

CHAPTER 880

Income Tax

Editor's note: Continuation of taxation of an S Corporation shareholder's distributive share of the net profits of the S Corporation to the same extent currently permitted by the City was approved by the voters on November 2, 2004.

- 880.01 Purpose.
- 880.02 Definitions.
- 880.03 Imposition of tax.
- 880.04 Effective period.
- 880.045 Tax sharing agreements.
- 880.05 Income tax return and payment of tax.
- 880.06 Collection at source - withholding.
- 880.07 Declarations.
- 880.08 Duties of the Tax Administrator.
- 880.09 Investigative powers of the Tax Administrator; divulging confidential information.
- 880.10 Interest and penalties.
- 880.11 Collection of unpaid taxes and refunds of overpayments.
- 880.12 Violations.
- 880.13 Board of Review.
- 880.14 Allocation of funds.
- 880.15 Credit for tax paid to another municipality or to a Joint Economic Development District.
- 880.16 Separability.
- 880.17 Collection of tax after termination of chapter.
- 880.99 Penalty.

CROSS REFERENCES

- Power to levy income tax - see Ohio Const., Art. XVIII, Sec. 3
- Tax Administrator - see CHTR. Sec. 6.04; ADM. 232.02
- Increases to be decided by vote of electors - see CHTR. Sec. 16.01
- Payroll deductions - see Ohio R.C. 9.42
- Municipal income tax - see Ohio R.C. Ch. 718
- Department of Finance - see ADM. Ch. 232
- Income Tax Auditor - see ADM. 232.045
- Administrative Tax Assistant - see ADM. 232.05

City of Fairlawn, Ohio Code of Ordinances

880.01 PURPOSE.

In order to provide funds for the purposes of general Municipal operations, maintenance of new equipment, extension and enlargement of Municipal services and facilities and capital improvements of the City, there is hereby levied a tax on salaries, wages, commissions and other compensation and on net profits as hereinafter provided, provided all funds received by the City as a result of the increase in the rate of tax approved by the electors at the August 8, 1989, special election shall be used for capital improvements of the City as provided in Section 880.14.

(Ord. 1992-176. Passed 12-7-92; Ord. 2004-001A. Passed 2-23-04.)

880.02 DEFINITIONS.

As used in this chapter, unless the context clearly indicates otherwise:

(a) “Adjusted Federal Taxable Income” is a “C” corporation's Federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, but including subsequent adjustments from required additions and deductions. Pass-through entities must compute “Adjusted Federal Taxable Income” as if the pass-through entity was a “C” corporation. This definition does not apply to any taxpayer required to file a return under Ohio R.C. 5745.03 or to the net profit from a sole proprietorship. This definition is effective for tax years beginning on or after January 1, 2004.

(b) “Association” is a partnership, limited partnership, limited liability company, subchapter S corporation as defined in the Federal Tax Code, or any form of unincorporated enterprise.

(c) “Board of Review” is the Board created by and constituted as provided in Section 880.13.

(d) “Business” is an enterprise, activity, profession, public utility, public service, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or other entity.

(e) “City” is the City of Fairlawn, Ohio.

(f) “Corporation” is a corporation or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory or foreign country or dependency, but not including a subchapter S corporation.

(g) “Domicile” is the permanent legal residence of a taxpayer on such basis that, if

City of Fairlawn, Ohio Code of Ordinances

otherwise qualified, the taxpayer may be registered as an elector of the City. A taxpayer may have more than one (1) residence but not more than one (1) domicile.

(h) “Employee” means one who works for wages, salary, commissions or any other type of compensation or other income in the service and under the control of an employer.

(i) “Employer” means an individual, association, corporation, governmental body (including units or agencies thereof), or any other entity, whether or not organized for profit, that provides one (1) or more persons a salary, wage, commission, or other compensation or other income.

(j) “Fiscal year” is an accounting period of twelve (12) months or less ending on any day other than December 31. For the purposes of this chapter, the fiscal year shall coincide with the fiscal year used for Federal income tax purposes.

(k) “Generic Form” is an electronic or paper form designed for reporting estimated municipal income taxes, and/or annual municipal income tax liability, and/or separate requests for refunds that contain all the information required on Fairlawn's regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms without altering the City's procedures for processing forms.

