

CHAPTER **881**

Income Tax Rules and Regulations

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CROSS REFERENCES

Power to levy income tax - see Ohio Const., Art. XII, Sec. 8

Majority vote of electors required - see CHTR. Sec. [10-3](#)

Payroll deductions - see Ohio R.C. 9.42

Municipal income taxes - see Ohio R.C. Ch. 718

Income tax ordinance - see B.R. & T. Ch. [880](#)

881.01 PURPOSE.

The purposes of these Rule and Regulations are to assist the Tax Department and taxpayers to comply with the Tax Ordinance and to provide fair and consistent application of the Tax Ordinance to similarly situated taxpayers. These Rules and

Regulations shall be deemed to be authoritative interpretations of provisions in the Ordinance.

(Ord. 67-28. Passed 12-4-67; Ord. 02-24. Passed 12-23-02.)

881.02 DEFINITIONS.

As used in these Rules and Regulations, the following words shall have the meaning ascribed to them in this section, unless the context clearly indicates or requires a different meaning.

(a) "Business" means an enterprise, activity, profession, trade or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity. The ordinary administration of a decedent's estate by the administrator or executor is not to be construed as a business within this definition.

(b) "Business apportionment" means the portion of net profits to be allocated as having been earned within the City of Vandalia. That percentage may be determined by actual books and records verifying such amounts or, in the absence of actual books and records, by the application of the three-factor formula of property, payroll, and sales as provided in the Income Tax Ordinance.

(c) "City" means the City of Vandalia, Ohio.

(d) "Domicile" means that place where an individual has his or her true, fixed, and permanent home, and principal establishment, and to which whenever he or she is absent he or she has the intention of returning. A "domicile" is a permanent legal residence that a taxpayer intends to use for an indefinite period and continues in one place until another permanent home and principal establishment is acquired. Some factors used to determine domicile are: addresses used for federal and state income tax filings; business, social and family ties to a community; voting registration and place actually voted; automobile registrations and driver's license; where children attend school and length of time there; social security records; employer records; being shown as a dependent on the tax return of a parent or guardian; and, if married, where the family resides. This is not an all-inclusive list and other factors may be considered as necessary. A domicile once acquired is presumed to continue until it is shown to have been changed. Temporary changes of residence do not usually affect changes in domicile. College students whose parents are in the City, although they may be away from the home in which they maintain a room or significant presence for indefinite periods, are normally considered to be domiciled in the City until such time as they become self-supporting and meet other domicile determination factors as listed above. When a taxpayer has previously been domiciled in the City but whose domicile has changed, such change may be indicated as a part of the filing of their final Vandalia return. If a return is not required, a written notice should be submitted to the tax division with both current and previous addresses.

(e) "Employee" means one who works for wages, salary, commission or any other types of compensation in the service of an employer. Anyone for whom an employer is required to withhold for Federal, State or Social Security or Medicare purposes, or for whom worker's compensation premiums or unemployment tax contributions are required to be paid shall be considered an employee.

(f) "Employer" means an individual, partnership, corporation, including not-for-profit corporations, association, governmental agency or any other entity who or that employs one or more persons and pays, allocates or sets aside a salary, wage, commission or any other type of compensation. To be an employer does not require that business be conducted.

(g) "Federal Income Tax" means the tax required to be paid by a taxpayer pursuant to the Internal Revenue Code.

(h) "Federal Income Tax return" means the tax return filed by the taxpayer pursuant to the Internal Revenue Code.

(i) "Fiscal year" means an accounting period of 12 months or less ending on any day other than December 31. Only fiscal years accepted by the Internal Revenue Service for Federal income tax purposes may be used for City tax purposes.

(j) "Gross receipts" means total income from any source whatsoever. Gross receipts shall include, but not be limited to, income in the form of commissions, fees, rentals from real estate and tangible personal property, and other compensation for work done or services provided as well as income from sales of stock-in-trade.

(k) "Joint Economic Development District" means districts created under Ohio R.C. 715.70 and 715.71, as amended from time to time.

(l) "Net profit" for a taxpayer other than an individual means adjusted federal taxable income as defined in the Ohio Revised Code. "Net profit" for a taxpayer that is an individual means the profit required for federal tax purposes to be reported on Schedule C, Schedule E, Schedule F or any other schedule of income and expenses as reportable for federal income tax purposes. Such net profit generally is comprised of the net gain from the operation of a business, profession, enterprise or other activity carried on for profit or normally carried on for profit after provisions for ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for federal income tax purposes but without the deduction of taxes imposed by the Income Tax Ordinance or Federal, State or other taxes based on income, and in the case of an association or partnership, without the deduction of salaries, wages or other compensation or payments to partners or other owners. Net profits, as disclosed on any return filed pursuant to the Income Tax Ordinance and these Rules and Regulations, shall be calculated using the same accounting method used in reporting net income to the Federal Internal Revenue Service, provided that such method does not conflict with any

provisions of the Income Tax Ordinance or the Ohio Revised Code; and such net profits must be reconciled with the income reported to the Federal Internal Revenue Service.

(m) "Ordinance", "this Ordinance", "the Ordinance" or "the Income Tax Ordinance" means Chapter 880 of the Codified Ordinances of the City of Vandalia, Ohio and any amendments or supplements thereto.

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

(o) "Other entity" means any person, business or enterprise not otherwise specifically defined herein.

(p) "Partnership" means an association, joint venture or any form of unincorporated enterprise owned by two or more persons.

(q) "Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any section prescribing and imposing a penalty or interest, the term "person" includes an officer or employee of a corporation, or a member or employee of a partnership, or in the case of an unincorporated entity not having a partner, member or officer, any employee or agent of such entity, who, as such officer, employee, agent or member, has control, supervision or is charged with the responsibility of tax law compliance or is under a duty to perform the act in respect of which the violation resulting in said penalty or interest occurs.

(r) "Place of business" means any office, factory, warehouse, storage area, distribution center, building or other space which is occupied or used by the taxpayer in carrying out any business activity.

(s) "Resident" means an individual domiciled in the City of Vandalia or any person who maintains a place of abode within the City for a total of 183 days or more within any 12-month period.

(t) "Resident unincorporated business entity" means an unincorporated business entity having a place of business within the City of Vandalia.

(u) "Taxable income" means qualifying wages, salaries, commissions and any other compensation earned, received, accrued or in any other way set apart by an employer or employers before any deduction other than ordinary and necessary business expenses as properly reported for federal income tax purposes and actually deducted for federal income tax purposes, and/or the net profits from the operation of a business, profession or other activity or enterprise adjusted in accordance with provisions of the Income Tax Ordinance and with these Rules and Regulations, and/or all other income from whatever source that is not exempt from municipal taxation per the Ohio Revised Code.

When used in these Rules and Regulations, the singular shall include the plural and the masculine shall include the feminine and neuter.

(Ord. 67-28. Passed 12-4-67; Ord. 02-24. Passed 12-23-02.)

881.03 IMPOSITION OF TAX.

(a) Resident Employees. An annual tax as set forth in the Income Tax Ordinance shall be imposed upon the taxable income of all residents of the City. The source of the earnings and the place where work or services were performed is immaterial. All earnings of residents wherever earned or paid are subject to Vandalia taxation. Taxable items include but are not limited to:

(1) Qualifying salaries, wages, commissions, incentive payments, bonuses and other compensation earned, received, accrued or in any other way set apart unto residents of the City whether paid directly or through an agent and whether in cash or in property during the tax period as:

A. An officer, director or employee of a corporation, including charitable and other nonprofit organizations.

B. An employee (as distinguished from a partner or member) of a partnership, association or any form of unincorporated entity owned by two or more persons.

C. An employee (as distinguished from a proprietor) of a business, trade or profession conducted by an individual owner.

D. An officer or employee (whether elected, appointed or commissioned) of the United States Government or any of its agencies or of a corporation created, owned or controlled by the United States Government or of the State of Ohio or any of its political subdivisions or agencies or any foreign country or dependency except military on active duty.

E. An employee of any other entity or person whether based on hourly, daily, weekly, semi-monthly, monthly, annual, unit of production or piece work rates; and whether paid by an individual, partnership, association, corporation, including nonprofit and charitable corporations, governmental administration, agency, authority, board, branch, bureau, department, subdivision, section or unit or any other entity.

(2) Commissions earned, received, accrued or in any other way set apart unto residents of the City whether paid directly or through an agent and whether paid in cash or property regardless of how calculated or by whom paid or where such payment is made.

A. If amounts received as a drawing account exceed the commissions earned, the tax shall be on the gross amounts received, unless the excess is subject to the demand of the employer for repayment.

B. If commissions are included in the net earnings of a trade, business, profession, enterprise or other activity carried on by an unincorporated entity of which the individual receiving such compensation is owner or part owner and therefore subject to the tax through the entity, the individual shall not be subject to the tax on the same commissions.

(3) Amounts received from an employer for expenses and used as such by the individual receiving them are not deemed to be compensation subject to taxation if the employer deducts such expenses or advances from gross income for the purpose of determining net profits taxable under federal law and the employee is not required to include such receipts as income on his or her federal income tax return. However, expense allowances or advances received that are in excess of actual expenses are taxable by the recipient individual employee.

(4) Fees, unless such fees are includable as part of the net profits of a trade, business, profession or enterprise regularly carried on by an unincorporated entity owned or partly owned by said individual and such net profits are subject to the tax. The term "fees" shall include honorariums, marriage and funeral offerings, gratuities received in the performance of religious ceremonies and other monies received by members of the clergy, evangelists or religious workers.

(5) Other compensation, in addition to items mentioned elsewhere in these Rules and Regulations, including but not limited to bonuses, stipends, tips, other earned income, supplemental unemployment benefits (S.U.B. pay), income from partnerships, estates or trusts, employee contributions to costs of fringe benefits, ordinary gains as reported on Federal Form 4797, recapture of depreciation, vacation pay, farm net income, employer paid premiums for group term life insurance in the same amounts as taxable to the employee for federal tax purposes, contributions made on behalf of employees to tax deferred annuity programs, income from guaranteed annual wage contracts, prizes and gifts of any type if connected with employment, director fees, income from jury duty, union steward fees, strike pay, profit sharing, uniform, automobile and travel allowances, gambling and lottery winnings, reimbursements in excess of deductible expenses, executor fees, pre-retirement distributions from retirement plans, amounts received from covenants not to compete to the extent includable on the taxpayer's federal income tax return, other income as taxable for the purpose of federal income tax including but not limited to employer-provided educational assistance and other types of income earned, received accrued or in any other way set apart or deemed as ordinary income for federal income tax purposes, including compensation paid to domestic, casual or other types of employees. All qualifying wages appearing on a W-2 shall be considered as taxable to the recipient and will not be excluded from taxable income unless it can be shown to be an exception in accordance with the Income Tax Ordinance and these Rules and Regulations.

