

**COUNCIL OF THE VILLAGE OF YELLOW SPRINGS  
REGULAR COUNCIL MEETING  
AGENDA**

**IN COUNCIL CHAMBERS @ 7:00 P.M.**

**Tuesday, January 16, 2018**

Comments from the Public are welcomed at two different times during the course of the meeting: (1) Comments on items not on the Agenda will be heard under Citizens Concerns, and (2) Comments on all items listed on the Agenda will be heard during Council's consideration of said item. A Sign-In sheet will be made available on the small table at the rear of the Council Chambers. Please write your name and the topic you wish to discuss.

**CALL TO ORDER**

**ROLL CALL**

**REGULAR SESSION (7:00)**

**SWEARING IN OF NEW BOARD and COMMISSION MEMBERS (7:05)**

**ANNOUNCEMENTS (7:10)**

**CONSENT AGENDA (7:20)**

1. Minutes of January 2, 2018 Regular Meeting
2. Minutes of January 10, 2018 Council Retreat

**REVIEW OF AGENDA**

**I. PETITIONS/COMMUNICATIONS (7:25)**

The Clerk will receive and file:

Greene County Public Health re: Radon  
Susan Jennings re: Community Solutions Letter of Support Request

**II. PUBLIC HEARINGS/LEGISLATION (7:30)**

**Emergency Reading of Ordinance 2018-02** Repealing Chapter 881 "Earned Income Tax Regulations Effective Beginning January 1, 2016" of The Codified Ordinances of the Village of Yellow Springs, Ohio and Enacting New Chapter 881 "Earned Income Tax Regulations Effective Beginning January 1, 2016" as Recommended by the Regional Income Tax Agency and Declaring an Emergency

**First Reading of Ordinance 2018-03** Repealing Chapter 881 "Earned Income Tax Regulations Effective Beginning January 1, 2016" Of The Codified Ordinances Of The Village Of Yellow Springs, Ohio And Enacting New Chapter 881 "Earned Income Tax Regulations Effective Beginning January 1, 2016" And Declaring An Emergency

**Reading of Resolution 2018-02** Adopting Rules and Procedures for Council

**III. CITIZEN CONCERNS (7:40)**

**IV. SPECIAL REPORTS (7:50)**

Bowen Presentation re: Housing Needs Assessment

**V. OLD BUSINESS**

**VI. NEW BUSINESS (8:50)**

Selection of Council Members to Boards and Commissions

Retreat Report-Out on Boards and Commissions

**VII. MANAGER'S REPORT (9:05)**

**VIII. ASSISTANT VILLAGE MANAGER/FINANCE DIRECTOR'S REPORT (9:10)**

**IX. CHIEF'S REPORT (9:15)**

**X. CLERK'S REPORT (9:20)**

**XI. FUTURE AGENDA ITEMS (9:25)**

Feb. 5 Board and Commission Policy Review  
2018 Council Goals

Feb. 20: Voluntary Tax Collection Discussion  
Revolving Loan Fund Follow Up  
Fees for Event Services Discussion  
Resolution 2018-0x Approving a Taser Policy for the Yellow Springs Police  
Department

**EXECUTIVE SESSION**

**ADJOURNMENT**

The next regular meeting of the Council of the Village of Yellow Springs will be held at 7:00 p.m. on **Monday, February 5, 2018** in Council Chambers, John Bryan Community Center, 100 Dayton Street.

The Village of Yellow Springs is committed to providing reasonable accommodations for people with disabilities. The Council meeting is wheelchair accessible. Any person requiring a disability accommodation should contact the Village Clerk of Council's Office at 767-9126 or via e-mail at [clerk@yso.com](mailto:clerk@yso.com) for more information.

**Council of the Village of Yellow Springs  
Regular Session Minutes**

**In Council Chambers @ 7:00 P.M.**

**Tuesday, January 2, 2018**

**CALL TO ORDER**

Vice President of Council Brian Housh called the meeting to order at 7:00pm.

**ROLL CALL**

Present were Housh, Council members Marianne MacQueen, Judith Hempfling, Kevin Stokes and Lisa Kreeger. Also present were Village Manager Patti Bates, Assistant Village Manager Melissa Dodd, Chief of Police Brian Carlson and Village Solicitor Chris Conard.

**SWEARING IN OF NEW COUNCIL MEMBERS AND MAYOR**

Mayor Pam Conine was sworn in by the Village Solicitor, and Housh, Stokes and Kreeger were sworn in by the Mayor.

**NOMINATION AND VOTE FOR COUNCIL PRESIDENT AND VICE PRESIDENT**

Housh opened nominations for Council President. MacQueen nominated Housh. Hempfling seconded. There being no further nominations, Housh CALLED THE VOTE. The MOTION PASSED 5-0 on a voice vote.

Housh opened nominations for Council Vice President. Kreeger nominated MacQueen. Housh seconded. There being no further nominations, Housh CALLED THE VOTE. The MOTION PASSED 5-0 on a voice vote.

**ANNOUNCEMENTS**

MacQueen thanked members of the Yellow Springs Police Department and Miami Township Fire Rescue for sponsoring the New Year's Eve event. Housh added thanks to the entire Village team as well.

Kreeger noted upcoming Martin Luther King Junior Day celebration events, and provided details regarding the march, teach-in and services on January 14<sup>th</sup> and 15<sup>th</sup>.

Housh noted Village Christmas tree pick up the week of the 8<sup>th</sup>.

Housh noted the Bryan Center Gallery reopening slated for January 19<sup>th</sup> from 6-9pm.

Housh also invited citizens and new Council members to board and commission meetings in the start of the new year, making note of upcoming ESC and HRC meetings.

Bates announced that the new water plant is online and producing water. She advised citizens to adjust water softeners accordingly.

Bates thanked Village crews, who have been out engaged in many repairs in the frigid weather over the last several weeks.

Spencer Glazer was welcomed as the new Community Access Station Manager.

Outgoing Station Manager Susan Gartner paid tribute to her colleagues at the Village and thanked everyone who has supported and encouraged her over the last two years. Gartner commented that her goal was to increase and support the sense of community in the Village through her work with Community Access. There is general agreement among her colleagues that she has accomplished this goal and that her work will continue in good order.

**CONSENT AGENDA**

1. Minutes of December 18, 2017 Regular Meeting

MacQueen MOVED and Hempfling SECONDED a MOTION TO ADOPT the Consent Agenda. The MOTION PASSED 5-0 on a voice vote.

**REVIEW OF AGENDA**

Ordinance 2018-01 was added to the agenda as legislation.

**PETITIONS/COMMUNICATIONS**

MacQueen reviewed communications received as follows:

Krista Magaw re: Jacoby Partnership Press Release

Chief Carlson re: Officer Charles and Officer Bennington Thank You  
Dino Pallotta re: Resignation from ESC

## **PUBLIC HEARINGS/LEGISLATION**

**Reading of Resolution 2018-01** Authorizing the Sale During Calendar Year 2018 of Municipally Owned Personal Property Which is Not Needed For Public Use, or Which is Obsolete or Unfit for the Use for Which it was Acquired, by Internet Auction, Pursuant to Ohio Revised Code Section 721.15(D). Stokes MOVED and MacQueen SECONDED a MOTION TO APPROVE.

Bates explained the legislation as housekeeping, a necessity if the Village is to dispose of surplus property. She noted the addition of Munibids to the legislation, which offers another means for disposing of property.

Stokes inquired regarding the fees charged.

Bates responded that these are rarely able to be lowered.

Kreeger inquired whether citizens might be able to bid on items before they are advertised.

Bates described the items generally up for bid, which tend to be of little interest locally.

Housh CALLED THE VOTE, and the MOTION PASSED 5-0 on a voice vote.

**Emergency Reading of Ordinance 2018-01** Amending the Declaration of Covenants and Restrictions for the Center for Business and Education for the Purpose of Complying with Ohio Law and Declaring an Emergency. MacQueen MOVED and Hempfling SECONDED a MOTION TO APPROVE.

Conard explained the need for the legislation as follows:

The CBE Covenants conflict with Ohio law that permits medical marijuana and our zoning code, which does not ban medical marijuana. The CBE Covenants prohibit any use that violates “federal” law and/or any business that features “drug paraphernalia.”

Conard noted that currently under federal law marijuana is still illegal in all regards. Every state that has legally allowed recreational and/or medical marijuana use is in violation of federal law. In addition, the definition of “drug paraphernalia” under Ohio law includes the tools to cultivate marijuana. Since Cresco will be growing marijuana with a license that the state has granted, the CBE Covenants that prohibit cultivation on the property under contract to Cresco do not comply with current Ohio law. Thus, Conard concluded, Council needs to pass this housekeeping legislation by deleting four words from the Covenants: “federal” and “or drug paraphernalia.” Doing so will bring the Covenants in line with Ohio and local laws.

Conard recommended that Council pass the legislation by emergency, and set forth a detailed explanation of the grounds for the emergency.

Conard noted that in the context of new laws and the conflict between federal and state law, legal counsel is reacting to circumstances as they evolve.

Stokes commented that the rationale for emergency language was, in his view, sound, and he had no objection to passage as an emergency.

Housh highlighted the “drug paraphernalia” language, and Conard noted that this language could derail the Cresco facility if left in the Covenants.

Conard noted that the Covenants will continue to evolve over the years and that this is appropriate as times and norms evolve.

Hempfling commented that the emergency language was, in this case, appropriate and non-concerning.

Housh solicited comments and questions from the audience, since the legislation will receive only one reading.

Tom Woods asked several clarifying questions and gathered more information regarding the Cresco facility and how emergency legislation is passed. He urged Council to vote “no” on the legislation.

Housh CALLED THE VOTE and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

## **CITIZEN CONCERNS**

Jim Hammond, owner of the Mills Park Hotel, expressed concern over the Lodging Tax. He read from several portions of the ordinance. Hammond stated that he would be in violation of his

responsibility as a hotel proprietor if he released guest information, which was his interpretation of his requirement as a transient guest lodging proprietor per the ordinance.

Hammond referenced the ordinance section regarding audit, which states that the audit, should one be required, would be the responsibility of the lodging owner. This expense, he argued, would be unduly burdensome and, if ordered by the Village, should be paid by the Village.

Hammond interpreted part three of the Exemptions section of the ordinance (rents received by individuals renting a room or rooms for fewer than five nights per calendar year) to mean that if a guest stays for fewer than five nights per year, that the guest does not have to pay the tax.

MacQueen asked whether Hammond had spoken to the Village Manager or Finance Director regarding his concerns, and stated her desire that a meeting take place so that his concerns could be addressed.

Hammond stated that two years ago Council President had asked that the Village Manager and Finance Director meet with affected local businesses and, he stated, this did not occur.