(l) “Gross income” is, unless otherwise excluded, all monies derived from any source whatsoever, including but not limited to:

(1) All salaries, wages, commissions, other compensation and other income from whatever source received by residents of the City, including distributive shares of an unincorporated business entity or association against which Fairlawn municipal income tax is not already levied.

(2) All salaries, wages, commissions, other compensation and other income from whatever source received by nonresidents for work done or services performed or rendered or activities conducted in the City. The net income received from the lease of property located in the City is also taxable.

(3) The portion attributable to the City of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities, from sales made, work done, services performed or rendered, and business or other activities conducted in the City. Such portion shall be determined as provided in Section 880.03 and in accordance with the regulations adopted by the Board of Review pursuant to Section 880.13.

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

(n) “Income.” See “gross income” as defined in this section.

City of Fairlawn, Ohio Code of Ordinances

(o) “Intangible Income” is the income of any of the following types: income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as defined by Ohio R.C. Chapter 718, and as may be changed from time to time.

(p) “Joint Economic Development District” is a district created under Ohio R.C. 715.70 and 715.71, as amended from time to time.

(q) “Net profits” for tax years prior to 2004 is the income from the operation of a business after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes, without deduction of taxes imposed by the provisions of this chapter or of Federal, State and other taxes based on income, and without deduction of amounts paid (other than amounts subject to Fairlawn withholding tax) to partners, officers, shareholders and other owners, adjusted to the requirements of this chapter and the rules and regulations promulgated by the Tax Administrator.

(r) “Net profits” shall include the gain recognized in the sale or other disposition of tangible personal property or real property used in business to the extent such gain does not exceed the depreciation allowable after October 1, 1968. (See “Adjusted Federal Taxable Income” for tax year 2004 and later.)

(s) “Nonresident” means a person domiciled outside the City.

(t) “Parsonage allowance” is the rental value of a dwelling furnished to a member of the clergy or a rental allowance to the extent that the allowance is used to rent or provide a home.

(u) “Pass-through entity” means a partnership, S corporation, limited liability company, or any other business entity, the income or profits from which are given pass-through treatment under the Internal Revenue Code. (See “Association” throughout this chapter for Fairlawn tax treatment provisions.)

(v) “Person” means every natural person, fiduciary, association or corporation. Whenever used in any clause prescribing and imposing a penalty, the term “person” as applied to any unincorporated entity, means the partners or members thereof and, as applied to corporations, the officers thereof.

(w) “Place of business” is any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his or her employees regularly in attendance.

(x) “Qualifying wage” means wages as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, but including subsequent adjustments from required additions and deductions. “Qualifying wage” represents employees' income from which municipal income tax shall be deducted by the employer, and any wages not considered a

City of Fairlawn, Ohio Code of Ordinances

part of “qualifying wage” shall not be taxed by the City. This definition is effective January 1, 2004.

(y) “Resident” means a person domiciled in the City.

(z) “Tax Administrator” is the individual designated to administer and enforce the provisions of this chapter.

(aa) “Taxable income” is the gross income, unless otherwise excluded, minus the deductions and credits allowed by this chapter.

(bb) “Taxable year” is the calendar year, or the fiscal year upon the basis of which the taxable income is to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.

(cc) “Taxpayer” means a person, whether an individual, association, corporation or other entity, required by this chapter to file a return or pay a tax.

(Ord. 1992-176. Passed 12-7-92; Ord. 2004-001A. Passed 2-23-04.)

880.03 IMPOSITION OF TAX.

(a) Applicability of Tax. Subject to the provisions of Section 880.16, an annual tax for the purposes specified in Section 880.01 shall be imposed on and after January 1, 1990, at the rate of two percent (2%) per year, upon all taxable income:

(1) On all income, qualifying wages, commissions and other compensation earned or received by resident individuals of the City.

A. For further clarification “income” includes, but is not limited to, lottery, gambling, and sports winnings.

B. If the taxpayer is considered a professional gambler for Federal income tax purposes, related deductions as permitted by the Internal Revenue Code shall be allowed against gambling and sports winnings.

C. If the taxpayer is not considered a professional gambler for Federal income tax purposes, a deduction shall be allowed for the year equal to the lesser of five thousand and no/100 dollars (\$5,000.00) or the combined income for the year from lottery, gambling, and sports winnings.