(6) In the case of domestic employees or other employees whose duties require them to live at their place of employment or assignment, board and lodging shall not be taxable as wages or compensation.

(7) Sick pay, disability pay, long-term disability pay, vacation pay, wage or salary continuation plan payments and other payments made to an employee by an employer or a third party agent during periods of absence from work are taxable when paid and at the rate in effect at time of payment and may not be excluded from taxable income by an employer, resident or nonresident employee. Disability benefits received from a policy in which the taxpayer has paid the premiums will not be taxable to the City to the extent that the benefits received are a result of such premiums. Benefits from disability policies of which the premiums are partially employer paid and partially employee paid are taxable only on the employer paid portion.

(8) Payments made to an employee by an employer as separation pay, severance pay, termination pay, early retirement incentives and similar pay-outs are taxable when paid.

(9) Employee contributions to retirement plans, including Internal Revenue Code Sections 401(k), 403(b), 457 and other deferred compensation plans, are taxable and are neither excludable nor deductible by the employee. Withholding applies to the employee's full compensation unreduced by an employee's contribution to a retirement or deferral plan. If an employer pays into a tax sheltered or tax deferred plan on behalf of an employee, or makes any similar type payments that may be in lieu of paying additional wages or other compensation, those payments are taxable and subject to withholding.

(10) Contributions made either by or on behalf of an employee to cafeteria-type plans that are includable in Federal Medicare wages, are fully taxable and may not be excluded or deducted from taxable income by either an employee or employer. Federal wage reductions do not cause a fully taxable wage or salary to lose its character as a fully taxable wage or salary subject to the provisions of the City Income Tax Ordinance or these Rules and Regulations, unless such reductions are includable in the calculation of qualifying wage per the Ohio Revised Code. Contributions to the costs of such benefits, when includable in qualifying wages, whether paid directly or through a payroll deduction plan, are not deductible from and should be included in taxable income. Employer-sponsored benefit plans that permit the participant employee to reduce taxable income for Federal income tax purposes are not recognized for City income tax purposes if contributions to such plans are includable in federal Medicare wages. Such a reduction does not cause the gross wage or salary to lose its character or taxability or withholding requirements for City purposes.

(11) Where compensation is paid or received in property, its fair market value, at the time of receipt, shall be subject to the tax and to withholding. Board, lodging and similar items received by an employee in lieu of additional cash compensation shall be included in earnings at their fair market value. Gifts to employees of a minimal amount

that may be given by employers during holidays or other occasions are taxable only to the extent that they are subject to taxation for federal income tax purposes.

(b) Nonresident Employees. An annual tax as set forth in the Income Tax Ordinance shall be imposed on the taxable income of all nonresidents of the City on qualifying salaries, wages, commissions, incentive payments, bonuses, and other compensation earned, received accrued or in any other way set apart unto nonresidents of the City for work done or services performed within the City whether such compensation is received or earned directly or through an agent and whether paid in cash or property. The location of the place from which payment is made is immaterial. The items subject to the tax for nonresidents of the City are the same as those listed and defined in these Rules and Regulations as subject to the tax for residents of the City. A nonresident individual who is in the employment of a nonresident business and in the course of said employment works or performs services in the City for 12 or fewer days within a calendar year shall be considered an occasional or casual entrant and shall not be subject to Vandalia income tax for those 12 or fewer days. For the purposes of the 12-day calculation, any portion of a day worked in the City shall be construed and counted as one day worked in the City. If said individual works or performs services in the City for 13 or more days during a calendar year, on the thirteenth day of said calendar year, the individual shall no longer be considered an occasional or casual entrant and shall be subject to taxation on all income earned in the City, including that earned during the first 12 days.

(1) If said individual can be reasonably defined as a professional entertainer, a professional athlete, a promoter of a professional sports or entertainment event or an employee of such a promoter, the herein-defined 12-day occasional or casual entrant provision for nonresidents shall not apply.

(2) Vandalia income tax withheld by a nonresident employer and paid to the City as a result of the employer being subject to withholding rules, as defined in these Rules and Regulations, cannot be refunded to an individual under the 12-day occasional or casual entrant provision.

(c) Resident Unincorporated Businesses. In the case of resident unincorporated businesses, professions, enterprises or other activities conducted, operated or engaged in, irrespective of whether such taxpayer has an office or place of business in the City, there is imposed an annual tax, as set forth in the Income Tax Ordinance, on the net profits earned, received, accrued, set apart or derived from sales made, work done, services performed, or business or other activities conducted in the City.

(1) The tax imposed on resident partnerships, associations, joint ventures or other unincorporated entities owned by two or more persons is upon the entities rather than the individual owners or members.

(2) The tax imposed on a resident unincorporated entity owned by one person is upon the individual owner. Net profits from self-employment, professions, sole

proprietorships and other unincorporated entities owned by one person are subject to the tax.

(3) The tax is imposed on all resident unincorporated entities having net profits attributable to the City under the method of allocation provided in the Income Tax Ordinance and in these Rules and Regulations regardless of where the owner or owners of such resident unincorporated business entity reside.

(4) Resident unincorporated entities owned by two or more persons, all of whom are residents of the City, shall disregard any method of allocation and shall be subject to the tax on the entire net profits.

(5) A resident individual who is sole owner of a resident unincorporated entity shall be subject to tax on the entire net profits of said business and shall disregard any method of allocation.

(6) In the case of a resident individual partner, member or part owner of a resident unincorporated business entity, the tax is imposed on said individual's distributive share of net profits earned, received, accrued, set apart or derived by the entity but not attributed to the City under the method of allocation set forth in the Income Tax Ordinance and these Rules and Regulations and not taxed against the entity.

(d) Nonresident Unincorporated Businesses. In the case of nonresident unincorporated businesses, professions, enterprises or other activities conducted, operated or engaged in, there is imposed an annual tax as set forth in the Income Tax Ordinance on the net profits earned, received, accrued, set apart or derived that are attributable to the City.

(1) The tax imposed on nonresident partnerships, associations, joint ventures or other unincorporated entities owned by two or more persons is upon the entities rather than the individual owners or members.

(2) The tax imposed on a nonresident unincorporated entity owned by one person is upon the individual owner.

(3) The tax is imposed on all nonresident unincorporated entities having net profits attributable to the City under the method of allocation provided in the Income Tax Ordinance and in these Rules and Regulations regardless of where the owner or owners of such nonresident unincorporated business entity reside.

(4) Nonresident unincorporated entities owned by two or more persons, all of whom are residents of the City, shall disregard any method of allocation and shall be subject to the tax on the entire net profits. In such case, the tax paid by the entity shall constitute all tax due from the owners or members for their distributive share of net profits. However, an additional return shall be required from such owner or member and

such return shall report any taxable income other than the distributive share of net profits from the entity.

(5) A resident individual who is sole owner of a nonresident unincorporated entity shall be subject to tax on the entire net profits of said business and shall disregard any method of allocation.

(6) In the case of a resident individual partner, member or part owner of a nonresident unincorporated business entity, the tax is imposed on said individual's distributive share of net profits earned, received, accrued, set apart or derived by the entity but not attributed to the City under the method of allocation set forth in the Income Tax Ordinance and these Rules and Regulations and not taxed against the entity.

(e) Corporations. In the case of corporations, whether domestic or foreign and whether or not such corporations have an office or place of business in the City, there is imposed an annual tax as set forth by the Income Tax Ordinance on the net profits earned, received, accrued, set apart or derived that are attributable to the City.

(1) There is in the Income Tax Ordinance and these Rules and Regulations a method of allocation that will determine if a corporation is conducting a business or other activity in the City and the amount of net profits subject to taxation by the City.

(2) Corporations required by provisions of the Ohio Revised Code to pay an excise tax may exclude from calculations of net profits subject to the tax imposed by the Income Tax Ordinance, that portion of their gross receipts upon which the excise tax is paid. Accordingly, expenses incurred in the production of such gross receipts shall not be deducted in calculating said net profits subject to the tax.

(3) Distributions to shareholders of S-corporations are not subject to taxation by the City. Conversely, losses derived from S-corporations may not be used to offset other income that may be subject to City taxation.

(4) S-corporations are required to file on an entity basis and pay the tax due on any net profits attributable to the City in the same manner as all other types of corporations that are subject to the tax. The tax is imposed upon the S-corporation net profits attributable to the City per the three-factor business apportionment formula without regard for where the owners, shareholders or members reside.

(f) Royalties. Royalties derived from land leases, coal, gravel and other mineral rights, oil and gas wells whether managed, extracted or operated by the taxpayer individually or through an agent or other representative are subject to taxation by the City. Royalties derived from intangible property, patents and copyrights are not taxable unless the taxpayer's activities produce a publication or other product which results in sales from which royalties are produced. Such items shall be clearly disclosed as an attachment to the City tax return.

(g) Rentals. An annual tax as set forth in the Income Tax Ordinance shall be imposed on rental earnings from all types of real estate or other property that is located within the City and from the rental earnings of City residents no matter where such rental property is located. The owner or owners of the property shall declare and pay the tax thereon. Rental earnings from all types of real estate and other property are not deemed to be earnings from a business, as defined in the Income Tax Ordinance and these Rules and Regulations, if the taxpayer's entire gross rental activity in aggregate is less than three hundred fifty dollars (\$350.00) per month.

(1) "Real property", as used in these Rules and Regulations, shall include commercial property, farm property, residential property and any and all other types of real estate or personal property for which rents, payments or remuneration in exchange for the use, possession or control of such property are earned, received, accrued or in any other way set apart.

(2) Individuals having rental losses, but not receiving gross rents that would average three hundred fifty dollars (\$350.00) per month or more over a calendar year, must be able to verify that such property was actually available for rent and that the rental amount was set at a reasonable fair market value in order to use such loss to offset other taxable income. Such property is not considered a business for loss offset purposes. However, all rental net gains are taxable without regard for the average monthly rental amount.