Conard addressed several of Hammond's concerns, noting that release of records refers to the number of guests and nights generally, not to any information specific to any one guest, and should not pose an issue. Regarding the audit concern, Conard opined that a request for an audit would indicate that "every other means of dispute resolution had been exhausted" and would certainly not be a regular or frequent occurrence.

Housh stressed that if there was language that needed to be clarified, that should occur, since Council and staff want to ensure clarity and ease of process. He went on to take exception with Hammond's statement that the Village had not met with proprietors or tried to understand the impact of the legislation prior to its passage. He noted that he had met on several occasions with Hammond, and that he had attended an information exchange session put on by the Village on the topic. Housh pointed out that the lodging tax had been the topic of Council discussion at "at least six meetings."

Hammond continued to express concerns with regard to the release of records.

MacQueen stated her opinion that the intent is to be as clear as possible and that any confusing language should be cleared up.

Housh pointed out that Dodd has stated that clarity and open communication are her goals.

Tom Woods asked who chose the wording for the license fee.

Bates explained the wording, noting that the Planning and Zoning Administrator, Denise Swinger, had worded the permit fee language.

## **SPECIAL REPORTS**

There were no Special Reports.

## **NEW BUSINESS**

There was no New Business.

## **OLD BUSINESS**

**JSTF re: Report on Taser Policy.** Hempfling commented that the matter is before Council only so that it can be considered to be brought as legislation.

Hempfling stated that the change in the policy has primarily to do with limiting the use of tasers on vulnerable populations, and in circumstances where anyone might inadvertently be hurt.

Housh stated that there are several wordsmithing issues, but that the concept of protecting citizens has been achieved. He stated that he would follow up with the edits if in fact legislation is to be brought.

Conard stated his understanding that Council wishes to be involved in any future effort to amend the taser policy, and that the best way to memorialize that desire is by way of resolution. He added that a notation should be placed into the policy that it (the policy) cannot be amended without approval of Council.

Bates suggested adding a resolution list to the General Orders Manual that lists those policies that may not be changed without Council input.

Bates suggested adding that language to the policy itself.

Housh suggested adding the language to each resolution.

Conard noted that the reason for this action is to memorialize the purpose for the policy even after that Council or that Chief have moved on.

Council determined to bring the taser legislation to the next meeting.

Kreeger noted the extent to which the efficacy of the policy relies upon training, specifically referencing the term “mental health crisis” and the base of knowledge even making such a determination requires.

Housh noted the emphasis upon CIT training required in the department currently, and noted the newly approved position of the Outreach Specialist as a significant step forward.

**Council Rules and Procedures Discussion Follow-Up.** Housh noted that every two years, Council reviews its rules and procedures. He suggested a brief discussion with finalization of changes on the 16<sup>th</sup>.

MacQueen asked that the attachments be placed in the packet.

Housh expressed his desire to end Council meetings no later than 9:30pm. He suggested that Council should have the latitude to limit speaking time to two minutes if there are a large number of speakers on a particular issue.

In response to a concern from Hempfling, Housh offered several means by which citizen input could be assured while still limiting the overall meeting time.

This was briefly discussed.

Kreeger stressed that citizen participation relies in part upon timeliness and adherence to the stated time frames.

Hempfling asked for more explanation of “emergency legislation”.

Housh asked that anything appearing on the Village website also appear on the Village Facebook page.

Housh asked that a draft of the document be brought to the January 10<sup>th</sup> Council Retreat, and that it be returned as legislation on the 16<sup>th</sup>.

**Ethics Regarding Boards and Commissions.** Hempfling commented that there are two issues at hand. One, she stated, was the issue with the Justice System Task Force, which involved a familial relationship. Hempfling stated that she had been approached by several persons who had suggested to her that having a Councilperson’s family member on a board or commission for which that Council member is the representative can be difficult, given that there are sometimes conflicting perspectives.

Hempfling noted that she then began to consider the close friendships of some members of Council with commission members, indicating that this was, to her, as, if not more, problematic than a familial relationship.

Hempfling asked how the problem is to be addressed given this situation.

Hempfling stated that she had spoken to the Solicitor and determined that there is not a legal issue in the matter. She opined that perhaps Council Liaisons who have close friends or family members on a board or commission could recuse if a situation warranted it, as a solution to the issue at hand.

Hempfling then brought up a resignation by a JSTF member, who then wrote a letter explaining the rationale for her decision. Hempfling characterized the letter as demeaning and as “an attack”, stating that if the issues are to be addressed, they need to be addressed in a consistent manner, referencing comments and concerns expressed by JSTF members regarding a Facebook post by John Hempfling.

MacQueen commented that there are recommendations regarding Council Liaisons to boards and commissions, among them that the Council Liaison not serve as the Chair of a board or commission. She suggested that language could be added to the recommendations such that it be suggested that two or more members of the same family not serve on any one board or commission unless there is compelling reason to do so. She suggested that if issues arise from such a situation, that

there be language in the recommendations as to how to address this. MacQueen commented that while there may not be any legal (financial) gain to any family member, there could certainly be ethical conflict.

MacQueen commented that family members serving on a board or commission “have more than one vote” in the sense that they have the opportunity to “build an agenda” together outside of the parameters of a meeting.

MacQueen commented that orientation of new board and commission members should include more information on what behaviors or actions might be in breach of the responsibilities of a board or commission member.

Council briefly debated the difference between “close friends” and “family” and whether both or either should be addressed with regard to Council Liaisons.

Housh commented upon the Council focus upon being civil and constructive, and noted that he and MacQueen will be reworking the Public Service Values for dissemination to board and commission members.

Hempfling asked what Council reaction was going to be to this second public attack, and asked for a Council response. She clarified that the letter she was referencing had been sent only to JSTF members.

Hempfling asked for a letter from Council President and that an apology be requested.

Kreeger commented that as Council Liaisons, their job is to set a standard for civility. She noted her training as a mediator and helpful guidelines learned in that role. She suggested further conversation on the matter, expressing concern that the JSTF has entered a negative pattern of interaction.

Hempfling disagreed with Kreeger’s interpretation, stating that she believes that the JSTF is operating smoothly, and that the two situations she has brought to the table have begun to resolve.

MacQueen referenced the letter written by the resigning commission member, opining that there was a significant difference between posting an accusation on Facebook and writing a letter to the members of one’s commission.

MacQueen characterized the letter as expressing an opinion and as a less flagrant attack than the initial Facebook post. She suggested a means other than a letter to address Hempfling’s concerns.

Housh offered to attend the JSTF meeting to speak with the group and then to talk about the situation further at the Council Retreat.

MacQueen asked that examples of how to disagree respectfully be a part of board and commission training.

Housh suggested that all Council members look at a draft letter before anything is sent out.

**House Bill 49 Update.** Conard made note of his comments at the previous meeting, and stated that a stay in implementation has been entered regarding the RITA litigation in Franklin County Court, which has delayed Council’s need to pass legislation regarding that portion of the tax code.

Conard then stated that he would need to bring “placeholder” compliance legislation as well as the expected “housekeeping” legislation before Council at its next meeting, with the understanding that the RITA litigation is still pending and due for a decision on or before February 28.

**Council Retreat Agenda.** Council members and staff discussed items for the half-day retreat scheduled for January 10<sup>th</sup>.

MacQueen suggested a review of 2017 Goals as a preparation for a 2018 goals conversation during the regular meeting.

Housh suggested a Facebook tool for gathering feedback that could be used in the 2018 goals discussion.

The focus of the agenda will be review of 2017 goals, boards and commissions and items related to same, and overall strategies for efficacy.

A decision was made to add an hour to the time frame, and the Retreat will start at 8am.

Diane Chiddester from the Yellow Springs News suggested that 2018 goals not be an agenda item for the Retreat, given the need for citizen awareness and input on this item.

MacQueen urged that only the 2017 goals be discussed, with an eye to improving process and strategy.

### **MANAGER'S REPORT**

Bates reported on the following:

Last year, staff found a few instances in which the special events process did not work as smoothly as it could have. To that end, staff has reviewed the process from beginning to end and come up with a few revisions of both the form and the process. These changes apply to any event on Village property or any event that requires a road closure. The new process starts with Samantha Stewart in the Youth Center. Sam will assist with the application, discuss fees (if any) and insurance requirements, and then route the application to appropriate departments. The Village is also instituting a deadline for event applications of **30 days prior to the event**. This allows proper processing and coordination of the various departments that may be involved.

Bates responded to a question from Housh, stating that events that do not charge for attendance and are open to the public are exempt from the rental charge.

Housh asked about opportunities for the Village to sponsor events.

Bates asked that requests go through the Clerk, who will then pass the request on to the Village Manager.

MacQueen received confirmation that last-minute events may still be considered, dependent upon the level of staff involvement needed.

MacQueen asked that the topic of charging for Village-wide events be revisited.

Beginning in mid-January, Planning and Zoning Officer Denise Swinger will work full-time. It was initially thought that Denise could fulfill this position working 30 hours a week. However, because the office is so busy, Denise regularly works between 33 and 36 hours a week. The Planning & Zoning office is likely to be even busier in 2018, as the Complete Streets Policy is implemented and as the Village begins work on the Active Transportation Plan, begins review of the Comprehensive Land Use Plan and possibly continues discussions on sidewalks.

Earlier this year, the State Legislature passed a bill governing small cellular towers/antennae in the right-of-way. This legislation places many restrictions on the local government as far as positioning of these towers and antennae. Staff continues to meet about this, but new developments indicate that the legislature may be changing the original form of the bill.

MacQueen reported that the Housing Advisory Committee has received the Housing Needs Assessment, and would like this to go to Council as soon as possible as a draft.

Bates agreed to send out the draft with her notations.

### **ASSISTANT VILLAGE MANAGER/FINANCE DIRECTOR REPORT**

The Finance and Utility office is again expanding the hours of the Utility Billing Office. When Dodd started in 2013, the office was open from 10am – 2pm. She then expanded the hours in 2016 from 8am – 3pm. Starting January 2, 2018, the office will be open from 8am until 5 pm Monday through Friday. The office will no longer be open until 6pm on bill due date, however.

### **CHIEF'S REPORT**

Chief Carlson announced that the Department has promoted Officers David Meister and Jeffery Beam to the position of Corporal.

The YSPD is in the process of interviewing qualified applicants for two full-time officer positions, and have so far tested nine individuals.

### **CLERK'S REPORT**

The Clerk submitted to Council a year-end summary of meeting information, offering an overview of the year.

### **AGENDA PLANNING**

Jan. 10: Council Retreat; AUM, 8am-12pm.  
Jan. 16: Bowen Presentation re: Housing Needs Assessment  
Selection of Council Members to Boards and Commissions



2018 Goals  
Taser Policy Resolution  
Rules and Procedures Resolution  
House Bill 49 Legislation  
Feb. 5: Voluntary Tax Collection Discussion  
Revolving Loan Fund Follow Up

MacQueen stated that she wanted to assure that written materials regarding a Community Improvement Corporation are provided for the Revolving Loan Fund discussion, given the controversial interpretation of Community Resource's CIC during its tenure.