1. If any lottery, gambling, or sports winnings are payable to the taxpayer over a period of years, only the amounts received in the first year are eligible for the

City of Fairlawn, Ohio Code of Ordinances

deduction.

(2) On all income, qualifying wages, commissions and other compensation earned or received by nonresident individuals of the City, for work done or services performed or rendered in the City.

(3) On the portion of the distributive share of the net profit of an individual, partner or owner of a resident unincorporated enterprise or association attributable to Fairlawn, but only if the tax was not paid by such unincorporated enterprise or association on behalf of the individual, partner, or owner.

(4) Effective for tax years 2004 and later, the distributive share of income paid to an S corporation shareholder shall be taxable in the following manner:

A. If no portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the distributive share is taxable only to the extent that it represents wages or net earnings from self-employment.

B. If any portion of the net profits of the S corporation are allocated or apportioned to the State of Ohio, the full amount of the distributive share is taxable.

(b) Determination of Taxable Income of a Business. The portion of net profits attributable to the City of a taxpayer conducting a business, both within and outside of the boundaries of the City shall be determined as follows:

(1) Net profit from a business or profession conducted both within and outside of the City shall be considered as having a taxable situs in the City for purposes of this tax in the same proportion as the average ration of:

A. The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the City during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period. Real property includes property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental by eight (8).

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

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

City of Fairlawn, Ohio Code of Ordinances

profession during the same period from sales and services wherever made or performed.

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

(3) As used in this section, “sales made in the City” means:

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

B. All sales of tangible personal property delivered within the City regardless of where title passes even though transported from a point outside the City if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the City and the sales result from such solicitation or promotion.

C. All sales of tangible personal property which is shipped from a place within the 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.

(4) Resident associations shall, on behalf of its owners, partners, and shareholders, remit to Fairlawn the appropriate tax due on the respective distributive shares of the owners, partners, and shareholders.

(5) Losses from the operation of a business or profession cannot be used to reduce wages from employment or other employment compensation.

(c) Operating Loss Carry-Forward.

(1) The portion of a net operating loss sustained in any taxable year allocable to the City may be applied against the portion of the net profit of succeeding years allocable to the City, until exhausted, but in no event for more than five (5) taxable years. No portion of a net operating loss shall be carried back against net profits of any prior year.

(2) The portion of a net operating loss sustained shall be allocated to the City in the same manner as provided herein for allocating net profits to the City.

(3) The Tax Administrator shall provide by rules and regulations the manner in which such net operating loss carry-forward shall be determined.

(d) Consolidated Return.

(1) Any affiliated group which files a consolidated return for Federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code may file a consolidated return with Fairlawn. However, once the affiliated group has elected to file a consolidated return

City of Fairlawn, Ohio Code of Ordinances

or a separate return with Fairlawn, the affiliated group may not change their method of filing in any subsequent tax year without written approval from Fairlawn.

(2) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the City constituting a portion only of its total business, the Tax Administrator shall require such additional information as deemed necessary to ascertain whether net profits are properly allocated to such City. If the Tax Administrator finds that net profits are not properly allocated to the City by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, the Tax Administrator shall make such allocation as is deemed appropriate to produce a fair and proper allocation of net profits to such City.

(e) Exclusions, Deductions and Credits. The tax provided for herein shall not be levied upon:

(1) The military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard.

(2) Unemployment and disability insurance benefits, welfare benefits, proceeds of insurance paid by reason of death of the insured, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived, and pensions paid as a result of retirement.

(3) The income of any civic, charitable, religious, fraternal, scientific, literary, or educational institution or other organization specified in Ohio R.C. 718.01, to the extent that the income is derived from tax exempt real estate, tax exempt tangible or intangible property, or tax exempt activities.

(4) Receipts by bona fide charitable, religious and educational organizations and associations, when those receipts are from seasonal or casual entertainment, amusement, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations and only to the extent that the said income is exempt from Federal Income Tax.

(5) Alimony received.

(6) The income of individuals under eighteen (18) years of age. The year in which the individual turns eighteen (18) shall be considered a fully taxable year.