(3) In the case of commercial property, the owner shall be considered engaged in a business activity when the rental is based on a percentage of sales, receipts or profits whether or not such rental exceeds three hundred fifty dollars (\$350.00) per month.

(4) In the case of farm property, the owner shall be considered engaged in business when he or she shares in the crops or when rental is based on a percentage of gross or net receipts received from the farm whether or not such amounts exceed three hundred fifty dollars (\$350.00) per month.

(5) A person who operates a rooming house of five or more rooms available for rent shall be considered to be engaged in business whether or not gross income exceeds three hundred fifty dollars (\$350.00) per month.

(6) Rentals received by a taxpayer engaged in the business of buying and selling real estate shall be considered as part of the business income.

(7) In determining the taxable income from rentals, the deductible expense amount shall be of the same nature and amount as properly reported and actually deducted for federal income tax purposes. In the absence of actual books and records, the Income Tax Superintendent may estimate taxable net rental income.

(8) Residents of the City are subject to taxation upon the net income from all rentals regardless of the location of the property.

(9) Nonresidents of the City are subject to taxation on rentals only if the property is located within the City. Nonresidents, in determining whether gross monthly rentals exceed three hundred fifty dollars (\$350.00), should take into consideration only those properties located within the City.

(10) Corporations owning or managing real estate or other rental property are taxable only on that portion of income derived from property located within the City.

(11) An individual, business or other entity having a rental property that is subject to the City income tax and who or that subsequently sells such rental property, shall attach Federal Form 4797, page 1 and 2, to the Vandalia return for the year in which the sale is made. Any amount or value realized on a sale, exchange or other disposition of such rental property shall be treated as taxable income to the extent of depreciation allowed or allowable.

(12) The owners of rental property located in the City shall, on or before October 31 of each year, submit a current listing of all renters to the City Income Tax Division. The list shall contain the name, address and date of occupancy of each tenant. Any change in occupancy that occurs during the year must be reported to the Income Tax Division immediately. A form or forms needed in making such reports will be furnished by the Income Tax Division and are available upon request. However, substitute forms are acceptable if such forms contain the applicable information of name, address and date of occupancy of all tenants.

(h) Non-taxable Income. In addition to items mentioned elsewhere in these Rules and Regulations, the following are examples of items that, for the individual recipients, are exempt from the City income tax: interest, dividends, social security benefits, income from federally qualified retirement plans, state unemployment benefits, worker's compensation, proceeds of life insurance policies, active duty military pay, earnings of persons under 18 years of age, capital gains, prizes and gifts not connected with employment, annuity distributions, housing allowances for the clergy to the extent that the allowance is used to provide a home as excluded by Section 107 of the Internal Revenue Code, health and welfare benefits distributed by government, charitable, religious or educational organizations.

(1) Proceeds from an educational scholarship, fellowship or grant is exempt from City income tax only when given for attendance as a student at an accredited college or university and when also exempt for federal income tax purposes.

(2) Alimony is not taxed to the recipient nor is it allowed as a deduction by the payor.

(3) Compensatory insurance proceeds derived from property damage or personal injury settlements are not taxable; however, this exclusion does not apply to any amounts of insurance proceeds paid as a replacement for lost salaries or wages.

(4) Compensation paid under the Ohio Revised Code to a person serving as a precinct election official, to the extent that such compensation is under one thousand dollars (\$1,000.00) annually, is exempt from City income tax. The payer of such precinct election official's income of under one thousand dollars (\$1,000.00) annually for any individual is not required to withhold the City income tax from that income. However, when such compensation is one thousand dollars (\$1,000.00) or more during any calendar year, it is subject to taxation and to withholding on the full amount earned during that tax period.

(5) Compensation paid to an employee of a transit authority, as defined for municipal tax purposes in the Ohio Revised Code, for operating a transit bus or other motor vehicle for such transit authority in or through the City is exempt from the City income tax, unless the bus or vehicle is operated on a regularly scheduled route in the City or the employee has a residence or domicile within the City or the transit authority headquarters is located in the City.

(i) Ordinary and Necessary Expenses. Except as provided in the Income Tax Ordinance or elsewhere in these Rules and Regulations, all ordinary and necessary expenses of operating a business that have been properly reported for federal income tax purposes and that have been deducted for federal income tax purposes, including reasonable compensation paid to employees, shall be allowed. However, no deduction may be claimed for salary or withdrawal of a proprietor or of the partners, members or other owners of an unincorporated business or enterprise.

(j) Deductibility of Taxes. There shall be no deduction of any taxes imposed by the Income Tax Ordinance or federal, state or any other tax based on income. Nor shall there be a deduction for gift, estate or inheritance taxes or taxes for local benefits or improvements to property. If for any reason the income from a property is not subject to the tax imposed by the Income Tax Ordinance, then taxes and any other expenses of such property are not deductible.

(k) Charitable Contributions. Charitable contributions shall not be deducted in the computation of qualifying wages for the City, nor shall charitable contributions be deducted in the computation of City income tax of an individual taxpayer. Corporations, partnerships and other businesses required to file returns on an entity basis may deduct charitable contributions to the extent that such contributions have been deducted for Federal tax purposes, and providing that such contributions are includable in the computation of adjusted Federal taxable income as reportable to the City. Such contributions must be supported through a Federal form attached to the City return.

(l) Employee Business Expenses. Individual taxpayers having employee expenses which are properly reportable on Federal Form 2106 and which have been taken as a deduction for federal income tax purposes may also be entitled to a deduction for City income tax purposes. The total of such expenses cannot exceed the related income from the employer of whom the expenses were incurred. A copy of Federal Form 2106 and Federal Schedule A must be filed as attachments to the City annual tax return. For City

purposes, expenses included on the Form 2106 may not be aggregated; in such case, an itemized listing of expenses must be attached to the City return. Employee business expenses related to income earned in another taxing municipality shall be used to reduce the tax due in such other municipality. In such circumstances, any other city tax credit allowed by the City will reflect the tax due to the other city after the reduction of the Form 2106 expenses.

(m) Moving Expenses. Individual taxpayers having moving expenses which are properly reportable on Federal Form 3903 and which have been taken as a deduction for federal income tax purposes may also be entitled to a deduction for City income tax purposes. The total of such moving expenses cannot exceed any reimbursed amounts received or set apart unto the employee from the employer of whom the expenses were incurred. A copy of Federal Form 3903 and Federal Schedule A must be filed as attachments to the City annual return.

(1) Moving expense reimbursements in excess of actual expenses that are properly reportable on Federal Form 3903 and/or not actually deducted from federal income tax are taxable.

(2) Moving expenses that are not reimbursed by the employer are not deductible.

(n) Expenses Attributable to Non-taxable Income. Expenses attributable to non-taxable income shall not be allowed as a deduction in the computation of income subject to City taxation. Per the Ohio Revised Code, when calculating adjusted Federal tax income, an amount equal to 5% of the tangible income that has been deducted in the adjusted Federal taxable income calculation will be considered as attributable to such non-taxable income and shall not be allowed as a deduction.

(o) Trucking Companies. Net profits derived by trucking companies and other carriers operating under a certificate issued by the P.U.C.O. are not subject to City tax per the Ohio Revised Code exemption of motor carriers. Motor carriers having gross receipts derived both within and without the Ohio Revised Code P.U.C.O. exemption are subject to the tax on that portion of their net profits not subject to the exemption and may not deduct expenses relating to any portion of the exempt amount of gross receipts.

(p) Allocation of Business Profits and Losses.

(1) If a corporate taxpayer doing business both within and without the City, or a nonresident unincorporated taxpayer doing business both within and without the City, has actual and bona fide books and records that accurately reflect the proper percentage of business activities within the City, such taxpayer shall use such records. In the absence of such records, such taxpayer shall use the Three-Factor Business Apportionment Formula as set forth in the Income Tax Ordinance and these Rules and Regulations. If the books and records of the taxpayer are used rather than the business apportionment formula, a statement must accompany the City return explaining the manner in which such apportionment is made in sufficient detail to enable the Superintendent to determine

whether the net profit or loss attributable to the City is apportioned with reasonable accuracy.

(2) Where allocation of net profit or loss is necessary and the taxpayer does not have appropriate actual books and records showing such allocation, the three-factor business apportionment formula percentage shall be calculated on the basis of:

A. The original cost of real and tangible personal property within and without the City; and

B. The gross business receipts within and without the City; and

C. The wages earned within and without the City.

(3) Business apportionment formula method:

A. Step 1: Ascertain the percentage which the original cost of real and tangible personal property, including leasehold improvements, owned or used in the business and situated within the City is of the original cost of all real and tangible personal property, including leasehold improvements, owned or used in the business wherever situated, during the period covered by the return.

1. The percentage of taxpayer's real and tangible personal property within the City is determined by dividing the original cost of such property within the City, without deduction of any encumbrances, by the original cost of all such property within and without the City. In determining such percentage, property rented to the taxpayer must be considered. The value of real and tangible personal property rented by the taxpayer shall be determined by multiplying gross annual rents payable by eight.

2. "Gross rents" means the actual sum of money or other form of compensation payable by the taxpayer for the use or possession of property whether designated as a fixed sum or as a percentage of sales or profits or other consideration. Any amounts such as interest, repairs, taxes, insurance or other amounts required to be paid in lieu of rents or as an addition to rents shall be included in gross rents.

B. Step 2: Ascertain the percentage which the gross receipts of the taxpayer derived from sales made, work done and services rendered in the City is of the total gross receipts, wherever derived, during the period covered by the return. The following shall be considered sales and gross receipts derived in the City:

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

2. All sales of tangible personal property which is delivered to purchasers within the City, regardless of where title passes, even though transported from a point outside Vandalia, if the taxpayer is regularly engaged through its own employees in the solicitation and the sales either directly or indirectly result from such solicitation.