**ADJOURNMENT**

At 9:11pm, Hempfling MOVED and Kreeger SECONDED a MOTION TO ADJOURN. The MOTION PASSED 5-0 ON A VOICE VOTE.

*Please note: These notes are not verbatim. A DVD copy of the meeting is available for viewing in the Clerk of Council's office between 9am and 3pm Monday through Friday or any time via youtube link from the Village website: [www.vso.com](http://www.vso.com)*

---

Karen Wintrow, President

---

Attest: Judy Kintner, Clerk of Council

**Council of the Village of Yellow Springs  
Retreat Minutes**

**Antioch University Midwest Room B102**

**Wednesday, January 10, 2018**

**CALL TO ORDER**

President of Council Brian Housh called the meeting to order at 8:04am.

**ROLL CALL**

Present were Housh, Marianne MacQueen, Judith Hempfling, Kevin Stokes and Lisa Kreeger. Also present were Village Manager Patti Bates and Assistant Village Manager Melissa Dodd, Solicitor Chris Conard and Solicitor Jennifer Grewe.

**COUNCIL RETREAT SESSION**

The retreat followed the schedule provided, and included the following discussions:

**Check-in with Council Members & Staff.**

During the check-in, Dodd identified feeling overwhelmed with Council requests for follow up on proposed projects and with major projects now underway. She noted the list of projects she is responsible for as well as her full-time role as Finance Director. The suggestion was made that Council proposals be “triaged” following the meetings, with a careful eye to staff workload, and then placed on the agenda within an appropriate time frame.

A further suggestion was made that every project have an action plan associated with it which identifies who is responsible for completion of which steps, and with a clear timeline.

Conard concurred with the heavy workload comments, noting that every year brings at least one unexpected project which adds significantly to his work commitment, and that these eventualities need to be accommodated.

With an eye to helping the process, Conard suggested that he provide a Solicitor’s Report at each meeting.

In the same vein, Housh noted his commitment as President to holding meetings which adhere to a predictable time frame, and suggested that Board and Commission reports be delivered in written form, with only highlights presented orally. This suggestion was met with mixed response.

**Council Responsibilities to Citizens/Staff/Commissions.**

Council members discussed their responsibilities with regard to representing citizens well and fully. The organizational chart was looked at and discussed briefly.

Staff noted that they interact with and respond to citizens daily, and that this comprises a significant part of their responsibilities.

Discussion of Council Roles & Interests vis-à-vis Boards & Commissions.

Council members talked about which boards and commissions might be a good fit for them, given interests and skills.

Project Management (e.g. relationships among staff, boards/commissions & consultants), Board/Commission Role in Accomplishing Council Goals (e.g. process to move board/commission work to staff & Council), Board/Commission Effectiveness.

This topic comprised the bulk of the meeting, addressing a number of aspects of Council relationships to boards and commissions.

Council discussed best practice with regard to Council members serving on or chairing a board which contains a close friend or family member, and while the topic was left open, MacQueen and Housh indicated that a review of the Guidelines for Commissions and Committees might be in order.

Council discussed how to address perceived breaches of ethical conduct by board or commission members.

MacQueen and Housh noted that they are continuing work on updating the Public Service

Values sheet for board and commission members, and that this can strengthen training and awareness of these issues.

A suggestion was made that a step by step process be put in place whereby board and commission members can express concerns or complaints about the board or about member behavior such that these can be more readily and effectively addressed.

The point was made that concrete actions or consequences for breaches have not been determined.

**2017 Goals Review & 2018 Opportunities/Concerns.**

MacQueen led a discussion of 2017 goals, with Council members, the Village Manager and Assistant Village Manager providing insight as to why they believed each had been successful or not.

It was identified that those goals with clearly defined steps, and which had strong leadership seemed to fare best.

It was noted that several goals were broad in scope and would likely proceed more efficiently if they were separated into two goals.

Council discussed how best to capture citizen input regarding priorities for 2018 goals.

Housh provided information regarding a survey tool and stated that he would develop this further.

The suggestion was made that each goal have a board or commission assigned to it to ensure a higher level citizen involvement and input.

Council determined that the first meeting in February will focus in part on 2018 goals.

**ADJOURNMENT**

At 12:13pm, Stokes MOVED TO ADJOURN. MacQueen SECONDED and the MOTION PASSED 5-0 on a voice vote.

---

Brian Housh, President

---

Attest: Judy Kintner, Clerk of Council

## **SOLICITOR'S REPORT ON HB 49**

January 16, 2018

In my reports to Council on December 18, 2017 and January 2, 2018, I discussed two aspects of HB 49. The first aspect pertained to the need to adopt changes to the Village's Codified Ordinances found in Section 881. Code Section 881 entitled "Earned Income Tax Regulations Effective January 1, 2016" was adopted in 2015 following changes to tax regulations passed by the Legislature known as HB 5. This existing code needed to be amended to correct some internal inconsistencies impacting filing dates. These changes are considered non-substantive and are being recommended by the Regional Income Tax Agency ("RITA"). RITA administers the Village tax collection program.

Ordinance 2018-02 is presented as emergency legislation and reflects the amendments to Village Code Section 881, which are recommended by RITA and required to be adopted on or before January 31, 2018.

Ordinance 2018-03 is presented to Council for a first reading. This Ordinance contains the substantive changes required under HB 49 regarding taxpayer filings for "Net Profit Taxes," which are being challenged in Lorain County (the Village will be party in that litigation) and in Franklin County where the judge issued a stay delaying the requirement that municipalities adopt the changes by January 31, 2018. The judge is expected to rule on the preliminary injunction by the end of February 2018. Depending on the Court's ruling, it is possible that Ordinance 2018-03 may need to be adopted by emergency in February.

The titles for the two Ordinances contain references to an effective date of January 1, 2016. The reason for the date reference has a historical basis. The legislature passed HB 5 in 2015 changing the state tax code with an effective date of January 1, 2016. Since taxes still were being paid under the old code, the effective date of the new tax code was placed in the title so that citizens would be able to determine which code applied to which tax year.

**VILLAGE OF YELLOW SPRINGS, OHIO  
ORDINANCE 2018-02**

**REPEALING CHAPTER 881 “EARNED INCOME TAX REGULATIONS EFFECTIVE BEGINNING JANUARY 1, 2016” OF THE CODIFIED ORDINANCES OF THE VILLAGE OF YELLOW SPRINGS, OHIO AND ENACTING NEW CHAPTER 881 “EARNED INCOME TAX REGULATIONS EFFECTIVE BEGINNING JANUARY 1, 2016” AS RECOMMENDED BY THE REGIONAL INCOME TAX AGENCY AND DECLARING AN EMERGENCY**

**Whereas**, Codified Ordinance Chapter 881 of the Village of Yellow Springs, Ohio provides the municipal income tax regulations for the year 2016 and subsequent years; and

**Whereas**, the General Assembly has determined that it is necessary and appropriate to further amend Chapter 718 of the Ohio Revised Code, setting forth statutory requirements for municipal income tax codes and has done so by enacting H.B. 49;

**Whereas**, Village Council has determined that it would be in the best interest of the Village to adopt a new Chapter 881 entitled “Earned Income Tax Regulations Effective Beginning January 1, 2016” of the Codified Ordinances of the Village of Yellow Springs, Ohio to update the municipal income tax code in accordance with changes to Chapter 718 of the Ohio Revised Code and the required changes are effective for the taxable year beginning January 1, 2018 and thereafter.

**NOW, THEREFORE, COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO HEREBY ORDAINS THAT:**

**Section 1.** Chapter 881 entitled “Earned Income Tax Regulations Effective Beginning January 1, 2016” of the Codified Ordinances of the Village of Yellow Springs, Ohio be repealed.

**Section 2.** A new Chapter 881 entitled “Earned Income Tax Regulations Effective Beginning January 1, 2016” of the Codified Ordinances of the Village of Yellow Springs, Ohio be enacted to read as set forth on Exhibit A with new language underlined and **bolded** and deleted language in ~~strike through~~, which is attached hereto and incorporated herein.

**Section 3.** This Ordinance is hereby declared to be an emergency under home rule powers for the purpose to amend the Yellow Springs Income Tax Code within the time period specified in H.B. 49, which will preserve the public peace. This Ordinance will take effect immediately upon adoption. The passage of this Ordinance does not waive any rights of the Village to continue its participation in Case Number 17 CV 194026 in the Lorain County Court of Common Pleas and the Village expressly reserves the right under its home rule powers to specifically challenge Section 803.100 of H.B.49.

\_\_\_\_\_  
Brian Housh, President of Council

Passed:

Attest: \_\_\_\_\_  
Judy Kintner, Clerk of Council

**ROLL CALL**

Brian Housh \_\_\_\_ Judith Hempfling \_\_\_ Marianne MacQueen \_\_\_ Kevin Stokes \_\_\_ Lisa Kreeger \_\_\_\_

## **EXHIBIT A**

### **881.01 AUTHORITY TO LEVY TAX; PURPOSE OF TAX.**

(a) To provide funds for the purpose of capital improvements and general operations of the Village of Yellow Springs (the "Village") there is hereby levied a tax on salaries, wages, commissions and other compensation and on net profits as hereinafter provided.

(b) The annual tax is levied at a rate of one and one-half percent. The tax is levied at a uniform rate on all persons residing in or earning or receiving income in the Village. The tax is levied on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided in Section 881.03 and other sections as they may apply.

(c) The tax on income and the withholding tax established by this chapter are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax is levied in accordance with, and is intended to be consistent with, the provisions and limitations of Ohio R.C. Chapter 718. This chapter is effective for tax years beginning on or after January 1, 2016. Municipal taxable years beginning on or before December 31, 2015 are subject to Chapter 880, and any amendments thereto, and rules and regulations, and any amendments thereto, as they existed before January 1, 2016.

### **881.02 DEFINITIONS.**

(a) Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to Federal income taxation or in Ohio R.C. Title LVII, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to Federal income tax and in Ohio R.C. Title LVII and the use is not consistent, then the use of the term in the laws of the United States relating to Federal income tax shall control over the use of the term in Ohio R.C. Title LVII.