(Ord. 1992-176. Passed 12-7-92.)

(7) Gains from involuntary conversions, cancellations of indebtedness,

City of Fairlawn, Ohio Code of Ordinances

interest on Federal obligations, items of income already taxed by the state from which the City is specifically prohibited from taxing.

(8) Income from a decedent's estate during the period of administration (except such income from the operation of a business).

(9) Compensation for personal injuries or for damages to property by way of insurance or otherwise, but this exclusion does not apply to compensation paid for lost salaries or wages or to compensation from punitive damages.

(10) Income, qualifying wages, commissions, other compensation, other income and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the states or their political subdivisions to impose net income taxes on income derived from interstate commerce.

(11) Income, qualifying wages, income of public utilities as specified in Ohio R.C. 718.01(6), commissions, other compensation, other income and net profits, intangible income as provided in Ohio R.C. 718.01, the taxation of which is prohibited by the Constitution of the State or any act of the Ohio General Assembly limiting the power of the City to impose net income taxes.

(12) The income of precinct elected officials whose income does not exceed one thousand dollars (\$1,000.00) annually.

(13) Taxpayers are permitted to deduct expenses on Federal Form 2106, subject to audit and approval by the Tax Administrator.

(14) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation.

(Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04; Ord. 2004-022. Passed 4-5-04; Ord. 2005-065. Passed 10-17-05.)

880.04 EFFECTIVE PERIOD.

Such tax shall be levied, collected and paid with respect to the income, qualifying wages, commissions and other compensation and with respect to the net profits of businesses, professions or other activities earned or received on and after January 1, 2004. This chapter replaces Ordinances 1992-176, 1993-54, 1994-119, 1995-5 and 2000-115 and amendments thereto, for taxable years 2004 and later.

(Ord. 1991-209. Passed 12-16-91; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed

2-23-04.)

880.045 TAX SHARING AGREEMENTS.

The Mayor shall, subject to the approval of the Council, have the authority to enter into agreements with another political subdivision for the distribution of the tax imposed by this chapter.

(Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)

880.05 INCOME TAX RETURN AND PAYMENT OF TAX.

(a) Each person who was a resident of the City at any time during the taxable year and who received any gross income for that taxable year and each person employed within the City, except as herein provided, shall, whether or not a tax is due thereon, make and file a return on or before April 30 of the following year and on or before April 15 for tax years 2004 and later. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four (4) months from the end of such fiscal year or period. (For retiree exemption, see paragraph (j)).

(b) The return shall be filed with the Tax Administrator on forms furnished by or obtainable upon request from the Tax Administrator or on a generic form, setting forth:

(1) Gross income less allowable expenses incurred in the acquisition of such gross income during the taxable year and subject to such tax;

(2) The amount of the tax imposed by this chapter on such earnings and profits; and

(3) Such other pertinent statements, information returns or other information as the Tax Administrator may require, including but not limited, to Federal forms W-2 and 1099.

(c) For tax years prior to 2004, the Tax Administrator may extend the time for filing the annual return upon the request of the taxpayer for a period of not to exceed six (6) months, or one (1) month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax return. For taxable year 2004 the extended due date shall be the last day of the month following the month to which the due date of the Federal income tax return has been extended. For taxable years subsequent to 2004 the extended due date shall be the last day of the month to which the due date of the Federal income tax return has been extended. The request for extension by the Tax Administrator or a copy of the extension granted

City of Fairlawn, Ohio Code of Ordinances

by the Internal Revenue Service shall be due by the original due date for the annual return or four months from the end of the fiscal year (or for tax years 2004 and later, one hundred five (105) days from the end of the fiscal year). Interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended, and penalty and interest shall be assessed if not filed and paid within the period as extended. The Tax Administrator may deny a taxpayer's request for extension if the taxpayer's income tax account with the City is delinquent in any way.

(d) The taxpayer making a return shall, at the time of the filing thereof, pay to the Tax Administrator the amount of taxes due; provided, however, that where any portion of the tax so due has been withheld or where any portion of such tax has been paid through estimated payments or where an income tax is required to be paid to another municipality or to a Joint Economic Development District on the same income, credit for the amount so paid in accordance with Section 880.15 shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return. (See also Sections 880.06, 880.07 and 880.15)

(e) A taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of this chapter may have such overpayment applied against any liability hereunder or, at his or her election indicated on the return, such overpayment (or part thereof) shall be refunded.