3. All sales of tangible personal property which is delivered within the City regardless of where title passes, if shipped or delivered from an office, store, warehouse, factory, place of storage or other facility or stock of goods within the City.

a. In application of the foregoing paragraphs, a carrier shall be considered the agent of the seller regardless of the F.O.B. point or other conditions of the sale, and the place at which orders are accepted or contracts written shall be immaterial.

b. Solicitation of customers outside the City by mail or phone or fax or electronic means from an office or place of business within the City, or when such solicitation is automatically directed to points outside the City but was ordered or initiated in the City, shall not be considered as solicitation of sales outside the City.

c. Business receipts are not considered to have been derived by the taxpayer outside the City solely because they were payable or actually received outside of the City. Nor shall the fact that deliveries are made outside the City necessarily constitute a sale for which receipts are allowable outside the City.

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

C. Step 3: Ascertain the percentage which the total wages, salaries, commissions and other compensation of employees within the City is of total wages, salaries commissions and other compensation of all employees within and without the City during the period covered by the return.

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

2. Wages, salaries and other compensation shall be calculated on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the taxpayer.

3. For employees who perform services both within and without the City, the amount treated as compensation for services performed within the City shall be deemed to be as follows:

a. In the case of an employee whose compensation depends directly on the volume of business secured, such as a salesperson on a commission basis, the City

wages, salaries and other compensation amount is the amount received for the business attributable to the employee's efforts within the City.

b. In the case of an employee whose compensation depends on other results achieved, the amount attributable to the City is the value of the proportion of the total compensation received for services within the City.

c. In the case of an employee compensated on a time basis, the amount of wages, salaries and other compensation attributable to the City is the proportion of the total amount received for working time within the City.

D. Step 4: Add the percentages determined in Step 1, Step 2 and Step 3 and divide the total by the number of percentages used. The result so obtained is the business allocation percentage. In determining the business apportionment percentage through use of the three-factor formula, a factor shall not be excluded from the computation merely because the factor is allocable entirely within or outside of the City. A factor is excluded only when it does not exist anywhere.

(4) The business apportionment formula shall be applied to the entire taxable net profits of the taxpayer, wherever derived, to determine the net profits allocable to the City.

(5) In the event that a just and equitable result cannot be obtained under the standard three-factor formula, the Superintendent may substitute other factors to be used within the formula or prescribe other methods of allocating net income to determine a fair and proper allocation. Application to use substitute factors in the formula or to use a different method to allocate net profits must be made, in writing, to the Superintendent before the end of the taxable year. The application shall state the specific grounds and reasoning on which the substitution of factors or use of a different method is requested. No specific form need be followed in making such application. Once a taxpayer has filed under a substitute method, such method may not be changed unless the Superintendent grants permission for a change.

(q) Nonprofit Organizations. Any charitable, educational, fraternal or other type of nonprofit organization that meets Ohio Revised Code requirements for exemption from the payment of real estate taxes is exempt from the tax imposed by the Income Tax Ordinance. However, any such nonprofit organization is required to file declarations and tax returns and remit the taxes imposed by the Income Tax Ordinance, and otherwise comply with all other aspects of the Income Tax Ordinance as with other for-profit organizations, on all business activities of a type conducted for profit or ordinarily conducted for profit by taxpayers operating for a profit.

(1) The Income Tax Superintendent is authorized to verify forms filed with the federal government by nonprofit organizations relating to or establishing their status for federal tax purposes; and nonprofit organizations will keep copies of such forms available for inspection and verification.

(2) The exemption of the nonprofit organization from the imposition of the tax does not extend to its employees or to its requirement to withhold and remit taxes on salaries, wages, commissions or other compensation paid to its employees.

(r) Recapture of Depreciation. Capital gains and losses from the sale, exchange or other disposition of property shall not be taken into consideration in arriving at net profits earned. However, any amount or value realized on a sale, exchange or other disposition of tangible personal property or real property used in business in excess of book value shall be treated as taxable income to the extent of depreciation allowed or allowable.

(s) Stock Options. Any income or value received from the grant, 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 plan shall not be included in the City taxable income of individual taxpayers.

(Ord. 02-24. Passed 12-23-02; Ord. 05-03. Passed 2-7-05.)

881.04 RETURN AND PAYMENT OF TAX.

(a) Date and Requirements for Filing.

(1) On or before April 15 of each year, every person 18 years of age or older, subject to the provisions of the Income Tax Ordinance shall, without assessment or notice or demand, make and file a return with the Superintendent whether or not a tax is due. Such return must be on a form prescribed by and obtainable upon request from the Superintendent. The Superintendent shall accept a generic form of any return, report or document required to be filed if the generic form once completed and filed, contains all the information required to be submitted with the City prescribed returns reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules and regulations and ordinances of Vandalia.

(2) If the return is for a fiscal year or any period less than a year, said return shall be made within three and one-half months from the end of the fiscal year or other period.

(3) The fact that a person subject to City filing requirements is not required to file a Federal tax return does not relieve such person from filing a City tax return.

(4) Individuals who are permanently retired and who have no income subject to taxation by the City must file a return for the year following the year in which they become permanently retired. Subsequent filings will not be required of those retirees receiving no income subject to taxation. However, such retirees may, when deemed necessary by the Superintendent, be required to verify their Federal tax status. Such verification will be no more than once every three years in frequency.

A. Individuals that are permanently retired are required to file annual returns until an exemption is granted, in writing, by the Superintendent.

B. Anyone, including retirees, receiving a pre-printed return from the tax office has an active account and must file a return.

(5) Every person subject to the provisions of the Income Tax Ordinance shall, without assessment or notice or demand, file a return setting forth the aggregate amount of qualifying salaries, wages, commissions and other compensation earned, received, accrued or in any other way set apart, and net profits from business or other activities including the rental of real estate and other personal property, and any other income subject to taxation under the Income Tax Ordinance earned, received, accrued or set apart for the period covered by the return, and such other facts and information as the Superintendent may require.

(6) All returns required to be filed shall set forth the aggregate amount of qualifying wages, salaries, bonuses, incentive payments, commissions, fees and other compensation earned, received, accrued or in any other way set apart and subject to the tax from each employer, taxable net profits and other pertinent information as the Tax Superintendent may require. In lieu of the above, a taxpayer may submit an affidavit from the tax office of any City in which the taxpayer worked, stating that the taxpayer has met the obligation to file and pay the tax in that City. This alternative is available to those taxpayers that have income that is fully withheld upon at a rate equal to or higher than the Vandalia rate.

(7) Trustees of active trusts are required to file returns and pay the tax on the taxable income thereof.

(8) Fiduciaries are liable for the payment of any taxes due by a deceased person from the estate of such deceased person.

(9) Nonresident employees need not file a return when their entire earnings subject to taxation by the City of Vandalia for the tax period are paid by an employer or employers and said employer or employers have withheld and remitted the full and proper amount of Vandalia income tax.

(10) An employee who is permitted to deduct employee business expenses from gross wages, salaries or other compensation for Federal tax purposes through Federal Form 2106 and Federal Schedule A must file a City return in order to claim such deductions.

(11) Anyone actually or constructively receiving income subject to City taxation but not fully withheld upon must file a City return.

(12) Taxpayers having income, wages, salaries or other compensation for which a return must be filed, and also having net profits subject to taxation from an individually owned business that is not required to file on an entity basis, are required to file only one return including all income subject to taxation.

(13) Except as provided for herein, the tax is upon the partnership or association as an entity, whether resident or nonresident, and a return is required from the entity disclosing the net profits allocable to the City and the tax paid thereon. However, any resident partner or resident member of an unincorporated entity is required to make a return and pay the tax in accordance with the Income Tax Ordinance.

(14) All returns shall set forth the amount of tax imposed by the Income Tax Ordinance on all income subject to taxation. Any credits that may be applicable may not be set forth until after the full and proper amount of tax is determined and reported on said return.

(15) A husband and wife may file returns either individually or jointly.

(16) All returns filed must clearly indicate how taxable income was determined. Applicable schedules must be attached. The Superintendent of Taxation may require additional information to verify the accuracy of any return and to provide documentation or verification of any items or amounts shown on the return.

(17) Where amounts of total income, deductions and net profits are included, as shown on a Federal return, any items of income that are not subject to City tax and any unallowable expenses shall be eliminated in determining net taxable income.

(18) A corporation, partnership, association, trust or other organization required to file returns on an entity basis must show a reconciliation of net income reported on the Federal income tax return with the income reported on the City return.

(19) Operating losses (except any portion of a loss separately reportable for municipal tax purposes to another city) from business or professional activities, the profits of which would be subject to the tax under the Income Tax Ordinance, may be offset against salaries, wages or other compensation or against net profits from other business or professional activities. Such losses may only be deducted in the year in which they occur. There is no carry forward or backward of operating losses.

(20) If a change in Federal income tax liability made by the Internal Revenue Service or by a judicial decision results in an additional amount of tax payable to the City, a report of such change shall be filed within three months after receipt of the notice from the Internal Revenue Service or court decision. If such change results in a reduction of taxes owed and paid to the City, a claim for refund may be filed with the Superintendent as prescribed by the Income Tax Ordinance.

(b) Extensions.

(1) Upon written request received on or before the due date for filing the return, and for good cause shown, the Superintendent may, when it is deemed to be in the best interest of the City, extend the time for filing such return for a period not beyond the last

day of the month following the month in which the federal income tax return has been extended.

(2) All extensions shall be conditioned upon the taxpayer filing a tentative return, accompanied by payment of any tax due by the date the return is normally due, and upon the taxpayer maintaining continuing compliance with all provisions of the Income Tax Ordinance.

(3) A late filing penalty shall not be assessed in those cases in which the return is filed and the final tax paid within the period as extended provided all other filing and payment provisions of the Income Tax Ordinance have been met. However, the amount by which the actual tax found to be due exceeds the payment submitted with the tentative return shall bear late payment penalty and interest from the original due date of the return.

(4) Extensions granted by the Superintendent are done so with the understanding that the declaration, filing and payment requirements have been fulfilled. However, if upon further examination, it becomes evident that such requirements have not been met, interest and penalties shall be assessed in full and in the same manner as though no extension had been granted.

(c) Payment with Return.

(1) The taxpayer making a return shall, at the time of filing, without assessment or notice or demand, pay the amount of taxes shown to be due thereon.

(2) A taxpayer who has made and filed a complete return and who has overpaid the amount of tax due may have such overpayment refunded or applied against the next year estimated tax due at his or her election as indicated on the return. When no such election has been indicated by the taxpayer, any overpayment will be credited to the next tax year. All overpayments will be transferred first to any tax year in which there is a delinquent balance due before such overpayment will be credited forward to pay estimated taxes or be refunded.