(b) The singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

(c) As used in this chapter:

(1) "Adjusted Federal taxable income," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division (c)(24)~~E-D~~ of this section, means a C corporation's Federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

A. Deduct intangible income to the extent included in Federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

B. Add an amount equal to five percent of intangible income deducted under division (c)(1)A. of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

C. Add any losses allowed as a deduction in the computation of Federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

D. 1. Except as provided in division (c)(1)D.2. of this section, deduct income and gain included in Federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

2. Division (c)(1)D.1. of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

E. Add taxes on or measured by net income allowed as a deduction in the computation of Federal taxable income;

F. In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of Federal taxable income;

G. Deduct, to the extent not otherwise deducted or excluded in computing Federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under Ohio R.C. 4313.02;

~~H. 1. Except as limited by divisions (c)(1)H.2., 3., and 4. of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017.~~

~~————— The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce Municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.~~

~~————— 2. No person shall use the deduction allowed by division (c)(1)H. of this section to offset qualifying wages.~~

~~————— 3. a. For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty percent of the amount of the deduction otherwise allowed by division (c)(1)H.1. of this section.~~

~~————— b. For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by division (c)(1)H.1. of this section.~~

~~————— 4. Any pre-2017 net operating loss carry forward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (c)(1)H. of this section.~~

~~————— 5. Nothing in division (c)(1)H.3.a. of this section precludes a person from carrying forward, use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (c)(1)H.3.a. of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (c)(1)H.3.a. of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (c)(1)H.3.a. of this section shall apply to the amount carried forward. **Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.**~~

I. Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's Federal taxable income unless an affiliated group of corporations includes that net profit in the group's Federal taxable income in accordance with Section 881.05(v)(3)B.

J. Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's Federal taxable income unless an affiliated group of

corporations includes that loss in the group's Federal taxable income in accordance with Section 881.05(v)(3)B.

If the taxpayer is not a C corporation, is not a disregarded entity that has made an election described in division (c)(48)B. of this section, is not a publicly traded partnership that has made the election described in division (c)(24)~~ED~~. of this section, and is not an individual, the taxpayer shall compute adjusted Federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States Treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (c)(1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of Federal self-employment tax.

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

B. "Assessment" does not include a notice denying a request for refund issued under Section 881.09(c)(3), a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (c)(2)A. of this section.

(3) "Audit" means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a Municipal income tax.

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

(5) "Calendar quarter" means the three-month period ending on the last day of March, June, September, or December.

(6) "Casino operator" and "casino facility" have the same meanings as in Ohio R.C. 3772.01.

(7) "Certified mail," "express mail," "United States mail," "postal service," and similar terms include any delivery service authorized pursuant to Ohio R.C. 5703.056.

(8) "Disregarded entity" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for Federal income tax purposes.



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

(10) "Employee" means an individual who is an employee for Federal income tax purposes.

(11) "Employer" means a person that is an employer for Federal income tax purposes.

(12) "Exempt income" means all of the following:

A. The military pay or allowances of members of the Armed Forces of the United States or members of their reserve components, including the national guard of any state.

B. Intangible income.

C. Social Security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, State, or Federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (c)(12)C. of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code.

D. The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

E. Compensation paid under Ohio R.C. 3501.28 or 3501.36 to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars (\$1,000) for the taxable year. Such compensation in excess of one thousand dollars (\$1,000) for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

F. Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations.

G. Alimony and child support received.

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

I. Income of a public utility when that public utility is subject to the tax levied under Ohio R.C. 5727.24 or 5727.30. Division (c)(12)I. of this section does not apply for purposes of Ohio R.C. Chapter 5745.

J. Gains from involuntary conversions, interest on Federal obligations, items of income subject to a tax levied by the State and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business.

K. Compensation or allowances excluded from Federal gross income under section 107 of the Internal Revenue Code.

L. Employee compensation that is not qualifying wages as defined in division (c)(35) of this section.

M. Compensation paid to a person employed within the boundaries of a United States Air Force base under the jurisdiction of the United States Air Force that is used for the housing of members of the United States Air Force and is a center for Air Force operations, unless the

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

N. All of the income of individuals under sixteen years of age.

O. 1. Except as provided in divisions (c)(12)O.2., 3., and 4. of this section, qualifying wages described in Section 881.04(c)(2) or (c)(5) to the extent the qualifying wages are not subject to withholding for the Village under either of those divisions.

2. The exemption provided in division (c)(12)O.1. of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

3. The exemption provided in division (c)(12)O.1. of this section does not apply to qualifying wages that an employer elects to withhold under Section 881.04(c)(4)B.

4. The exemption provided in division (c)(12)O.1. of this section does not apply to qualifying wages if both of the following conditions apply:

a. For qualifying wages described in Section 881.04(c)(2), the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in Section 881.04(c)(5), the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;

b. The employee receives a refund of the tax described in division (c)(12)O.4.a. of this section on the basis of the employee not performing services in that municipal corporation.

P. 1. Except as provided in division (c)(12)P.2. or 3. of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the Village on not more than twenty days in a taxable year.

2. The exemption provided in division (c)(12)P.1. of this section does not apply under either of the following circumstances:

a. The individual's base of operation is located in the municipal corporation.

b. The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (c)(12)P.2.b. of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 881.04(c).

3. Compensation to which division (c)(12)P. of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.

4. For purposes of division (c)(12)P. of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

Q. Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to Ohio R.C. 709.023 on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the

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

R. Income the taxation of which is prohibited by the constitution or laws of the United States. Any item of income that is exempt income of a pass-through entity under division (c) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

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

(14) "Generic form" means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated Municipal income taxes, or annual Municipal income tax liability or for filing a refund claim.

(15) "Gross receipts" means the total revenue derived from sales, work done, or service rendered.

(16) "Income" means the following:

A. 1. For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident except as provided in division (c)(24)~~ED~~ of this section.

2. For the purposes of division (c)(16)A.1. of this section:

a. Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (c)(16)A.4. of this section;

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

3. Division (c)(16)A.2. of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (c)(16)E. of this section.

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

B. In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

C. For taxpayers that are not individuals, net profit of the taxpayer;

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

E. In accordance with a ballot issue, regarding S corporation language, approved by the voters in the election on November 4, 2003, a shareholder's share of net profits of an S corporation are taxable to the Village.

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

(18) "Internal Revenue Code" has the same meaning as in Ohio R.C. 5747.01.

(19) "Limited liability company" means a limited liability company formed under Ohio R.C. Chapter 1705 or under the laws of another state.

(20) "Municipal corporation" includes a joint economic development district or joint economic development zone that levies an income tax under Ohio R.C. 715.691, 715.70, 715.71, or 715.74.

(21) A. "Municipal taxable income" means the following:

1. For a person other than an individual, income ~~reduced by exempt income to the extent otherwise included in income and then, as applicable,~~ apportioned or sitused to the Village under Section 881.03, **as applicable**, and further reduced by any pre-2017 net operating loss carry forward available to the person for the Village.

2. a. For an individual who is a resident of the Village, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (c)(21)B. of this section, and further reduced by any pre-2017 net operating loss carry forward available to the individual for the municipal corporation.

b. For an individual who is a nonresident of the Village, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or sitused to the municipal corporation under Section 881.03, then reduced as provided in division (c)(21)B. of this section, and further reduced by any pre-2017 net operating loss carry forward available to the individual for the Village.

B. In computing the Municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (c)(21)A.2.a. or (c)(21)B. of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for Federal income tax purposes for the taxable year, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for Federal income tax purposes, but only to the extent the expenses do not relate to exempt income. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation and are not related to exempt income.

(22) "Municipality" means the same as the Village of Yellow Springs. If the term Village is capitalized in the chapter, the reference is to the Village of Yellow Springs.

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

(24) A. ~~"Net profit" for a person other than an individual means adjusted Federal taxable income.~~

AB. "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (c)(24)AB. of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (c)(~~241~~)CH. of this section.

**B. "Net profit" for a person other than an individual means adjusted federal taxable income reduced by any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017, subject to the limitations of division (C)(24)(c) of this section.**

**C. (i) The amount of such operating loss shall be deducted from net profit to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five (5) consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.**

**(ii) No person shall use the deduction allowed by division (C)(24)(c) of this section to offset qualifying wages.**

**(iii)(a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (C)(24)(c) of this section.**

**(b) For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by (C)(24)(c) of this section without regard to the limitation of division (C)(24)(c)(iii)(a) of this section.**

**(iv) Any pre-2017 net operating loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to (C)(24)(c) of this section.**

**(v) Nothing in division (C)(24)(c)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (C)(24)(c)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (C)(1)(h)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (C)(24)(c)(iii)(a) of this section shall apply to the amount carried forward.**

DE. For the purposes of this chapter, and notwithstanding division (c)(24)BA. of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

ED. A publicly traded partnership that is treated as a partnership for Federal income tax purposes, and that is subject to tax on its net profits by the Village, may elect to be treated as a C corporation for the Village. The election shall be made on the annual return for the Village. The Village will treat the publicly traded partnership as a C corporation if the election is so made.

(25) "Nonresident" means an individual who is not a resident of the Village.

(26) "Ohio Business Gateway" means the online computer network system, created under Ohio R.C. 125.30, that allows persons to electronically file business reply forms with State agencies and includes any successor electronic filing and payment system.

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

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

(29) "Pension" means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form.

Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.

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

(31) "Postal service" means the United States postal service.

(32) "Postmark date," "date of postmark," and similar terms include the date recorded and marked in the manner described in division (B)(3) of Ohio R.C. 5703.056.

(33) A. "Pre-2017 net operating loss carry forward" means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the Village that was adopted by the Village before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in the Village in future taxable years.

B. For the purpose of calculating Municipal taxable income, any pre-2017 net operating loss carry forward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.

(34) "Publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.

(35) "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

A. Deduct the following amounts:

1. Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.

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

3. Any amount included in wages that is exempt income.

B. Add the following amounts:

1. Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.

2. Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. Division (c)(35)B.2. of this section applies only to those amounts constituting ordinary income.

3. Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (c)(35)B.3. of this section applies only to employee contributions and employee deferrals.

4. Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.

5. Any amount received that is treated as self-employment income for Federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code.

6. Any amount not included in wages if all of the following apply:

a. For the taxable year the amount is employee compensation that is earned outside the United States and that either is included in the taxpayer's gross income for Federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code;

b. For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;

c. For no succeeding taxable year will the amount constitute wages; and

d. For any taxable year the amount has not otherwise been added to wages pursuant to either division (c)(35)B. of this section or Ohio R.C. 718.03, as that section existed before the effective date of H.B. 5 of the 130th General Assembly, March 23, 2015.

(36) "Related entity" means any of the following:

A. An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock;

B. A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock;

C. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (c)(36)D. of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation's outstanding stock;

D. The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (c)(36)A. to C. of this section have been met.

(37) "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "twenty percent (20%)"

shall be substituted for "five percent (5%)" wherever "five percent (5%)" appears in section 1563(e) of the Internal Revenue Code.

(38) "Resident" means an individual who is domiciled in the municipal corporation as determined under Section 881.03(e).

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

(40) "Schedule C" means Internal Revenue Service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(41) "Schedule E" means Internal Revenue Service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(42) "Schedule F" means Internal Revenue Service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(43) "Single member limited liability company" means a limited liability company that has one direct member.