(f) Amended Returns.

(1) Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 880.11 and 880.15. Such amended returns shall be on a form obtainable from the Tax Administrator or on an acceptable form. A taxpayer may not change the method of accounting (such as cash or accrual) or apportionment of net profits after the due date for filing the original return.

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

(g) Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of six (6) years from the date his or her return is filed, or the withholding taxes are paid.

(h) Those officers or the employees having control or supervision of or charged with the responsibility of filing the report and making payment, are personally liable for failure to file the report or pay the tax due as required by this section. The dissolution, bankruptcy, or

City of Fairlawn, Ohio Code of Ordinances

reorganization of a corporation, association, or other entity does not discharge an officer's or employee's liability for a prior failure of the corporation, association, or other entity to file returns or pay tax due.

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

(j) A retiree having no income taxable to Fairlawn shall be exempt from these filing requirements and any subsequent penalties. A retiree shall file an annual return for the year in which the retirement occurred, indicating that no tax is, or will be, due Fairlawn as a result of their retirement, and also indicating the date of retirement. Upon approval by the Tax Administrator, such exemption shall be in effect until that time in which the retiree receives taxable income for Fairlawn income tax purposes, at which time the retiree shall be required to comply with the provisions of this chapter, including the filing requirements.

(Ord. 1992-176. Passed 12-7-92; Ord. 1995-5. Passed 1-3-95; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)

880.06 COLLECTION AT SOURCE - WITHHOLDING.

(a) In accordance with rules and regulations prescribed by the Tax Administrator, each employer within or doing business within the City shall deduct at the time of the payment of any income, qualifying wage, commission or other compensation, the tax of two percent (2%) of the gross income, qualifying wages, commissions or other compensation due by the employer to all employees subject to the provisions of this chapter. The employer shall make a return and pay to the Tax Administrator the amount of taxes so deducted on or before the last day of the month following the close of each calendar quarter. Such returns shall be **on form** approved by the Tax Administrator and shall be subject to the rules and regulations of the Tax Administrator. The employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld. The Administrator shall have the authority to deny quarterly payments if the employer is not in full compliance with all City income tax laws, and instead require monthly payments.

(b) Effective July 1, 1982, all employers whose withholding for Fairlawn income tax averaged one hundred dollars (\$100.00) or more per month in the preceding tax year shall remit such withholding no later than the fifteenth day of the succeeding calendar month.

(c) The employer shall be deemed a trustee for the benefit of the City and any tax collected by the employer from his or her employees shall, until it is paid to the City, be deemed a trust fund in the hands of the employer.

(d) All employers that provide any contractual service within the City, and who

City of Fairlawn, Ohio Code of Ordinances

employ subcontractors in conjunction with that service, shall provide the City the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withholding requirements under this chapter.

(Ord. 1992-176. Passed 12-7-92; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)

880.07 DECLARATIONS.

(a) Every person who anticipates any taxable income which is not subject to Fairlawn withholding, per Section 880.06, or who engages in any business or activity subject to the tax imposed by this chapter shall file a declaration setting forth the estimated taxable income together with the estimated tax due thereon.

(b) Such declaration shall be filed on or before April 30 for taxable years 2004 and prior thereto, and on or before April 15 for taxable years 2005 and later. However, no penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the City on the first day of January in the year in which they became subject to estimated payments, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent (100%) of the previous year's tax liability, provided that the previous year reflected a twelve (12) month period.

(c) Those taxpayers reporting on a fiscal year basis shall file a declaration within four (4) months after the beginning of each fiscal year or period.

(Ord. 1992-176. Passed 12-7-92.)

(d) Such declaration shall be filed upon a form furnished by, or obtainable from, the Administrator, or shall be filed upon a generic form. Credit shall be taken for any municipal income tax to be withheld from any portion of such income. In accordance with the provisions of Section 880.15, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality or to a Joint Economic Development District.

(Ord. 1995-5. Passed 1-3-95.)

(e) The original declaration or any subsequent amendment thereof may be increased or decreased on or before any subsequent quarterly payment date.

