligibility. Where a qualifying non-retail business is subject to the provisions of Section 881.0403 of this Chapter (~~Imposition of Withholding Tax~~) it may be eligible for the City Income Tax Rebate Program. Qualifying businesses will be non-retail businesses including, but not limited to, manufacturing, distribution, research and development, or technology firms. The incentive program is available to qualifying new businesses or qualifying existing businesses.

(b) Rebate Program.

- (1) The Income Tax Rebate Program will rebate a portion of withholding income taxes collected from qualifying non-retail businesses creating at least forty-five (45) new full-time jobs with a wage of one hundred fifty percent (150%) of the federal minimum wage, or twenty (20) jobs at four hundred percent (400%) of the federal minimum wage, or some combination such that the total payroll exceeds seven hundred and fifty thousand dollars (\$750,000) for those jobs paying in excess of one hundred fifty percent (150%) of the federal minimum wage. At least twenty percent (20%) of the jobs will be held by City residents.
- (2) If the qualifying non-retail business adds the requisite number of employees and payroll, they will be eligible for a rebate of withholding taxes paid based on a credit of up to one percent (1%) of the withholding income tax rate (i.e., credit of up to 1% of current 2.25 percent tax rate equating to 44.44% rebate of withholding taxes paid).
- (3) Qualifying non-retail businesses are eligible for a rebate for up to five (5) years, if they commit to staying in the City for at least ten (10) years. The rebate program will contain claw back provisions specified in the rebate agreement if the qualifying non-retail business leaves prior to the ten- (10) year period or significantly reduces employment.

(c) Council Approval. All rebate agreements are subject to the approval of City Council.

(Ord. 15-33. Passed 07/23/15; Ord. 15-61. Passed 11/24/15; Ord. 2018-08. Passed 02/22/18; **Ord. 2020-\*\*, Passed \*\*/\*\*/20**)

**881.27 881.15 RETURNS FILED PURSUANT TO OPT-IN PROVISIONS OF ORC CHAPTER 718.80 to 718.95.**

(a) **Adoption. The City hereby adopts and incorporates by reference ORC Sections 718.80 to 718.95 for tax years beginning on or after January 1, 2018.**

(b) **Election to Opt-In to State System.** Certain taxpayers may elect to be subject to ORC 718.80 to 718.95, in lieu of the provisions set forth in this Chapter and/or the 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.

(c) **Limitations on State Tax Commissioner.** Nothing in this Income Tax Code shall be construed to make any section of this Chapter, other than this section 881.27~~15~~, applicable to the Tax Commissioner's administration of the City income tax or to any taxpayer that has made the election under ORC 718.80, nor shall the State Tax Commissioner have any authority to administer any provisions of this Chapter, except as set forth in this Section 881.15.

(Ord. 2018-08. Passed 02/22/18; **Ord. 2020-\*\*, Passed \*\*/\*\*/20**)

~~881.98 SEVERABILITY.~~

~~— If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal, invalid or not permissible under ORC Chapter 718., such unconstitutionality, illegality or invalidity shall affect only such sentence, clause, section or part of this chapter and shall not affect or impair any of the remaining sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of the City Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.~~

~~(Ord. 2018-08. Passed 02/22/18)~~

881.99 **VIOLATIONS; PENALTIES.**

(a) **Fraud; Disclosure of Tax Information; Failure to Remit Withheld Income Taxes. Except as provided in division (b) of this section, whoever violates Section 881.17, Section 881.16(a), or Section 881.04 by failing to remit City income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for a term of up to six (6) months, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.**

~~Whoever violates any of the provisions of this chapter, for which no penalty is otherwise provided, is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six (6) months, or both, for each offense.~~

(b) **Disclosure of Information in Violation of the Internal Revenue Code. Any person who discloses information received from the Internal Revenue Service in violation of Internal Revenue Code Section 7213(a), 7213A, or 7431 shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than five thousand dollars (\$5,000) plus the costs of prosecution, or imprisonment for a term not exceeding five (5) years, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.**

~~The refusal to produce books, papers, records and copies of federal income tax returns, or the refusal to submit to such examination, by any employer or person subject or presumed to be subject to the tax, or by~~

~~any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Accounts Receivable Division authorized hereby, shall be deemed to be in violation of this chapter guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six months, or both, for each offense. Each disclosure shall constitute a separate offense.~~

**(c) Separate Offenses. Each instance of access or disclosure in violation of Section 881.16(a) of this Chapter constitutes a separate offense.**

**(d) Other Violations; Penalties. Whoever violates any provision of this Chapter for which violation no penalty is otherwise provided, is guilty of a misdemeanor of the fourth degree on a first offense; on a second offense within one (1) year after the first offense, the person is guilty of a misdemeanor of the second degree; on each subsequent offense within one (1) year after the first offense, the person is guilty of a misdemeanor of the first degree. By way of an illustrative enumeration, violations of this Chapter shall include but not be limited to the following acts, conduct, and/or omissions:**

- (1) Fail, neglect or refuse to make any return or declaration required by this Chapter; or**
- (2) Knowingly make any incomplete return; or**
- (3) Willfully fail, neglect or refuse to pay the tax, penalties, and interest, or any combination thereof, imposed by this Chapter; or**
- (4) Neglect or refuse to withhold or remit City income tax from employees; or**
- (5) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or her books, records, papers, federal and state income tax returns or any documentation relating to the income or net profits of a taxpayer; or**
- (6) Fail to appear before the Tax Administrator and to produce his or her books, records, papers, federal and state income tax returns or any documentation relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator;  
**or****
- (7) Refuse to disclose to the Tax Administrator any information with respect to such person's income or net profits, or in the case of a person responsible for maintaining information relating to his or her employer's income or net profits, such person's employer's income or net profits; or**
- (8) Fail to comply with the provisions of this Chapter or any order or subpoena of the Tax Administrator authorized hereby; or**
- (9) To avoid imposition or collection of City income tax, willfully give to an employer or prospective employer false information as to his or her true name, correct social security number and residence address, or willfully fail to promptly notify an employer or a prospective employer of any change in residence address and date thereof; or**
- (10) Fail, as an employer, agent of an employer or other payer, to maintain proper records of employees' residence addresses, total qualifying wages paid and municipal tax withheld, or to knowingly give the Tax Administrator false information; or**
- (11) Willfully fail, neglect or refuse to make any payment of estimated City income tax for any taxable year or any part of any taxable year in accordance with this Chapter; or**
- (12) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Chapter.**

**(e) Strict Liability. For purposes of this section, any violation that does not specify a culpable mental state or intent, shall be one of strict liability and no culpable mental state or intent shall be required for a person to be guilty of that violation.**

**(f) Definition. For purposes of this section, the term “person” shall, in addition to the meaning prescribed in Section 881.02, include in the case of a corporation, association, pass-through entity or unincorporated business entity not having any resident owner or officer within the City, any employee or agent of such corporation, association, pass-through entity or unincorporated business entity who has control or supervision over or is charged with the responsibility of filing the municipal income tax returns and making the payments of the City income tax as required by this Chapter. (Source: ORC 718.99)**

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