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

(45) **(A)** "Tax Administrator" means the individual charged with direct responsibility for administration of an income tax levied by the Village in accordance with this chapter. **Tax Administrator does not include the state tax commissioner.**

**(B) "Tax commissioner" means the tax commissioner appointed under Section 121.03 of the Ohio Revised Code.**

(46) "Tax return preparer" means any individual described in section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.

(47) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(48) A. "Taxpayer" means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (c)(48)B.1. of this section, a disregarded entity.

B. 1. A single member limited liability company that is a disregarded entity for Federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:

a. The limited liability company's single member is also a limited liability company.

b. The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.



c. Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of Ohio R.C. 718.01 as that section existed on December 31, 2004.

d. The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.

e. The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.

2. For purposes of division (c)(48)B.1.e. of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least four hundred thousand dollars (\$400,000).

(49) "Taxpayers' rights and responsibilities" means the rights provided to taxpayers in Sections 881.09, 881.12, 881.13, 881.19(b), 881.20, 881.21, and Ohio R.C. 5717.011 and 5717.03, and the responsibilities of taxpayers to file, report, withhold, remit, and pay Municipal income tax and otherwise comply with Ohio R.C. Chapter 718 and resolutions, ordinances, and rules and regulations adopted by the Village for the imposition and administration of a Municipal income tax.

(50) "Video lottery terminal" has the same meaning as in Ohio R.C. 3770.21.

(51) "Video lottery terminal sales agent" means a lottery sales agent licensed under Ohio R.C. Chapter 3770 to conduct video lottery terminals on behalf of the State pursuant to Ohio R.C. 3770.21.

### **881.03 IMPOSITION OF TAX.**

The income tax levied by the Village at a rate of one and one-half percent is levied on the Municipal taxable income of every person residing in and/or earning and/or receiving income in the Village.

#### Individuals.

(a) For residents of the Village, the income tax levied herein shall be on all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident. This is further detailed in the definition of income (Section 881.02(c)(16)).

(b) For nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(c) For residents and nonresidents, income can be reduced to "Municipal taxable income" as defined in Section 881.02(c)(21). Exemptions which may apply are specified in Section 881.02(c)(12).

#### Refundable Credit for Nonqualified Deferred Compensation Plan.

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

A. "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.

B. "Qualifying loss" means the amount of compensation attributable to a taxpayer's nonqualified deferred compensation plan, less the receipt of money and property attributable to distributions from the nonqualified deferred compensation plan. Full loss is sustained if no distribution of money and property is made by the nonqualified deferred compensation plan. The taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.

C. 1. "Qualifying tax rate" means the applicable tax rate for the taxable year for the which the taxpayer paid income tax to the Village with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

2. If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the Village each year with respect to the nonqualified deferred compensation plan.

D. "Refundable credit" means the amount of the Village income tax that was paid on the non-distributed portion, if any, of a nonqualified deferred compensation plan.

(2) If, in addition to the Village, a taxpayer has paid tax to other municipal corporations with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.

(3) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to the Village for all taxable years with respect to the nonqualified deferred compensation plan.

(4) The credit allowed under this division is allowed only to the extent the taxpayer's qualifying loss is attributable to:

A. The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or

B. The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

#### Domicile.

(e) (1) A. An individual is presumed to be domiciled in the Village for all or part of a taxable year if the individual was domiciled in the Village on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in the Village for all or part of the taxable year.

B. An individual may rebut the presumption of domicile described in division (e)(1)A. of this section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the Village for all or part of the taxable year.

(2) For the purpose of determining whether an individual is domiciled in the Village for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:

A. The individual's domicile in other taxable years;

B. The location at which the individual is registered to vote;

- C. The address on the individual's driver's license;
- D. The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;
- E. The location and value of abodes owned or leased by the individual;
- F. Declarations, written or oral, made by the individual regarding the individual's residency;
- G. The primary location at which the individual is employed;
- H. The location of educational institutions attended by the individual's dependents as defined in section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation where the educational institution is located;
- I. The number of contact periods the individual has with the Village. For the purposes of this division, an individual has one "contact period" with the Village if the individual is away overnight from the individual's abode located outside of the Village and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the Village.

(3) All additional applicable factors are provided in the Rules and Regulations.

Businesses.

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

(1) Except as otherwise provided in division (f)(2) of this section, net profit from a business or profession conducted both within and without the boundaries of the Village shall be considered as having a taxable situs in the Village for purposes of Municipal income taxation in the same proportion as the average ratio of the following:

A. The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the Village during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

B. Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the Village to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under Section 881.04(c);

C. Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Village to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(2) A. If the apportionment factors described in division (f)(1) of this section do not fairly represent the extent of a taxpayer's business activity in the Village, the taxpayer may request, or the Tax Administrator of the Village may require, that the taxpayer use, with respect to all or any

portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

1. Separate accounting;
2. The exclusion of one or more of the factors;
3. The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;
4. A modification of one or more of the factors.

B. A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by Section 881.12(a).

C. The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (f)(2)A. of this section, but only by issuing an assessment to the taxpayer within the period prescribed by Section 881.12(a).

D. Nothing in division (f)(2) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(3) As used in division (f)(1)B. of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

A. A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:

1. The employer;
2. A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
3. A vendor, customer, client, or patient of a person described in division (f)(3)A.2. of this section, or a related member of such a vendor, customer, client, or patient.

B. Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;

C. Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (f)(3)A. or B. of this section solely in order to avoid or reduce the employer's Municipal income tax liability. If the Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(4) For the purposes of division (f)(1)C. of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

A. Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in the Village if, regardless of where title passes, the property meets any of the following criteria:

1. The property is shipped to or delivered within the Village from a stock of goods located within the Village.

2. The property is delivered within the Village from a location outside the Village, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village and the sales result from such solicitation or promotion.

3. The property is shipped from a place within the Village to purchasers outside the Village, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

B. Gross receipts from the sale of services shall be situated to the Village to the extent that such services are performed in the Village.

C. To the extent included in income, gross receipts from the sale of real property located in the Village shall be situated to the Village.

D. To the extent included in income, gross receipts from rents and royalties from real property located in the Village shall be situated to Village.

E. Gross receipts from rents and royalties from tangible personal property shall be situated to Village based upon the extent to which the tangible personal property is used in Village.

(5) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual, or by a disregarded entity owned by the individual, shall be subject to the Village's tax only if the property generating the net profit is located in the Village or if the individual taxpayer that receives the net profit is a resident of the Village. The Village shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.

(6) A. Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the Village, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the Village to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

B. An individual who is a resident of the Village shall report the individual's net profit from all real estate activity on the individual's annual tax return for the Village. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under the Village's income tax ordinance.

(7) When calculating the ratios described in division (f)(1) of this section for the purposes of that division or division (f)(2) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

#### **881.04 COLLECTION AT SOURCE.**

##### Withholding Provisions.

(a) Each employer, agent of an employer, or other payer located or doing business in the Village shall withhold an income tax from the qualifying wages earned and/or received by each employee in the Village. Except for qualifying wages for which withholding is not required under Section 881.03 or division (b)(4) or (b)(6) of this section, the tax shall be withheld at the rate, specified in Section 881.03, of one and one-half percent. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

(b) (1) Except as provided in division (b)(2) of this section, an employer, agent of an employer, or other payer shall remit to the Tax Administrator of the Village the greater of the

income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer according to the following schedule:

A. Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the Village in the preceding calendar year exceeded two thousand three hundred ninety-nine dollars (\$2,399), or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the Village in any month of the preceding calendar quarter exceeded two hundred dollars (\$200.00).

Payments under division (b)(1)A. of this section shall be made ~~so that the payment is received by~~ to the Tax Administrator not later than fifteen days after the last day of each month for which the tax was withheld.

B. Any employer, agent of an employer, or other payer not required to make payments under division (b)(1)A. of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the ~~last~~ last fifteenth day of the month following the ~~last day~~ of each calendar quarter.

(2) If the employer, agent of an employer, or other payer is required to make payments electronically for the purpose of paying Federal taxes withheld on payments to employees under section 6302 of the Internal Revenue Code, 26 C.F.R. 31.6302-1, or any other Federal statute or regulation, the payment shall be made by electronic funds transfer to the Tax Administrator of all taxes deducted and withheld on behalf of the Village. The payment of tax by electronic funds transfer under this division does not affect an employer's, agent's, or other payer's obligation to file any return as required under this section.

(3) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by Tax Administrator and the Village as the return required of a non-resident employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer.

(4) An employer, agent of an employer, or other payer is not required to withhold the Village income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.

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

B. The failure of an employer, agent of an employer, or other payer to remit to the Village the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.

(6) Compensation deferred before June 26, 2003, is not subject to the Village income tax or income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

(7) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been

withheld, and such amount shall be deemed to be held in trust for the Village until such time as the withheld amount is remitted to the Tax Administrator.

(8) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Tax Administrator listing:

A. The names, addresses, and Social Security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the Village during the preceding calendar year;

B. The amount of tax withheld, if any, from each such employee, the total amount of qualifying wages paid to such employee during the preceding calendar year;

C. The name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year;

D. Any other information required for Federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee;

E. Other information as may be required by the Tax Administrator.

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

(10) An employer is required to deduct and withhold the Village income tax on tips and gratuities received by the employer's employees and constituting qualifying wages, but only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.

(11) The Tax Administrator shall consider any tax withheld by an employer at the request of an employee, when such tax is not otherwise required to be withheld by this chapter, to be tax required to be withheld and remitted for the purposes of this section.

Occasional Entrant - Withholding.

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

A. "Employer" includes a person that is a related member to or of an employer.

B. "Fixed location" means a permanent place of doing business in this State, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.

C. "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this State to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this State at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the greatest number of days in a calendar year performing services for or on behalf of the employer, but

instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (c)(2)A.1. of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's principal place of work with respect to those qualifying wages for the purposes of this section.

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

D. "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.

E. "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.

F. "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.

G. "Worksite location" means a construction site or other temporary worksite in this State at which the employer provides services for more than twenty days during the calendar year. "Worksite location" does not include the home of an employee.

(2) A. Subject to divisions (c)(3), (c)(5), (c)(6), and (c)(7) of this section, an employer is not required to withhold the Village income tax on qualifying wages paid to an employee for the performance of personal services in the Village if the employee performed such services in the Village on twenty or fewer days in a calendar year, unless one of the following conditions applies:

1. The employee's principal place of work is located in the Village.
2. The employee performed services at one or more presumed worksite locations in the Village. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in the Village at which the employer provides or provided services that can reasonably be, or would have been, expected by the employer to last more than twenty days in a calendar year. Services can reasonably be expected by the employer to last more than twenty days if either of the following applies at the time the services commence:
  - a. The nature of the services are such that it will require more than twenty days of the services to complete the services;
  - b. The agreement between the employer and its customer to perform services at a location requires the employer to perform the services at the location for more than twenty days.
3. The employee is a resident of the Village and has requested that the employer withhold tax from the employee's qualifying wages as provided in Section 881.04.
4. The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.