(f) Such declaration of estimated tax to be paid to the City shall be accompanied by a payment of at least one-fourth (1/4) of the estimated annual tax and at least a similar amount and, in the case of individuals, shall be paid on or before the last day of the seventh, tenth, and thirteenth months after the beginning of the taxable year, and in the case of corporations and associations shall be paid on or before June 15, September 15, and December 15. However,

City of Fairlawn, Ohio Code of Ordinances

when an amended declaration has been filed, the unpaid balance shown due shall be paid in equal installments on or before the remaining payment dates.

(Ord. 1992-176. Passed 12-7-92; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)

880.08 DUTIES OF THE TAX ADMINISTRATOR.

(a) It shall be the duty of the Tax Administrator to receive the tax imposed by this chapter in the manner prescribed herein, to keep an accurate record thereof and to report all moneys so received.

(b) It shall be the duty of the Tax Administrator to enforce payment of all taxes owed to the City, to keep accurate records for a minimum of six (6) years showing the amount due from each taxpayer, and to show the dates and amounts of payments thereof.

(c) (1) The Tax Administrator is hereby charged with the enforcement of the provisions of this chapter, and is hereby authorized, subject to the approval of the Board of Review, to adopt, promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns. Taxpayers are hereby required to comply with said rules and regulations.

(2) The Tax Administrator is hereby authorized to arrange for the payment of unpaid taxes, interest and penalties on a schedule of installment payments not to exceed six months, when the taxpayer has provided evidence to the satisfaction of the Tax Administrator that, due to certain hardship conditions, he or she is unable to pay the full amount of the tax due. Such authorization shall not be granted until proper returns are filed by the taxpayer for all amounts owed by him or her under this chapter.

(3) Failure to make any deferred payment when due shall cause the total amount unpaid, including the penalty and interest, to become payable on demand and, in such case, the provisions of Sections 880.11 and 880.99 shall apply.

(d) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Administrator may determine the amount of tax appearing to be due the City from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon. Such assessment shall be collected in accordance with the rules and regulations.

(e) Subject to the consent of the Board of Review or pursuant to regulations approved by the Board, the Tax Administrator shall have the power to compromise any interest or penalty,

or both, imposed by Section 880.10.

(Ord. 1992-176. Passed 12-7-92; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)

880.09 INVESTIGATIVE POWERS OF THE TAX ADMINISTRATOR; DIVULGING CONFIDENTIAL INFORMATION.

(a) The Tax Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and Federal income tax returns and State of Ohio income tax returns of any employer or of any taxpayer or person subject to, or whom the Administrator believes is subject to, the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax due under this chapter. Every such employer and supposed employer is hereby directed and required to furnish within ten (10) calendar days following a written request by the Tax Administrator, or his or her duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(b) The Tax Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him or her and may examine such person, under oath, concerning any income which was or should have been reported for taxation or any transaction tending to affect such income. The Tax Administrator may compel the production of books, papers, records and Federal income tax returns and State of Ohio income tax returns regarding such income and may require the appearance of all persons before him or her, whenever he or she believes such persons have knowledge of such income or information pertinent to such inquiry.

(c) The refusal to produce books, papers, records and Federal income tax returns and State of Ohio income tax returns, or the refusal to submit to such examination by any employer or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Tax Administrator authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 880.99.

(d) Any information gained as the result of any return, investigation, hearing or verification required or authorized by this chapter shall be confidential, and no disclosure shall be made except to Municipal, State or Federal taxing agencies, except for official tax purposes or except in accordance with proper judicial order. Any person divulging such information shall be punished as prescribed in Section 880.99(b).

(e) Every taxpayer shall retain all records necessary to compute his or her tax liability

City of Fairlawn, Ohio Code of Ordinances

for a period of six (6) years from the date his or her return is filed or the withholding taxes are paid.

(Ord. 1992-176. Passed 12-7-92; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)

880.10 INTEREST AND PENALTIES.

(a) All taxes imposed, including estimated payments, and all moneys withheld or required to be withheld by employers, under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of one and one-half percent (1-1/2%) per month or fraction of a month.