(3) No tax shall be collected and no overpayment shall be refunded or applied against subsequent liabilities when less than one dollar (\$1.00).

(d) Amended Returns.

(1) Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of any tax overpaid, subject to the provisions of the Income Tax Ordinance. Such amended return shall be on a form prescribed by the Superintendent of Taxation. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return without prior approval of the Superintendent.

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

(e) Consolidated Returns.

(1) Consolidated returns may be filed by a group of corporations that are affiliated through stock ownership, provided such group files consolidated returns for federal income tax purposes.

(2) For a subsidiary corporation to be included in a consolidated return, 80% or more of its stock must be owned by the other members of the affiliated group.

(3) A consolidated return must include all companies that are so affiliated.

(4) Once a consolidated return has been filed for any taxable year, the consolidated group must continue to file consolidated returns in subsequent years unless:

A. Permission, in writing, is granted by the Tax Superintendent; or

B. A new corporation, other than a corporation created or organized by a member of the group, has become a member of the group during the taxable year; or

C. A corporation member of the group is sold or exchanged.

(5) Liquidating a corporation or merging one of the corporations of the group into another member of the group will not qualify the group for filing separate returns.

(6) If a corporation becomes a member of the group during the taxable year, the consolidated return must include the income from the entire year of the parent corporation and any subsidiaries which were members of the group for the entire year, plus the income of each subsidiary that becomes a member of the group during the year for the period beginning with the date it became a member of the affiliated group. For the period prior to the time any subsidiary became a member of the group, separate returns must be filed for that subsidiary. When a subsidiary ceases to be a member of the affiliated group, the consolidated return must include the income of such subsidiary for the period during which it was a member, but for the period after it ceases to be a member of the group, separate returns must be filed. If a corporation has been a member of the affiliated group for less than a month of the taxable year of the group, it may be considered as not being part of the group. Similarly, a subsidiary may be considered as being a member of the affiliated group during the entire taxable year of the group if the period during which it was not a member does not exceed one month.

(7) If a subsidiary is a member of a consolidated group for only part of a taxable year, the income considered to be earned in such fractional part of the year shall be prorated accordingly.

(8) In determining the allocation fraction where a corporation becomes a member of the consolidated group or ceases to be a member during the taxable year, the property factor (Step 1 of the Three-Factor Business Apportionment Formula as provided in the Income Tax Ordinance and these Rules and Regulations) shall be determined on the basis of original cost of the property during the period such corporation was a member of the group. The rental portion of the factor, however, shall be calculated at eight times the annual rent. The gross receipts and wage factors shall be based on the actual amounts.

(9) All subsidiary corporations filing as a part of a consolidated group shall be liable for the tax as well as the parent corporation.

(10) In consolidating the net income, the taxable income of each corporation shall be calculated in accordance with the provisions governing the taxable income of separate corporations except that there shall be eliminated unrealized profits and losses in transactions between members of the affiliated group.

(11) In determining expenses that are not allowable because they are allocable to non-taxable income, such calculations shall be based on the consolidated net income.

(f) Operating Losses.

(1) Net losses (except any portion of a loss separately reportable for municipal tax purposes to another city) incurred during any taxable period, in a business or other activity subject to City income tax, are deductible from the taxpayer's net profits from similar business endeavors for the same period.

(2) Losses are deductible only in the taxable period in which they are incurred. There is no carry forward or backward of losses.

(Ord. 67-28. Passed 12-4-67; Ord. 83-12. Passed 4-18-83; Ord. 86-11. Passed 11-3-86; Res. 90-R-29. Passed 10-1-90; Ord. 02-24. Passed 12-23-02.)

881.05 COLLECTION AT SOURCE.

(a) Duty of Withholding.

(1) Except as provided in the City Income Tax Ordinance or elsewhere in these Rules and Regulations, each employer within or doing business within the City who employs one or more individuals shall, without assessment or notice or demand, deduct at the time of each payment, from the qualifying salary, wage, commission or other compensation earned, allocated, received, set aside or paid residents of the City

regardless of where the services were rendered, and for nonresidents who performed work or services or other income producing activities in the City, the amount of tax due at the rate as provided in the Income Tax Ordinance. Federal deferred income plans and tax sheltered annuity plans, while they may not be applicable to federal withholding, are not recognized for City purposes; the full amount of gross wages shall be withheld upon for City income tax purposes. Contributions by an employee from his or her current earnings to any retirement or annuity plan or the like do not act to reduce such employee's income for City tax or withholding purposes.

(2) All employers within or doing business within the City are required to make the collections and deductions specified in this section from the gross income of all City residents regardless of the fact that all or part of the services performed by such residents of City may be performed outside the City.

(3) The place where payroll is prepared, even though it may be outside the City, has no bearing on the duty of an employer to deduct and remit the proper City income tax.

(4) Employers who do not maintain a permanent office or place of business in the City, but who are subject to tax on net profits attributable to the City, are considered to be employers within the City and subject to City withholding requirements.

(5) Commissions and fees paid to independent contractors are not subject to withholding or collection of the tax at the source. Taxpayers receiving such commissions and fees, in all instances, must file a declaration and return and must pay the tax per the Income Tax Ordinance. It is the responsibility of any entity or individual to provide copies to the City of Federal Form 1099 or such other form used to report commissions, fees or other compensation paid to non-employees. Such Forms 1099 or other reporting forms shall be due on or before February 28 of each year and shall include a calculation of the total compensation earned in the City by all recipients of said compensation during the preceding year.

(6) Where a nonresident receives compensation for personal services rendered or performed partly inside and partly outside the City, the employer shall, without assessment or notice or demand, withhold and remit the tax on that portion of the compensation which is earned within the City. The employer shall comply with the following rules of apportionment when making a determination as to amount to withhold:

A. If the nonresident is a salesperson, agent or other employee whose compensation depends directly on the volume of business transacted or chiefly effected by the employee, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted or chiefly effected by the employee bears to the total volume of business conducted by said employee.

B. The deducting and withholding from the compensation of other nonresident employees, including officers of corporations, shall attach to the proportion

of the compensation of such employee which the total number of working hours within the City is of the total working hours.

C. The fact that nonresident employees are subject to call at any time does not permit the allocation of pay for the time worked within the City on a seven-day per week basis. The percentage of time worked in the City will be calculated on the basis of a 40-hour week unless the employer notifies and documents with the Superintendent that a greater or lesser number of hours is worked. The determination of tax liability of nonresidents working in and out of the City is to be computed on the formula of the total number of days worked in the City divided by the total number of days worked during the year and the resulting percentage applied to the total annual income from wages including sick leave, vacation, wage continuation plans and the like. A working day is any day for which compensation is received whether or not services were performed that day. Where no record can be substantiated of the number of days worked during the year, the figure 260 is to be used as the total number of days worked.

D. Wage continuation plans paid by the employer or third party agent on behalf of the employer for the purpose of health, rest, recuperation or other reward are deemed to have the same tax situs as the primary job assignment or job location of the employee and are taxable on the same ratio as the normal earnings of such employee.

E. An employee's attendance of meetings, training sessions, seminars and the like do not constitute changes in tax situs and are not factors in determining time in or out of the City.

F. The occasional entry into the City by a nonresident employee who performs the duties for which he or she is employed primarily outside the City but who enters the City for less than 12 days during any calendar year, shall not be deemed to take such employee out of the class of those rendering their services entirely outside the City. For the purposes of the 12-day calculation, "day" means any part of a 24-hour calendar day.

G. The Superintendent of Taxation shall, upon review of all circumstances, make a determination as to the taxable status of the employee and the duty of the employer to withhold the tax.

(7) Where an employee is given advances against future wages, commissions or other compensation, withholding shall be on the full amount advanced.

(8) Bonuses paid to employees as well as prizes and gifts to employees from their employers are subject to the City income tax and the employer shall withhold the tax at the time of payment. Such tax shall be remitted in the return for that period in the same manner as for any other compensation.

(9) Employers shall withhold and remit the tax on the full amount of qualifying wages, salaries, commissions and other compensation paid to employees regardless of the

fact that an employee may have allowable expenses in connection with such compensation. Such expenses may, when certain criteria is met and if properly substantiated, be allowed as a reduction of the employee's taxable income at the time the employee files his or her annual City income tax return.

(10) Contributions by an employee from his or her earnings to any retirement or annuity plan or the like, do not act to reduce such employee's income for City income tax purposes, even though such contributions may be treated as a tax deferral for federal income tax purposes. For City purposes, the employer shall withhold on the full amount of qualifying wages, salaries, commissions and other compensation.

(11) No person shall be required to withhold the tax on the wages or other compensation paid to domestic servants employed exclusively in or about such person's residence. However, such employee shall be subject to all other aspects of the Income Tax Ordinance and these Rules and Regulations.

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

(13) The mere fact that the tax is not withheld will not relieve the employee of the responsibility of filing a return and paying the proper amount of tax due.

(14) The officer or employee having control or supervision of or charged with the responsibility of filing the return and making payment is personally liable for failure to file the City return or pay the City tax due as required. The officer or employee shall be personally liable for the tax he or she failed to return or pay as well as any related interest, penalties or fees. The dissolution of a corporation does not discharge an officer's or employee's liability for a prior failure of the corporation to file City returns or pay City tax due.

(b) Return and Payment of Tax Withheld and Status of Employers.

(1) Every employer required to withhold City income tax from the salaries, wages and other compensation shall, on or before the last day of each month, make a return and pay the tax withheld during the preceding calendar month. However, the Superintendent of Taxation shall have the authority to approve the filing of returns and payment of the tax on a quarterly basis when deemed to be in the best interest of the City.

A. An employer who wishes to file and remit quarterly may request the authority for quarterly filing from the Superintendent. Such request must be in writing, stating the name and City withholding account number of the employer, the address to

which withholding forms should be mailed, the estimated amount of tax to be withheld each quarter, and the name, title and address of the person or persons responsible for complying with City withholding requirements. In considering such a request, the Superintendent will base the decision on the facts and the best interests of the City. The best interest of the City will be the primary deciding factor. Once approval is granted for quarterly filing and payment, the employer may continue on such basis unless notified by the Superintendent that quarterly filing is withdrawn. The Superintendent shall withdraw the quarterly filing authorization whenever it is deemed that such quarterly authorization is no longer in the City's best interest.