B. For the purposes of division (c)(2)A. of this section, an employee shall be considered to have spent a day performing services in the Village only if the employee spent more time



performing services for or on behalf of the employer in the Village than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:

1. Traveling to the location at which the employee will first perform services for the employer for the day;
2. Traveling from a location at which the employee was performing services for the employer to any other location;
3. Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;
4. Transporting or delivering property described in division (c)(2)B.3. of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;
5. Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.

(3) If the principal place of work of an employee is located in another Ohio municipal corporation that imposes an income tax, the exception from withholding requirements described in division (c)(2)A. of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to that municipal corporation.

(4) A. Except as provided in division (c)(4)B. of this section, if, during a calendar year, the number of days an employee spends performing personal services in the Village exceeds the twenty-day threshold, the employer shall withhold and remit tax to the Village for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in the Village.

B. An employer required to begin withholding tax for the Village under division (c)(4)A. of this section may elect to withhold tax for the Village for the first twenty days on which the employer paid qualifying wages to the employee for personal services performed in the Village.

(5) If an employer's fixed location is the Village and the employer qualifies as a small employer as defined in Section 881.02, the employer shall withhold Municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the Village, regardless of the number of days which the employee worked outside the corporate boundaries of the Village.

To determine whether an employer qualifies as a small employer for a taxable year, the employer will be required to provide the Tax Administrator with the employer's Federal income tax return for the preceding taxable year.

(6) Divisions (c)(2)A. and (c)(4) of this section shall not apply to the extent that a Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of Section 881.04.

## **881.05 ANNUAL RETURN; FILING.**

(a) An annual Village income tax return shall be completed and filed by every individual taxpayer sixteen years of age or older and any taxpayer that is not an individual for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

(1) The Tax Administrator may accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer under Section 881.04 of this chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due the Village.

(2) Retirees having no Municipal taxable income for the Village income tax purposes may file with the Tax Administrator a written exemption from these filing requirements on a form prescribed by the Tax Administrator. The written exemption shall indicate the date of retirement and the entity from which retired. The exemption shall be in effect until such time as the retiree receives Municipal taxable income taxable to the Village, at which time the retiree shall be required to comply with all applicable provisions of this chapter.

(b) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(c) If an individual is unable to complete and file a return or notice required by the Village, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.

(d) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust.

(e) The Village shall permit spouses to file a joint return.

(f) (1) Each return required to be filed under this division shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer. The return shall include the taxpayer's Social Security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.

(2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return, and amended return, copies of the following documents: all of the taxpayer's Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's Federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040 **or, in the case of a return or request required by a qualified municipal corporation, Ohio form IT-1040**; and, with respect to an amended tax return, any other documentation necessary to support the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.

(3) The Tax Administrator may require a taxpayer that is not an individual to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.

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

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

(g) (1) A. Except as otherwise provided in this chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of State individual income tax returns under division (G) of Ohio R.C. 5747.08. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the Village. No remittance is required if the net amount due is ten dollars (\$10.00) or less.

B. Except as otherwise provided in this chapter, each annual net profit return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth of the fourth month following the end of the taxpayer's taxable year. The taxpayer shall complete and file the return or notice on forms prescribed to the Village. No remittance is required if the net amount due is ten dollars (\$10.00) or less.

(2) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's Federal income tax return shall automatically receive an extension for the filing of the Village's income tax return. The extended due date of the Village's income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. An extension of time to file under this division is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

A. A copy of the Federal extension request shall be included with the filing of the Village's income tax return.

B. A taxpayer that has not requested or received a six-month extension for filing the taxpayer's Federal income tax return may submit a written request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's Village income tax return. If the request is received by the Tax Administrator on or before the date the Village income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

(3) If the Tax Commissioner extends for all taxpayers the date for filing State income tax returns under division (G) of Ohio R.C. 5747.08, a taxpayer shall automatically receive an extension for the filing of the Village's income tax return. The extended due date of the Village's income tax return shall be the same as the extended due date of the State income tax return.

(4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the Village, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this division, including taxpayers not otherwise required to file annual returns.

(5) To the extent that any provision in this division (g) of this section conflicts with any provision in divisions (n), (o), (p), or (q) of this section, the provisions in divisions (n), (o), (p), or (q) prevail.

(h) (1) For taxable years beginning after 2015, the Village shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars (\$10.00) or less.

(2) Any taxpayer not required to remit tax to the Village for a taxable year pursuant to division (h)(1) of this section shall file with the Village an annual net profit return under division (f)(3) of this section, **unless the provisions of division (h)(3) apply.**

**(3)A. A person may notify the Tax Administrator that the person does not expect to be a taxpayer subject to the Village's income tax ordinance for a taxable year if both the following apply:**

**1. The person was required to file a tax return with the Village for the immediately preceding taxable year because the person performed services at a worksite location (as defined in Section 881.4(c)(1)G.) within the Village.**

**2. The person no longer provides services in the Village and does not expect to be subject to the Village's income tax for the taxable year.**

**B. The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the Village. The affidavit shall also include the following statement: "The affiant has no plans to perform any services within the Village, make any sales in the Village, or otherwise become subject to the tax levied by the Village during the taxable year. If the affiant does become subject to the tax levied by the Village for the taxable year, the affiant agrees to be considered a taxpayer and to properly comply as a taxpayer with the Village income tax ordinance and rules and regulations." The person shall sign the affidavit under penalty of perjury.**

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

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

(i) If a payment **under this chapter** is required to be made by electronic funds transfer, the payment is **shall be** considered to be made when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment **on the date of the timestamp assigned by the first electronic system receiving that payment.** This division shall not apply to payments required to be made under Section ~~881.04(b)(1)A.~~ or provisions for semi-monthly withholding.

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

(k) Each return required by the Village to be filed in accordance with this division shall include a box that the taxpayer may check to authorize another person, including a tax return

preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return.

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

Filing via Ohio Business Gateway.

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

(2) Any employer, agent of an employer, or other payer may report the amount of Municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.

(3) Nothing in this section affects the due dates for filing employer withholding tax returns.

Extension for Service in or for the Armed Forces.

(n) Each member of the national guard of any state and each member of a reserve component of the Armed Forces of the United States called to active duty pursuant to an executive order issued by the President of the United States or an act of the Congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the Armed Forces, may apply to the Tax Administrator of the Village for both an extension of time for filing of the return and an extension of time for payment of taxes required by the Village during the period of the member's or civilian's duty service, and for 180 days thereafter. The application shall be filed on or before the 180th day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

(o) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the 181st day after the applicant's active duty or service terminates. The Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate.

However, taxes pursuant to a contract entered into under this division are not delinquent, and the Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(2) If the Tax Administrator determines that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the municipal corporation before the 181st day after the applicant's active duty or service terminates.

(3) Taxes paid pursuant to a contract entered into under division (o)(1) of this section are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(p) (1) Nothing in this division denies to any person described in this division the application of divisions (n) and (o) of this section.

(2) A. A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by a municipal corporation in accordance with this chapter. The length of any extension granted under division (p)(2)A. of this section shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this division, "qualifying taxpayer" means a member of the national guard or a member of a reserve component of the Armed Forces of the United States called to active duty pursuant to either an executive order issued by the President of the United States or an act of the Congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the Armed Forces.

B. Taxes whose payment is extended in accordance with division (p)(2)A. of this section are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (c)(2)A. of this section in calculating the penalty or interest due on any unpaid tax.

(q) For each taxable year to which division (n), (o), or (p) of this section applies to a taxpayer, the provisions of divisions (o)(2) and (o)(3) of this section, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

#### Consolidated Municipal Income Tax Return.

(r) As used in this section:

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

(2) "Consolidated Federal income tax return" means a consolidated return filed for Federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

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

(4) "Incumbent local exchange carrier" has the same meaning as in Ohio R.C. 4927.01.

(5) "Local exchange telephone service" has the same meaning as in Ohio R.C. 5727.01.

(s) (1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated Municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the Village's income tax in that taxable year, and if the affiliated group of corporations filed a consolidated Federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change

in the reporting method is required under Federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated Municipal income tax returns under division (s)(2) of this section or a taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(2) An election to discontinue filing consolidated Municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated Municipal income tax return election period in effect under division (s)(1) of this section. The election to discontinue filing a consolidated Municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (s)(1) or (s)(2) of this section is binding on all members of the affiliated group of corporations subject to a Municipal income tax.

(t) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated Federal income tax return for a taxable year shall file a consolidated Village income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the Village. A taxpayer that is required to file a consolidated Village income tax return for a taxable year shall file a consolidated Village income tax return for all subsequent taxable years, unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.

(u) A taxpayer shall prepare a consolidated Village income tax return in the same manner as is required under the United States Department of Treasury regulations that prescribe procedures for the preparation of the consolidated Federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(v) (1) Except as otherwise provided in divisions (v)(2), (v)(3), and (v)(4) of this section, corporations that file a consolidated Municipal income tax return shall compute adjusted Federal taxable income, as defined in Section 881.02, by substituting "consolidated Federal taxable income" for "Federal taxable income" wherever "Federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated Village income tax return shall make any adjustment otherwise required under Section 881.02(c)(1) to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated Federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least eighty percent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated Federal taxable income for a taxable year, the corporation filing a consolidated Village income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

A. Exclude the pass-through entity's net profit or loss from the consolidated Federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 881.05(r) through (y), exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the Village. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate

taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated Federal taxable income of the affiliated group.

B. Include the pass-through entity's net profit or loss in the consolidated Federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 881.05(r) through (y), include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the Village. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated Federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than eighty percent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated Federal taxable income for a taxable year, all of the following shall apply:

A. The corporation filing the consolidated Municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated Federal taxable income of the affiliated group and, for the purposes of making the computations required in Section 881.05(r) through (y), exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the Village;

B. The pass-through entity shall be subject to Village income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated Federal taxable income of the affiliated group.

(w) Corporations filing a consolidated Village income tax return shall make the computations required under Section 881.05(r) through (y) by substituting "consolidated Federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(x) Each corporation filing a consolidated Village income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by the Village in accordance with this chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

(y) Corporations and their affiliates that made an election or entered into an agreement with the Village before January 1, 2016, to file a consolidated or combined tax return with the Village may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.

#### **881.06 CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES.**

(a) Every individual taxpayer domiciled in the Village who is required to and does pay, or has acknowledged liability for, a municipal tax to another municipality on or measured by the same income, qualifying wages, commissions, net profits or other compensation taxable under this chapter may claim a nonrefundable credit upon satisfactory evidence of the tax paid to the other municipality. Subject to division (c) of this section, the credit shall not exceed the tax due the Village under this chapter.