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

(1) For failure to pay any taxes, including estimated payments, when due, other than taxes withheld, one and one-half percent (1-1/2%) per month or fraction of a month, not to exceed one hundred percent (100%) of the total tax due. Additionally, in the case of a taxpayer who fails to file his or her return when due, and who is not otherwise exempt from the filing requirement, the Tax Administrator may impose a civil penalty of fifty dollars (\$50.00) for the first offense and one hundred dollars (\$100.00) for each subsequent offense, in addition to any other penalties which may otherwise be imposed.

(2) For failure to remit taxes withheld from employees, ten percent (10%) per month or fraction of a month, not to exceed one hundred percent (100%) of the total tax due, in addition to the tax withheld.

(c) Neither penalty nor interest will be assessed on an additional tax assessment made by the Tax Administrator in the case of a tax liability due to a Federal audit when the return has been filed in good faith and the tax is paid within the time prescribed by the Tax Administrator.

(d) In the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, provided that an amended return is filed and the additional tax is paid within three (3) months after final determination of the Federal tax liability.

(Ord. 1992-176. Passed 12-7-92; Ord. 1994-119. Passed 9-6-94; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)

880.11 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.

(a) All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to this tax or failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later. In the case of fraud, omission of twenty-five percent (25%) or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all prosecutions to recover municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. However, in those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitations, the period within which an additional assessment may be made by the Tax Administrator shall be one (1) year from the time of the final determination of the Federal tax liability.

(b) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date such payment was made or the return was due or within three (3) months after final determination of the Federal tax liability, whichever is later. However, the following shall apply regarding refunds of tax withheld from nonqualified deferred compensation plans (NDCP):

(1) A taxpayer may be eligible for a refund if the taxpayer has suffered a loss from an NDCP. The loss will be considered sustained only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to the NDCP. Full loss is sustained if no distribution of money and property will be made by the NDCP.

(2) A taxpayer who receives income as a result of payments from an NDCP, and that income is less than the amount of income deferred to the NDCP and upon which municipal tax was withheld, then a refund will be issued on the amount representing the difference between the deferred income that was taxed and the income received from the NDCP. If different tax rates applied to the tax years in which deferrals, a weighted average of the different tax rates will be used to compute the refund amount.

(3) Refunds shall be allowed only if the loss is attributable to the bankruptcy of the employer who had established the NDCP, or the employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified compensation.

(c) Income tax that has been deposited with Fairlawn, but should have been deposited with another municipality or Joint Economic Development District, is allowable by Fairlawn as a refund but is subject to the three (3) year limitation on refunds. Income tax that should have been deposited with Fairlawn, but was deposited with another municipality or Joint Economic

City of Fairlawn, Ohio Code of Ordinances

Development District, shall be subject to recovery by Fairlawn. Fairlawn will allow a non-refundable credit for any amount owed Fairlawn that is in excess of the amount to be refunded by the other municipality or Joint Economic Development District, as long as the tax rate of the other municipality or Joint Economic Development District is the same or higher than the Fairlawn tax rate. If the Fairlawn tax rate is higher, the tax representing the net difference of the rates is also subject to collection by Fairlawn.

(d) Payments received shall first be applied to delinquent penalties and interest, and then to taxes.

(e) Amounts of less than one dollar (\$1.00) shall not be collected or refunded.

(Ord. 1992-176. Passed 12-7-92; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)

880.12 VIOLATIONS.

(a) No person shall:

(1) Fail, neglect or refuse to make any return or declaration required by this chapter;

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

(3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;

(4) Fail, neglect or refuse to withhold the tax from his or her employees or remit such withholding to the Tax Administrator;

(5) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine the books, records, papers and Federal income tax returns relating to the taxable income of a taxpayer;

(6) Fail to appear before the Tax Administrator and to produce the books, records, papers or Federal income tax returns relating to the income of a taxpayer upon order or subpoena of the Tax Administrator;

(7) Refuse to disclose to the Tax Administrator any information with respect to the income of a taxpayer;

(8) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator authorized hereby;

City of Fairlawn, Ohio Code of Ordinances

(9) Give an employer false information as to his or her true name, correct social security number and residence address, or fail to notify an employer promptly of any change in residence address and date thereof;

(10) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City tax withheld, or knowingly give the Tax Administrator false information; or

(11) Attempt to do anything to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

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

(c) The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse him or her from filing any information return, tax return or declaration of estimated tax, or from paying any tax due. Penalties will be imposed in accordance with Section 880.99.