B. Notice of withdrawal of quarterly filing authorization shall be made in writing and may be served in person or mailed to the address where withholding returns are mailed. Proof of mailing furnished by the United States Post Office shall be presumptive proof of receipt.

C. Employers authorized to file and pay on a quarterly basis shall, on or before the last day of each month following the calendar quarter ending March 31, June 30, September 30 and December 31, make a return and pay the tax withheld during the preceding calendar quarter.

(2) Every employer is deemed to be a trustee for the City in collecting and holding the tax required per the Income Tax Ordinance to be withheld and all funds so collected by such withholding are deemed to be trust funds.

(3) Every employer required to deduct and withhold the City income tax at the source is liable directly to the City for payment of such tax whether the tax was actually collected or withheld from the employee or not.

(4) Every employer required to withhold City income tax shall file, no later than February 28 of each year, an annual reconciliation covering the aggregate amount deducted and remitted during the entire preceding calendar year. The employer shall file with the Superintendent, in a form prescribed by the Superintendent, an information return for each employee from whom the City income tax has been withheld, clearly showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of City income tax withheld from such employee. The information return may be a copy of Federal Form W-2 or other listing as approved by the Superintendent and containing the required information.

(5) If more than the amount of tax required to be deducted by the employer is withheld from the employee's pay, such excess may be refunded by the employer or the City depending upon the circumstances and the time the over-withholding is determined, as follows:

A. Current employees:

1. If the over-withholding is discovered in the same withholding period, the employer shall make the necessary adjustment directly with the employee and the amount to be reported as withheld shall be the corrected amount.

2. If the over-withholding is discovered in a subsequent period of the same calendar year, the employer may make proper adjustment with the employee. In such case, the report for the period in which the adjustment is made shall indicate the total amount actually withheld, the amount of the adjustment deducted therefrom, and the corrected amount reported.

3. If the over-withholding is discovered in the following year, the employer should notify the Superintendent of such over-withholding and the circumstances thereof. Upon proper verification, the Superintendent shall refund to the employee the amount of such excess withholding.

B. Former employees:

1. If over-withholding is discovered from an employee who is no longer employed by the employer, the employer shall notify the Superintendent and provide verification of the amount and circumstances of such over-withholding and the Superintendent shall then refund to the employee the amount of such excess withholding.

2. If the error is discovered by the employee, such employee shall file a claim with the Superintendent and, upon certification by the employer, the Superintendent shall refund to the employee the amount of such excess withholding.

(6) Where an employer has withheld the tax from all wages of a nonresident of the City and such nonresident has been employed outside the City for all or a part of the time, such employee shall file a claim with the Superintendent covering such withholding and the Superintendent shall, upon verification by the employer, refund to the employee the amount of any excess withholding.

(7) If less than the amount of tax required to be deducted is withheld from an employee, such deficiency shall be withheld from subsequent wages. If the employee-employer relationship has terminated, the employer shall, immediately upon discovery, notify the Superintendent of such deficiency and the reasons and circumstances involved.

(8) In deducting and withholding the tax at the source and payment of any tax due, a fractional part of a cent shall be disregarded unless it amounts to one-half cent (\$.005) or more, in which case, it shall be increased to one cent (\$.01). No person shall be entitled to a refund nor additional payment merely because such rounding of the tax resulted in an apparent over or under payment.

(9) Employers desiring to make withholding filings and remittances by electronic funds transfer may do so beginning in 2003. Effective January 1, 2004, such electronic funds transfer shall be mandatory for those employers required to make

remittances on a monthly basis and by those employers who use a payroll service, an outside contractor or other third-party service or entity to process their withholding. Effective January 1, 2008, it shall become mandatory for all employers required to withhold and remit the tax to make such filings and remittances by electronic funds transfer. Electronic funds transfers must be made in a format that is compatible with systems in use by the City and such format must be approved by the Tax Superintendent.

(Ord. 67-28. Passed 12-4-67; Res. 90-R-29. Passed 10-1-90; Ord. 02-24. Passed 12-23-02.)

881.06 DECLARATIONS.

(a) Requirement of Filing.

(1) A declaration of estimated tax shall be filed by every taxpayer who may reasonably be expected to have income that is taxable to the City, the tax on which is not or will not be fully withheld upon by an employer or employers for City tax purposes.

(2) A taxpayer's final return for the preceding year may be used as the basis for calculating the declaration of estimated tax for the current year. In any event, declarations must present a good faith estimate of the tax that can reasonably be anticipated to be due.

(3) The Superintendent of Taxation may file a declaration or amended declaration of estimated tax on the behalf of a taxpayer when such declaration has not been received by the City or when such declaration, in the judgment of the Superintendent, is considered not to have been filed accurately and in good faith.

(4) If, upon the filing of the final return, the taxpayer did not pay at least 90% of the tax liability as properly shown on said return, the difference between 90% of the liability and the amount of estimated tax actually paid on or before January 31 of the following year or the thirteenth month after the beginning of a fiscal year, shall be subject to interest and penalty assessments as provided in the Income Tax Ordinance and these Rules and Regulations.

A. Any taxpayer whose declared taxes and payments are equal to or greater than the tax paid in the previous tax year shall not be assessed any interest or penalty for any increased taxes found to be due in the current year, except in the case where the required return and final return payment have not been submitted within the three and one-half month period after the close of the tax year.

B. An individual taxpayer who resides in the City and who is subject to penalty and interest assessment due to the underpayment of estimated tax shall not be assessed such penalty and interest if said taxpayer was not domiciled in the City on the first day of January of the calendar year for which the assessment was applicable.

(b) Date of Filing.

(1) Declarations are to be filed each year by April 15 or, for those taxpayers having a fiscal year or tax period differing from a calendar year, within three and one-half calendar months after the beginning of such tax period.

(2) A person or other entity conducting a business not previously subject to the tax, or who has income not fully withheld upon, shall file a declaration within three and one-half months after first becoming subject to the tax.

(c) Amended Declarations. An amended declaration must be filed on or before January 31 of the following year, or in the case of a taxpayer on a fiscal year basis, on or before the last day of the thirteenth month following the beginning of such fiscal year, if it appears that the original declaration made for such taxable year underestimated the taxpayer's income by 10% or more. At such time, a payment which, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability shall be made.

(d) Form of Filing.

(1) Declarations shall be filed on a form furnished by or obtainable from the City Income Tax Division or other form as approved by the Superintendent of Taxation. Credit shall be taken for City tax to be withheld from any portion of the income. Additionally, credit may be taken for tax properly due and paid or properly withheld and remitted to another taxing municipality or joint economic development district.

(2) The original estimate of tax liability or any subsequent amended estimate may be increased or decreased by filing an amended declaration on or before any quarterly payment date. Such amendment may be made on the regular declaration remittance form.

(e) Dates of Payments.

(1) The estimated tax of an individual taxpayer may be paid in full with the declaration or in equal installments on or before the last day of the fourth, seventh, tenth and thirteenth month after the beginning of the taxable year.

(2) The estimated tax of a business taxpayer may be paid in full with the declaration or in equal installments on or before the fifteenth day of the fourth, sixth, ninth and twelfth month after the beginning of the taxable year.

(3) In the event that an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments over the remaining payment dates.

(f) Final Returns Required. The filing of a declaration does not relieve the taxpayer of the duty and necessity of filing a final annual City income tax return even though there

may be no difference between the estimated tax liability and the actual tax liability and payment has been made in full.

(Ord. 67-28. Passed 12-4-67; Res. 90-R-29. Passed 10-1-90; Ord. 02-24. Passed 12-23-02.)

881.07 DUTIES AND POWERS OF THE SUPERINTENDENT OF TAXATION.

(a) General Provisions.

(1) It shall be the duty of the Income Tax Superintendent to administer the Income Tax Ordinance of the City, to receive the tax imposed by the Income Tax Ordinance in the manner prescribed by the Income Tax Ordinance and to keep an accurate record thereof. The Superintendent shall report all monies received, on a daily basis, to the Director of Finance.

(2) It shall be the duty of the Superintendent to enforce payment of all taxes owing the City, to keep accurate records for a minimum of five years showing the amount due from each taxpayer and to show the dates and amounts of payments thereof.

(3) The Superintendent is charged with the responsibility to enforce the provisions of the Income Tax Ordinance and is empowered to adopt rules, policies, and procedures relating to any matter pertaining to the administration and enforcement of the Income Tax Ordinance.

A. Any taxpayer, employer or other interested party desiring a special ruling on any matter pertaining to the Income Tax Ordinance or these Rules and Regulations should submit to the Superintendent, in writing, all facts involved and the ruling sought.

B. Certain rules, policies, procedures and the like, as established by the Superintendent per the above empowerment may additionally require concurrence by the City Council or Income Tax Board of Appeals.

(4) The Superintendent has the authority to correct or adjust any return submitted when a correction or adjustment is necessary to accomplish the intent of the Income Tax Ordinance or these Rules and Regulations.

A. If, as a result of investigation and examination by the Superintendent, a return is found to be incorrect, the Superintendent is authorized to assess and collect any underpayment of tax withheld at the source or any underpayment of tax due from any taxpayer on earnings or net profits or both.

B. If, as a result of such investigation or examination it is found that an overpayment has been made, the Superintendent shall allow such overpayment as a credit against a subsequent year liability or refund that amount to the taxpayer.

(5) In the event that the Superintendent has obtained information indicating that a taxpayer may have an obligation to file a return or may have a tax obligation that was not shown on a return, the Superintendent is authorized to assess and collect the tax actually due with or without the formality of obtaining a return from the employer or taxpayer.

A. The Superintendent may prepare returns on behalf of an employer or taxpayer.

B. Whenever the Superintendent has been unable to secure information from a taxpayer or employer as to the taxable income for any year, the Superintendent may determine the amount of tax appearing to be due, together with any penalties, interest or fees, and assess the taxpayer or employer upon the basis of such determination. Such determination may be adjusted upon submission by the taxpayer of actual records from which the correct amount of tax due may be calculated.