(b) The Village shall grant a credit against its tax on income to a resident of the Village who works in a joint economic development zone created under Ohio R.C. 715.691 or a joint economic development district created under Ohio R.C. 715.70, 715.71, or 715.72 to the same



extent that it grants a credit against its tax on income to its residents who are employed in another municipal corporation.

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

### **881.07 ESTIMATED TAXES.**

(a) As used in this section:

(1) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for the Village's income tax for the current taxable year.

(2) "Tax liability" means the total taxes due to the Village for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.

(b) (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least two hundred dollars (\$200.00). For the purposes of this section:

A. Taxes withheld for the Village from qualifying wages shall be considered as paid to the Village in equal amounts on each payment date unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case they shall be considered as paid on the dates on which the amounts were actually withheld.

B. An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(2) Taxpayers filing joint returns shall file joint declarations of estimated taxes. A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. A taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the Tax Administrator.

(3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of Municipal income tax returns under Section 881.05(g) or on or before the fifteenth day of the fourth month after the taxpayer becomes subject to tax for the first time.

(4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.

(5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.

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

A. On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half percent of the tax liability for the taxable year;

B. On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five percent of the tax liability for the taxable year;

C. On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half percent of the tax liability for the taxable year;

D. ~~On~~ **For an individual, on or before the fifteenth day of the first month of the following taxable year, ninety percent of the tax liability for the taxable year. For a person other than an individual, on** or before the fifteenth day of the twelfth month of the taxable year, ninety percent of the tax liability for the taxable year.

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

(3) On or before the fifteenth day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with Section 881.05.

(d) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to Section 881.18 upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (e) of this section. The amount of the underpayment shall be determined as follows:

A. For the first payment of estimated taxes each year, twenty-two and one-half percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

B. For the second payment of estimated taxes each year, forty-five percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

C. For the third payment of estimated taxes each year, sixty-seven and one-half percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

D. For the fourth payment of estimated taxes each year, ninety percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment.

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

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

(1) The amount of estimated taxes that were paid equals at least ninety percent of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.

(2) The amount of estimated taxes that were paid equals at least 100 percent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return with the Village under Section 881.05 for that year.

(3) The taxpayer is an individual who resides in the Village but was not domiciled there on the first day of January of the calendar year that includes the first day of the taxable year.

(Ord. 2015-19. Passed 11-16-15.)

#### **881.08 ROUNDING OF AMOUNTS.**

A person may round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher, or other document required under this chapter. Any fractional part of a dollar that equals or exceeds fifty cents (\$.50) shall be rounded to the next whole dollar, and

any fractional part of a dollar that is less than fifty cents (\$.50) shall be dropped. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.

### **881.09 REQUESTS FOR REFUNDS.**

(a) As used in this section, "withholding tax" has the same meaning as in Section 881.18.

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

(1) Overpayments of ten dollars (\$10.00) or more;

(2) Amounts paid erroneously if the refund requested is ten dollars (\$10.00) or more.

(c) (1) Except as otherwise provided in this chapter, requests for refund shall be filed with the Tax Administrator, on the form prescribed by the Tax Administrator within three years after the tax was due or paid, whichever is later. The Tax Administrator may require the requestor to file with the request any documentation that substantiates the requestor's claim for a refund.

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

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

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

(1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request.

(2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven days of such last day.

(3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven days of the last day for making the request.

(e) Interest shall be allowed and paid on any overpayment by a taxpayer of any Municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in Section 881.18(a)(4).

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

(a) Income tax that has been deposited with the Village, but should have been deposited with another municipality, is allowable by the Village as a refund but is subject to the three-year limitation on refunds.

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

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

(d) Nothing in this section permits any credit carry forward.

**881.11 AMENDED RETURNS.**

(a) (1) If a taxpayer's tax liability shown on the annual tax return for the Village changes as a result of an adjustment to the taxpayer's Federal or State income tax return, the taxpayer shall file an amended return with the Village. The amended return shall be filed on a form required by the Tax Administrator.

(2) If a taxpayer intends to file an amended consolidated Municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated Federal income tax return, the taxpayer shall notify the Tax Administrator before filing the amended return.

(b) (1) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due, together with any penalty and interest thereon. If the combined tax shown to be due is ten dollars (\$10.00) or less, no payment need be made. The amended return shall reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's Federal or State income tax return only:

A. To determine the amount of tax that would be due if all facts, figures, computations, and attachments were reopened; or

B. If the applicable statute of limitations for civil actions or prosecutions under Section 881.12 has not expired for a previously filed return.

(2) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations, and attachments were reopened; i.e., the payment shall be the lesser of the two amounts.

(c) (1) In the case of an overpayment, a request for refund may be filed under this division within the period prescribed by division (d) of this section for filing the amended return, even if it is filed beyond the period prescribed in that division if it otherwise conforms to the requirements of that division. If the amount of the refund is less than ten dollars (\$10.00), no refund need be paid by the Village. A request filed under this division shall claim refund of overpayments resulting from alterations only to those facts, figures, computations, or

attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's Federal or State income tax return, unless it is also filed within the time prescribed in Section 881.09.

(2) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations, and attachments were reopened. All facts, figures, computations, and attachments may be reopened to determine the refund amount due by inclusion of all facts, figures, computations, and attachments.

(d) Within sixty days after the final determination of any Federal or State tax liability affecting the taxpayer's Village tax liability, that taxpayer shall make and file an amended Village return showing income subject to the Village income tax based upon such final determination of Federal or State tax liability. The taxpayer shall pay any additional the Village income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is less than ten dollars (\$10.00).

### **881.12 LIMITATIONS.**

(a) (1) A. Civil actions to recover Municipal income taxes and penalties and interest on Municipal income taxes shall be brought within the later of:

1. Three years after the tax was due or the return was filed, whichever is later; or
2. One year after the conclusion of the qualifying deferral period, if any.

B. The time limit described in division (a)(1)A. of this section may be extended at any time if both the Tax Administrator and the employer, agent of the employer, other payer, or taxpayer consent in writing to the extension. Any extension shall also extend for the same period of time the time limit described in division (c) of this section.

(2) As used in this section, "qualifying deferral period" means a period of time beginning and ending as follows:

A. Beginning on the date a person who is aggrieved by an assessment files with the Board of Tax Review the request described in Section 881.21. That date shall not be affected by any subsequent decision, finding, or holding by any administrative body or court that the Board of Tax Review did not have jurisdiction to affirm, reverse, or modify the assessment or any part of that assessment.

B. Ending the later of the sixtieth day after the date on which the final determination of the Board of Tax Review becomes final or, if any party appeals from the determination of the Local Board of Tax Review, the sixtieth day after the date on which the final determination of the Board of Tax Review is either ultimately affirmed in whole or in part or ultimately reversed and no further appeal of either that affirmation, in whole or in part, or that reversal is available or taken.

(b) Prosecutions for an offense made punishable under a resolution or ordinance imposing an income tax shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

(c) A claim for a refund of Municipal income taxes shall be brought within the time limitation provided in Section 881.09.

(d) (1) Notwithstanding the fact that an appeal is pending, the petitioner may pay all or a portion of the assessment that is the subject of the appeal. The acceptance of a payment by the Village does not prejudice any claim for refund upon final determination of the appeal.

(2) If upon final determination of the appeal an error in the assessment is corrected by the Tax Administrator, upon an appeal so filed or pursuant to a final determination of the Board of Tax Review, of the Ohio Board of Tax Appeals, or any court to which the decision of the Ohio Board of Tax Appeals has been appealed, so that the resultant amount due is less than the amount paid, a refund will be paid in the amount of the overpayment as provided by Section 881.09, with interest on that amount as provided by of Section 881.09(e).

(e) No civil action to recover the Village income tax or related penalties or interest shall be brought during either of the following time periods:

(1) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties;

(2) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

### **881.13 AUDITS.**

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

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

(c) At all stages of an audit by the Tax Administrator, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. The Tax Administrator shall prescribe a form by which a taxpayer may designate such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the Tax Administrator. If a taxpayer has not submitted such a form, the Tax Administrator may accept other evidence, as the Tax Administrator considers appropriate, that a person is the authorized representative of a taxpayer.

A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner.

This division does not authorize the practice of law by a person who is not an attorney.

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

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

(f) If the Tax Administrator fails to substantially comply with the provisions of this section, the Tax Administrator, upon application by the taxpayer, shall excuse the taxpayer from penalties and interest.

### **881.14 SERVICE OF ASSESSMENT.**

(a) As used in this section:

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

(2) "Undeliverable address" means an address to which the postal service or an authorized delivery service under Ohio R.C. 5703.056 is not able to deliver an assessment of the Tax Administrator, except when the reason for non-delivery is because the addressee fails to acknowledge or accept the assessment.

(b) Subject to division (c) of this section, a copy of each assessment shall be served upon the person affected thereby either by personal service, by certified mail, or by a delivery service authorized under Ohio R.C. 5703.056. With the permission of the person affected by an assessment, the Tax Administrator may deliver the assessment through alternative means as provided in this section, including, but not limited to, delivery by secure electronic mail.

(c) (1) A. If certified mail is returned because of an undeliverable address, a Tax Administrator shall utilize reasonable means to ascertain a new last known address, including the use of a change of address service offered by the postal service or an authorized delivery service under Ohio R.C. 5703.056. If the Tax Administrator is unable to ascertain a new last known address, the assessment shall be sent by ordinary mail and considered served. If the ordinary mail is subsequently returned because of an undeliverable address, the assessment remains appealable within sixty days after the assessment's postmark.

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

(2) If mailing of an assessment by a Tax Administrator by certified mail is returned for some cause other than an undeliverable address, the Tax Administrator shall resend the assessment by ordinary mail. The assessment shall show the date the Tax Administrator sends the assessment and include the following statement:

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

Unless the mailing is returned because of an undeliverable address, the mailing of that information is prima facie evidence that delivery of the assessment was completed ten days after the Tax Administrator sent the assessment by ordinary mail and that the assessment was served.

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

(d) (1) A person disputing the presumption of delivery and service under division (c) of this section bears the burden of proving by a preponderance of the evidence that the address to which the assessment was sent by certified mail was not an address with which the person was associated at the time the Tax Administrator originally mailed the assessment. For the purposes of this section, a person is associated with an address at the time the Tax Administrator originally mailed the assessment if, at that time, the person was residing, receiving legal documents, or

conducting business at the address; or if, before that time, the person had conducted business at the address and, when the assessment was mailed, the person's agent or the person's affiliate was conducting business at the address. For the purposes of this section, a person's affiliate is any other person that, at the time the assessment was mailed, owned or controlled at least twenty percent, as determined by voting rights, of the addressee's business.

(2) If a person elects to appeal an assessment on the basis described in division (d)(1) of this section, and if that assessment is subject to collection and is not otherwise appealable, the person must do so within sixty days after the initial contact by the Tax Administrator or other Village official, or the designee of either, with the person. Nothing in this division prevents the Tax Administrator or other official from entering into a compromise with the person if the person does not actually file such an appeal with the Local Board of Tax Review.