(Ord. 1992-176. Passed 12-7-92; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)

880.13 BOARD OF REVIEW.

(a) A Board of Review, consisting of a Chairperson and two (2) other individuals each to be appointed by the Mayor, is hereby established. Each member of the Board will serve for a term of three (3) years. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board shall be conducted privately unless a public hearing is requested by the taxpayer. Provisions of Section 880.09 with reference to the confidential character of information required to be disclosed by this chapter shall apply to all matters as may be heard before the Board on appeal.

(b) Any rule, regulation or amendment or change thereto, which is adopted by the Tax Administrator under the authority conferred by this chapter, must be approved by the Board of Review before the same becomes effective. The Board shall hear and pass on appeals from any ruling or decision of the Tax Administrator and, at the request of the taxpayer or the Tax Administrator, is authorized to substitute alternative methods of allocation. Upon an appeal from the refusal of the Administrator to recommend abatement of penalty and interest, the Board of Review may nevertheless abate penalty or interest or both.

(c) Any person dissatisfied with any ruling, decision or penalty imposed by the Tax

City of Fairlawn, Ohio Code of Ordinances

Administrator under the authority conferred by this chapter or Rules and Regulations, and who has filed the required returns or other documents pertaining to the municipal income tax obligation at issue, may appeal to the Board of Review within thirty (30) days from the announcement of such ruling, decision or imposition by the Tax Administrator. The request shall be in writing and shall state why the decision should be deemed incorrect or unlawful. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such action or any part thereof. The Board must issue a decision within ninety (90) days after the final hearing and send a notice of its decision to the taxpayer within fifteen (15) days after issuing the decision.

(d) Any person dissatisfied with any ruling or decision of the Board of Review may appeal therefrom to a court of competent jurisdiction within thirty (30) days from the announcement of such ruling or decision. For matters relating to tax years beginning on or after January 1, 2004, any ruling or decision of the Board of Appeal may be appealed to a court of competent jurisdiction or to the State Board of Tax Appeals.

(Ord. 1992-176. Passed 12-7-92; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)

880.14 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be applied for the following purposes:

(a) To defray all costs of collecting the taxes levied by this chapter and the cost of administering and enforcing all such provisions.

(b) All funds collected by the City as a result of the increase in the rate of tax approved by the electors at the August 8, 1989, special election shall be set aside and used for capital improvements approved by Council or, at the discretion of Council, any part of all of such funds may be used for the payment of principal and of interest on debt incurred for capital improvement purposes, effective January 1, 1990.

(c) The balance remaining after providing for the allocations set forth in subsections (a) and (b) shall be used for any purpose that may be determined by ordinance of Council.

(Ord. 1992-176. Passed 12-7-92; Ord. 1993-54. Passed 3-15-93; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04; Ord. 2009-052. Passed 6-15-09.)

880.15 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY OR TO A JOINT

ECONOMIC DEVELOPMENT DISTRICT.

When a resident of the City is subject to and has paid a municipal income tax to another municipality or a Joint Economic Development District on the same income taxable under this chapter, the resident may claim a credit of the amount of such tax, but not in excess of the tax assessed by this chapter.

(Ord. 1995-5. Passed 1-3-95; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)

880.16 SEPARABILITY.

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

(Ord. 1992-176. Passed 12-7-92; Ord. 2004-001A. Passed 2-23-04.)

880.17 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

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

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 880.05 and 880.06 as though the same were continuing.

(Ord. 1992-176. Passed 12-7-92; Ord. 2004-001A. Passed 2-23-04.)

880.99 PENALTY.

(a) Whoever violates any of the provisions of this chapter for which no penalty is otherwise provided, is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both, for each offense.

(b) Whoever violates Section 880.09(d) is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both. Each disclosure shall constitute a separate offense.

(c) In addition to the above penalty, any employee or member of the Tax Review Board of the City who violates the provisions of Section 880.09(d) shall be guilty of an offense punishable by immediate dismissal.

(Ord. 1992-176. Passed 12-7-92; Ord. 2000-115. Passed 12-18-00; Ord. 2004-001A. Passed 2-23-04.)