(6) The Superintendent shall make electronic versions of the Income Tax Ordinance, these Rule and Regulations and Vandalia income tax returns available to the public through the Internet. Any amendments, supplements or changes to the Income Tax Ordinance or Rules and Regulations shall be made available on the Internet within 90 days of adoption of such amendment, supplement or change.

(b) Corrections and Assessments.

(1) Where a taxpayer or employer has failed to file a return or has filed a return which is incomplete or does not show the proper amount of tax due, the Superintendent may assess and collect any underpayment of tax withheld at the source or any underpayment of tax due from any taxpayer on earnings or net profits or both. In such case, the Superintendent shall issue a proposed assessment showing the amount of tax due together with any penalties, interest or fees that may be applicable.

A. Such proposed assessment shall be served in person or by mailing to the taxpayer's last known address. Proof of mailing furnished by the U.S. Post Office shall be presumptive proof of receipt by the addressee. A proposed assessment is not necessary in cases where a taxpayer or employer has filed a return indicating the amount of tax due but has failed to pay the tax shown to be due. In such instances, the Superintendent may proceed with enforcement provisions per the Income Tax Ordinance.

B. A taxpayer may, within 30 days after the date the proposed assessment was served or mailed, file a written appeal with the Superintendent. If no appeal is filed with 30 days, such proposed assessment shall become final. If the Superintendent receives such appeal, the taxpayer will be given an opportunity, within 30 days of receipt of such appeal, to a hearing with the Superintendent to discuss the proposed assessment and to present any facts relative to the assessment. The Superintendent may extend the date of the hearing upon good cause shown. After such hearing, the Superintendent shall withdraw, modify or reaffirm the assessment and it shall then become final.

(2) When a proposed assessment becomes final, notice of such final assessment shall be issued by the Superintendent and shall be served in the same manner as a proposed assessment.

A. A taxpayer shall have 30 days after the date a final assessment is served or mailed to file a written appeal with the Board of Tax Appeals. Such written notice of appeal shall be filed in a sealed envelope plainly marked "Appeal to Board of Tax Appeals" and mailed or delivered to the Superintendent, who shall, within five days after receipt, deliver such appeal to the Chairperson of the Board of Tax Appeals or, if the Chairperson is not available, to the Vice- Chairperson.

B. Within 30 days of notification from the Board of Tax Appeals that an appeal has been filed, the Superintendent shall provide the Board with a certified transcript of all actions, and the reasoning behind those actions, that were taken on the account prior to the final assessment being made. Such transcript shall be open to review by the taxpayer and the taxpayer's counsel.

(3) When the Board of Appeals grants a hearing on a final assessment, both the Superintendent and the taxpayer may present evidence relating to such assessment. The Board of Appeals may affirm, reverse or modify the final assessment and shall furnish a copy of the decision to the Superintendent and to the taxpayer. The taxpayer's copy of the decision shall be served in the same manner as the proposed and final assessments.

(c) Installment Plans. The Superintendent is authorized to arrange for payment of unpaid taxes, interest and penalties on a schedule of installment payments when the taxpayer has shown that due to certain hardship conditions a timely full payment of the amount due cannot be made.

(1) Such authorization for an installment plan shall not be granted until all proper and complete returns are filed and all amounts owed are established and all other payment options have, in the judgment of the Superintendent, been fully explored and eliminated.

(2) Installment plans shall not exceed a period of six months unless, in the judgment of the Superintendent, and with exceptional hardship conditions proven by the taxpayer, it is in the best interest of the City to grant provisions for an extended payment plan.

(3) When a delinquent balance due encompasses more than one tax year, any payments received shall first be applied to the oldest year tax balance due until the tax for that year is paid in full before applying payments to any other year or to penalties, interest or fees.

(4) Failure to make any installment plan payment when due shall cause the total unpaid amount, including all penalties, interest and fees, to become due and payable on

demand and to become subject to all enforcement provisions of the Income Tax Ordinance.

(d) Investigative Authority.

(1) The Income Tax Superintendent or any designated employee of the Income Tax Office is authorized to examine the books, papers, records and other documents, including Federal, State and other city income tax returns, of any employer or taxpayer or person or entity subject to the City income tax, or whom the Superintendent believes is subject to the tax, for the purpose of verifying the accuracy of any return made, or if no return was made, to ascertain the tax due under the provisions of the Income Tax Ordinance. Every such employer, supposed employer, taxpayer, supposed taxpayer, person or entity is required, within ten days following the written request from the Superintendent, to furnish to the Superintendent or duly authorized employee, the means, facilities and opportunity for making inspections and investigations of books, papers, records and other documents that may relate, in the judgment of the Superintendent, to City income tax.

(2) The Superintendent, or any person empowered to act in the Superintendent's capacity, is authorized to examine any person reasonably believed to have knowledge of the facts to appear before the Superintendent and to examine such person, under oath, concerning any income or profit which was, or should have been, returned for taxation, or any transaction tending to affect such income.

A. The Superintendent may issue subpoenas, if necessary, for attendance, whether the examination is to be at the income tax office or at the office of the taxpayer or other designated location, of all persons whether as parties or witnesses, whenever it is believed that such persons may have knowledge of such income or profits or other pertinent information or transaction that may affect income or profit. Individuals may be so ordered whether or not such individuals have custody of actual books and records of the taxpayer or employer or entity being investigated.

B. The Superintendent is specifically authorized to order the appearance of the local manager or representative of any taxpayer or employer or entity.

(3) Persons required to attend any hearings shall be notified not less than ten days prior to the time of the hearing. The notice shall show the time and place of the hearing and what books, papers, records or other documents or information is to be made available.

(4) The notice or subpoena shall be served by the Superintendent, or duly authorized agent, by delivering it to the person named in the notice, or by leaving the notice at the person's usual residence or place of business, or by mailing it to such usual residence or place of business by certified mail, return receipt requested.

(5) Refusal by any taxpayer, employer or other person or entity subject to or presumed to be subject to the tax, or having knowledge of or presumed to have knowledge of pertinent tax information, to appear before the Superintendent or to produce books, papers, records and other documents, as ordered by the Superintendent shall be deemed to be in violation of the Income Tax Ordinance. Such refusal by any taxpayer or employer or entity or other person to appear, or to produce books, papers, records or other documents or information as ordered by the Superintendent, constitutes a misdemeanor punishable by fine or imprisonment or both, as prescribed by the Income Tax Ordinance.

(6) Every taxpayer and employer subject to the tax is required to keep such records as will enable the filing of true, complete and accurate City income tax returns whether of taxes payable upon earnings or net profits or both or of taxes withheld at the source. Such records are to be maintained and preserved for a period of not less than five years after the close of the calendar or fiscal year to which the records relate or five years after the date the final return is filed and paid or the withholding taxes are remitted, whichever is later.

(e) Confidentiality. Any information gained as a result of any returns, investigations, verifications or hearings before the Superintendent as required or authorized by the Income Tax Ordinance, shall be confidential and no disclosure thereof shall be made except for official purposes or as ordered by a court of competent jurisdiction.

(1) The Superintendent may furnish copies of returns filed and other required information to examiners of the State of Ohio in connection with their duties of auditing political subdivisions.

(2) Nothing in these Rules and Regulations shall be construed as giving authority to any elected or administrative official or employee of the City, other than those of the Income Tax Division, for access to tax returns or other information in connection therewith that is filed with the Income Tax Division.

(3) Dissemination of information by the Superintendent of a general statistical nature, including but not limited to reports of total amounts collected, number of returns filed and the like, is not prohibited.

(Ord. 67-28. Passed 12-4-67; Ord. 02-24. Passed 12-23-02.)

881.08 INTEREST, PENALTIES AND FEES.

(a) Interest. All taxes due from taxpayers and moneys withheld by employers, or required to be withheld by employers, and remaining unpaid, including estimated tax payments ultimately found to be due, shall bear interest, in addition to the unpaid tax or withholdings, at the rate of one and one-half percent per month, or any part thereof, until paid in full. Interest will be assessed on any tax not paid by the due date. Having an

approved extension will not preclude the assessment of interest on any taxes paid late. Extensions, when requested and approved, extend only the time to file, not the time to pay any taxes due.

(b) Late Payment Penalties.

(1) In addition to any interest assessments, penalties based on the unpaid tax are imposed as follows:

A. For failure of a business or individual to pay taxes when due, other than taxes withheld, a penalty of one-half of one percent per month or fraction thereof, or 10%, whichever is greater.

B. For failure to remit taxes withheld from employees, a penalty of 3% per month or fraction thereof, or 10%, whichever is greater.

C. On the excess of 90% of the actual tax over the amount paid on declaration of estimated tax where a declaration has not been filed estimating a tax liability in the same or greater amount than paid the previous year, or where a final return has not been filed and the total paid on or before the end of the month following the close of the taxable year, a penalty of 10% of the difference between 90% of the total tax for the year and the amount paid through withholdings or declarations is imposed.

D. Except in the case of fraud, the penalty shall not exceed 50% of the unpaid tax.

(2) In the case where an extension of time to file has been authorized by the Superintendent, penalty will be assessed from the date the return was due when the return is not filed within the authorized extended period.

(c) Late Filing Fees. In addition to any interest or penalties based on late or non-payment of taxes, a late filing fee of twenty-five dollars (\$25.00) shall be assessed for late or non-filing of complete returns by the due date. Such late filing fees shall be assessed whenever a complete return is not filed by the due date without regard to amounts of tax due. The fact that such delinquent tax returns may have no tax due shall not relieve the taxpayer or employer of the responsibility to file the return in a timely manner or cause an abatement or adjustment of late filing fees.

(d) Exceptions.

(1) Late payment penalties will not be assessed when an audit or correction of a return by the Income Tax Division staff results in additional tax due, if the return was originally and in good faith, timely filed and taxes due thereon timely paid and the additional taxes resulting from the audit or correction paid in full within 15 days of notification of the additional amount due. In the absence of fraud, there will be no assessment of a penalty or interest on any additional taxes due resulting from a Federal

audit provided an amended City return is filed and the additional taxes due are paid in full within three months after the final determination of the federal tax liability.

(2) Late filing fees shall not be assessed in instances where a taxpayer has properly requested and been granted by the Tax Superintendent an extension of time to file and subsequently files a complete return by the extended due date.

A. Any taxes not paid by the original due date shall bear interest and penalty without regard for the extended due date.

B. Having an extension for Federal purposes shall have no bearing on City tax requirements and shall not cause an abatement of a penalty unless the proper extension of time to file the City return has been requested of and granted by the Superintendent.

(3) Late filing fees may be waived when an individual taxpayer is filing a City return for the first time due to being a new resident or becoming 18 years of age during that tax year.

A. Such waivers apply to individual taxpayers only and are not applicable to employers required to file withholding returns or to businesses required to file on net profits.

B. Late filing fee waivers will not be granted if the individual taxpayer has not complied with the filing requirements of the Income Tax Ordinance within six months after first being notified by the Superintendent of such requirement.

(4) Late filing fees will not be assessed when a nonresident is filing a return only for the purpose of obtaining a refund.

(5) Upon recommendation of the Superintendent, the Board of Adjudication may abate or adjust or compromise late payment penalties or interest or late filing fees when the taxpayer has shown good cause for the late filing or late payment of taxes when due. Upon appeal, the Board of Adjudication may, without recommendation of the Superintendent, abate or adjust or compromise late payment penalties, interest or late filing fees when it is deemed to be in the City's best interest to do so.

(6) Penalty and interest charges shall not be levied when the total of such charges amounts to less than five dollars (\$5.00).

(e) Violations by Employers. Any person required to withhold the tax who knowingly fails to withhold such tax, or pay over such tax or knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded or not withheld, or not paid over.

(Ord. 67-28. Passed 12-4-67; Ord. 86-11. Passed 11-3-86; Res. 90-R-29. Passed 10-1-90; Ord. 02-24. Passed 12-23-02.)

881.09 COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS.

(a) Unpaid Sums a Civil Debt.

(1) All taxes imposed by the Income Tax Ordinance and not paid when due become, together with interest, penalties and fees thereon, a debt due the City from the taxpayer and are recoverable by civil suit. Employers who are obligated to withhold and remit taxes required to be withheld at the source, and who fail to meet such withholding and remittance requirements, become liable to the City in a civil suit to enforce payment of the debt created by such failure.

(2) Except in those cases in which specific statute of limitation rights have been waived under the Ohio Revised Code, or cases in which a waiver of Federal statute of limitations has been executed, an additional tax assessment shall not be made by the Superintendent after three years from the time the complete return was due or filed, whichever is later, except in the case of filing a false or fraudulent return to evade payment of the tax, omission of 25% or more of income subject to the tax, or failure to file a return. In those cases where the Internal Revenue Service and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an assessment may be made by the Superintendent is extended to one year from the time of final determination of Federal tax liability.

(b) Refunds and Overpayments.

(1) Taxes that are overpaid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made, or the return was due, whichever is later.

(2) No refund shall be made when a taxpayer is not in full compliance with all provisions of the Income Tax Ordinance or these Rules and Regulations or when the taxpayer has not furnished all information and documentation required by the Income Tax Ordinance or the Superintendent.

(3) Overpayments will be either refunded or credited to the taxpayer's current year liability at the taxpayer's option. When no such option has been indicated by the taxpayer, any overpayment will be credited to the current year estimated tax due. All overpayments will be transferred first to any tax year in which there is a delinquent balance due before such overpayment will be credited to any estimated taxes or refunded.

(4) All refund claims for tax that was withheld by an employer shall be conditioned upon the employer providing certification that such withholding was true and

correct and that the employer's withholding account with the City has not been adjusted and such employer's City withholding account has been reconciled.

(5) Overpayments of less than one dollar (\$1.00) shall not be refunded nor credited to any subsequent tax year.

(Ord. 67-28. Passed 12-4-67; Res. 90-R-29. Passed 10-1-90; Ord. 02-24. Passed 12-23-02.)

881.10 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY; CREDIT TO RESIDENTS.

Every individual taxpayer who resides within the City but who earns, receives, accrues or in any other way has set aside to him any net profits, wages, salaries, commissions or other compensation for work done or services performed within another municipality, within a joint economic development district or within a joint economic development zone and who can establish and document that the tax was properly paid to the other municipality, joint economic development district or joint economic development zone on such earnings, may claim a credit of such tax against their City income tax obligation.

(a) The credit may not exceed the amount of tax imposed by the City Income Tax Ordinance; nor shall credit be allowed for the tax paid to another city on any income of an amount higher than the City taxable income.

(b) The credit shall not be applicable to any tax year other than the tax year when the tax upon which the credit is based was paid to the other municipality, joint economic development district or joint economic development zone. There shall be no carry forward or backward of any such tax credit.

(c) No credit shall be given unless the taxpayer claims such credit on the final return and presents such evidence and documentation as the Superintendent may require of the properly due payment made to the other municipality, joint economic development district or joint economic development zone. A statement satisfactory to the Superintendent from the other taxing municipality or joint economic development district or joint economic development zone to which the taxes for which credit is claimed are paid, that a City resident or that an employer of a City resident has paid the tax, shall be considered as fulfilling the evidence and documentation of taxes paid as required in this section.

(d) There shall be no credit allowed for any tax paid that is not based on or measured by income.

(e) There shall be no credit allowed for any type of income tax paid to the Federal Internal Revenue Service, the State of Ohio or any other State, County, school district or any other taxing entity other than municipalities or Ohio joint economic development

zones or joint economic development districts as created under Ohio R.C. 715.70 and 715.71.

(1) No credit will be allowed for taxes paid to joint economic development zones or to joint economic development districts outside the State of Ohio.

(2) In determining the amount of credit for taxes paid to cities outside Ohio, the taxable income on which such credit is based must be calculated in the same manner as for municipal taxes within Ohio.

(f) Where a resident of the City is subject to the tax of a municipality, or joint economic development district or joint economic development zone, and such tax is on or measured by income, the taxpayer shall not pay a total joint economic development zone, joint economic development district or municipal tax on the same income greater than the tax imposed at the higher rate.

(g) A non-refundable credit will be allowed in such case where a resident of the City has paid municipal income tax to another City in error and the City is pursuing the payment of tax due on the income that was paid incorrectly if such tax is not refundable by the other city due to statute of limitations. Where collection efforts have begun by the City of Vandalia prior to the other City tax becoming non-refundable due to statute of limitations and the taxpayer has neglected or refused to obtain a refund from the other City, no credit shall be allowed.

(Ord. 67-28. Passed 12-4-67; Ord. 02-24. Passed 12-23-02.)

881.11 VIOLATIONS.

(a) No person, taxpayer, partnership, corporation or employer shall:

(1) Fail, neglect or refuse to make any return or declaration required by the Income Tax Ordinance; or

(2) Make any incomplete, false or fraudulent return; or

(3) Fail, neglect or refuse to pay the tax, penalties or fees imposed by the Income Tax Ordinance; or

(4) Fail, neglect or refuse, when required to do so by the Income Tax Ordinance, to withhold the tax from employees or remit such tax on a timely basis to the Superintendent; or

(5) Refuse to permit the Superintendent, or any duly authorized employee of the Income Tax Division, to examine books, papers, records or other documents relating to City income tax, including copies of Federal tax returns; or

(6) Fail to appear before the Superintendent and to produce books, papers, records and other documents relating to City income tax, including copies of Federal tax returns, upon order of subpoena of the Superintendent; or

(7) Refuse to disclose to the Superintendent any information regarding income or net profits of a taxpayer that may be subject to City income tax; or

(8) Fail, neglect or refuse to provide correct information as to name, address and social security number to the Superintendent, or to an employer charged with the responsibility of withholding City income tax; or

(9) Fail, neglect or refuse to use ordinary and proper diligence in maintaining accurate records of residence addresses, work locations, total wages paid and City tax withheld for an employee by an employer required by the Income Tax Ordinance to withhold the tax; or

(10) Fail to comply with the provisions of the Income Tax Ordinance or any order or subpoena of the Superintendent; or

(11) Attempt to do anything whatsoever to avoid the filing of returns or to avoid payment of the whole or any part of the tax imposed by the Income Tax Ordinance.

(b) Any person subject to the provisions of the Income Tax Ordinance who has failed to file a return or has filed an incorrect return and has failed to pay the full amount of tax due, shall not be deemed to have committed an offense under the provisions of the Income Tax Ordinance until the assessment issued under the provisions of the Income Tax Ordinance has become due and payable.

(c) Any person who has filed a return under the provisions of the Income Tax Ordinance indicating the amount of tax due, and has failed to pay said tax, together with any penalties or interest or fees that may have been assessed or accrued, shall not be deemed to have committed an offense for having knowingly failed to pay the tax, penalties, interest or fees due until the date of the filing of such return.

(d) The term "person" as used in this section, shall, in addition to the meaning prescribed elsewhere in the Income Tax Ordinance or these Rules and Regulations, include, when a partner, member or officer of a partnership, association corporation or other entity is not within the City, any employee or agent of such partnership, association, corporation or other entity who can be found within the City.

(e) Prosecutions under the Income Tax Ordinance must be commenced within five years from the time of the offense except in the case of failure to file a return or in the case of filing a false or fraudulent return. In the event that a false or fraudulent return has been filed, the date prosecution must be commenced shall be extended to ten years from the date the return was due or the date the false or fraudulent return was filed.

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

(g) Whoever violates any of the provisions of these Rules and Regulations, 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 months, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(h) Any employee of the City who knowingly and willfully violates the provisions of these Rules and Regulations relative to disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal, and shall be subject to a fine of not more than one thousand dollars (\$1,000.00) or imprisoned not more than six months, or both. Each disclosure shall constitute a separate offense.

(Ord. 67-28. Passed 12-4-67; Ord. 02-24. Passed 12-23-02.)

881.12 AUTHORITY AND APPLICATION.

(a) These Rules and Regulations are issued under the authority conferred by the City of Vandalia Income Ordinance.

(b) These Rules and Regulations shall not apply to any person, business or other entity or to income, as to whom, or to which, it is beyond the power of the City of Vandalia to impose the tax provided for in the Income Tax Ordinance.

(c) If any sentence, clause, section or part of the Income Tax Ordinance or any sentence, clause section or part of these Rules and Regulations, or any tax against any individual or any of the several groups specified in these Rules and Regulations, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such sentence, clause, section or part of the Income Tax Ordinance or these Rules and Regulations and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of these Rules and Regulations or the Income Tax Ordinance.

(Ord. 02-24. Passed 12-23-02.)

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