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

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

(g) Additional regulations as detailed in the Rules and Regulations shall apply.

#### **881.15 ADMINISTRATION OF CLAIMS.**

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

(b) Nothing in this chapter prohibits a Tax Administrator from doing either of the following if such action is in the best interests of the municipal corporation:

(1) Compromise a claim;

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

(c) The Tax Administrator's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable.

(d) A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall be to the benefit of only the parties to the compromise or agreement, and shall not eliminate or otherwise affect the liability of any other person.

(e) A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due.

#### **881.16 TAX INFORMATION CONFIDENTIAL.**

(a) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this chapter is confidential, and no person shall access or disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the Village as authorized by this chapter. The Tax Administrator or a designee thereof may furnish copies of returns filed or otherwise received under this chapter and other related tax information to the Internal Revenue Service, the Tax Commissioner, and tax administrators of other municipal corporations.



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

### **881.17 FRAUD.**

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

### **881.18 INTEREST AND PENALTIES.**

(a) As used in this section:

(1) "Applicable law" means this chapter, the resolutions, ordinances, codes, directives, instructions, and rules adopted by the Village provided they impose or directly or indirectly address the levy, payment, remittance, or filing requirements of the Village.

(2) "Federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year.

(3) "Income tax," "estimated income tax," and "withholding tax" means any income tax, estimated income tax, and withholding tax imposed by the Village pursuant to applicable law, including at any time before January 1, 2016.

(4) "Interest rate as described in division (a) of this section" means the Federal short-term rate, rounded to the nearest whole number percent, plus five percent. The rate shall apply for the calendar year next following the July of the year in which the Federal short-term rate is determined in accordance with division (a)(2) of this section.

(5) "Return" includes any tax return, report, reconciliation, schedule, and other document required to be filed with a the Tax Administrator or the Village by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.

(6) "Unpaid estimated income tax" means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.

(7) "Unpaid income tax" means income tax due but not paid by the date the income tax is required to be paid under applicable law.

(8) "Unpaid withholding tax" means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.

(9) "Withholding tax" includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee's qualifying wages.

(b) (1) This section applies to the following:

A. Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;

B. Income tax, estimated income tax, and withholding tax required to be paid or remitted to the Village on or after January 1, 2016.

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

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

(1) Interest shall be imposed at the rate described in division (a) of this section, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax.

(2) A. With respect to unpaid income tax and unpaid estimated income tax, the Village may impose a penalty equal to fifteen percent of the amount not timely paid.

B. With respect to any unpaid withholding tax, the Village may impose a penalty ~~equal to~~ **not exceeding** fifty percent of the amount not timely paid.

(3) With respect to returns other than estimated income tax returns, the Village may impose a penalty of twenty-five dollars (\$25.00) for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed one hundred fifty dollars (\$150.00) for each failure.

(d) Nothing in this section requires the Village to refund or credit any penalty, amount of interest, charges, or additional fees that the Village has properly imposed or collected before January 1, 2016.

(e) Nothing in this section limits the authority of the Village to abate or partially abate penalties or interest imposed under this section when the Tax Administrator determines, in the Tax Administrator's sole discretion, that such abatement is appropriate.

(f) By the 31st day of October of each year the Village shall publish the rate described in division (a) of this section applicable to the next succeeding calendar year.

(g) The Village may impose on the taxpayer, employer, any agent of the employer, or any other payer the Village's post-judgment collection costs and fees, including attorney's fees.

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

### Authority.

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

(1) A. Exercise all powers whatsoever of a query nature as provided by law, including, the right to inspect books, accounts, records, memorandums, and Federal and State income tax returns, to examine persons under oath, to issue orders or subpoenas for the production of books, accounts, papers, records, documents, and testimony, to take depositions, to apply to a court for attachment proceedings as for contempt, to approve vouchers for the fees of officers and witnesses, and to administer oaths.

B. The powers referred to in this division of this section shall be exercised by the Tax Administrator only in connection with the performance of the duties respectively assigned to the Tax Administrator under the Village's income tax ordinance;

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

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

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

(5) Exercise the authority provided by law relative to consenting to the compromise and settlement of tax claims;

(6) Exercise the authority provided by law relative to the use of alternative apportionment methods by taxpayers in accordance with Section 881.03;

(7) A. Make all tax findings, determinations, computations, and orders the Tax Administrator is by law authorized and required to make and, pursuant to time limitations provided by law, on the Tax Administrator's own motion, review, re-determine, or correct any tax findings, determinations, computations, or orders the Tax Administrator has made.

B. If an appeal has been filed with the Board of Tax Review or other appropriate tribunal, the Tax Administrator shall not review, re-determine, or correct any tax finding, determination, computation, or order which the Tax Administrator has made, unless such appeal or application is withdrawn by the appellant or applicant, is dismissed, or is otherwise final;

(8) Destroy any or all returns or other tax documents in the manner authorized by law;

(9) Enter into an agreement with a taxpayer to simplify the withholding obligations described in Section 881.04.

#### Verification of Accuracy of Returns and Determination of Liability.

(b) (1) A Tax Administrator, or any authorized agent or employee thereof may examine the books, papers, records, and Federal and State income tax returns of any employer, taxpayer, or other person that is subject to, or that the Tax Administrator believes is subject to, the provisions of this chapter for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due under this chapter. Upon written request by the Tax Administrator or a duly authorized agent or employee thereof, every employer, taxpayer, or other person subject to this section is required to furnish the opportunity for the Tax Administrator, authorized agent, or employee to investigate and examine such books, papers, records, and Federal and State income tax returns at a reasonable time and place designated in the request.

(2) The records and other documents of any taxpayer, employer, or other person that is subject to, or that a Tax Administrator believes is subject to, the provisions of this chapter shall be open to the Tax Administrator's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the Tax Administrator, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The Tax Administrator may require any person, by notice served on that person, to keep such records as the Tax Administrator determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by the Village or for the withholding of such tax.

(3) The Tax Administrator may examine under oath any person that the Tax Administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Tax Administrator may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and Federal and State income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

(4) No person issued written notice by the Tax Administrator compelling attendance at a hearing or examination or the production of books, papers, records, or Federal or State income tax returns under this section shall fail to comply.

Identification Information.

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

(2) A. If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within thirty days of making the request, nothing in this chapter prohibits the Tax Administrator from imposing a penalty upon the person to whom the request was directed pursuant to Section 881.18, in addition to any applicable penalty described in Section 881.99.

B. If a person required by the Tax Administrator to provide identifying information does not notify the Tax Administrator of a change with respect to that information as required under Section 881.19(c) within thirty days after filing the next tax document requiring such identifying information, nothing in this chapter prohibits the Tax Administrator from imposing a penalty pursuant to Section 881.18.

C. The penalties provided for under divisions (c)(2)A. and B. of this section may be billed and imposed in the same manner as the tax or fee with respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in Section 881.99 for a violation of Section 881.17 and any other penalties that may be imposed by the Tax Administrator by law.

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

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

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

(c) A taxpayer is not relieved of tax liability for any activity or transaction related to a request for an opinion that contained any misrepresentation or omission of one or more material facts.

(d) A Tax Administrator may refuse to offer an opinion on any request received under this section. Such refusal is not subject to appeal.

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

(f) An opinion of the Tax Administrator issued under this section is not subject to appeal.

### **881.21 BOARD OF TAX REVIEW.**

(a) (1) The Board of Tax Review shall consist of three members. Two members shall be appointed by Council, but such appointees may not be employees, elected officials, or contractors with the Village at any time during their term or in the five years immediately preceding the date of appointment. One member shall be appointed by the Village Manager. This member may be an employee of the Village, but may not be the Director of Finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(2) The term for members of the Board of Tax Review of the Village shall be two years. There is no limit on the number of terms that a member may serve if the member is reappointed by the legislative authority. The Board member appointed by the Village Manager shall serve at the discretion of the administrative official.

(3) Members of the Board of Tax Review appointed by the legislative authority may be removed by the legislative authority by majority vote for malfeasance, misfeasance, or nonfeasance in office. To remove such a member, the legislative authority must give the member a copy of the charges against the member and afford the member an opportunity to be publicly heard in person or by counsel in the member's own defense upon not less than ten days' notice. The decision by the legislative authority on the charges is final and not appealable.

(4) A member of the Board of Tax Review who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.

(5) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the Board of Tax Review shall impair the power and authority of the remaining members to exercise all the powers of the Board of Tax Review.

(6) If a member is temporarily unable to serve on the Board of Tax Review due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the Board of Tax Review in the member's place. The appointment of such an individual shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

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

(c) Any person who has been issued an assessment may appeal the assessment to the Board of Tax Review by filing a request with the Board of Tax Review. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty days after the taxpayer receives the assessment.

(d) The Board of Tax Review shall schedule a hearing to be held within sixty days after receiving an appeal of an assessment under division (c) of this section, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board of Tax Review and may be represented by an attorney at law, certified public accountant, or other representative. The Board of Tax Review may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within 120 days after the first day of the hearing unless the parties agree otherwise.

(e) The Board of Tax Review may affirm, reverse, or modify the Tax Administrator's assessment or any part of that assessment. The Board of Tax Review shall issue a final determination on the appeal within ninety days after the Board of Tax Review's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the Board of Tax Review's final determination as provided in Ohio R.C. 5717.011.

(f) The Board of Tax Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Ohio R.C. 149.43. Hearings requested by a taxpayer before a Board of Tax Review created pursuant to this section are not meetings of a public body subject to Ohio R.C. 121.22.

#### **881.22 AUTHORITY TO CREATE RULES AND REGULATIONS.**

(a) Nothing in this chapter prohibits the legislative authority of the Village, or a Tax Administrator pursuant to authority granted to the Administrator by resolution or ordinance, to adopt rules to administer an income tax imposed by the Village in accordance with this chapter. Such rules shall not conflict with or be inconsistent with any provision of this chapter. Taxpayers are hereby required to comply not only with the requirements of this chapter, but also to comply with the Rules and Regulations.

(b) All rules adopted under this section shall be published and posted on the internet.

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

(a) Beginning on January 31, 2017 and each year thereafter, all owners of real property who rent or otherwise lease real property located in the Village to any person or business for residential dwelling or commercial purposes, including all or any part of houses, apartments, rooms and other rental accommodations during any part of a calendar year after January 1, 2016, shall file a written report with the Tax Administrator disclosing the name, address and telephone number, if available, of each residential or commercial tenant known to have occupied any part of a house, apartment, room or other residential dwelling or commercial rental property during the preceding calendar year.

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

he believes such person has knowledge of the name, address and telephone number of any tenant of residential real property in the Village.

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

(1) Fails, refuses or neglects to timely file a written report required by division (a) of this section;

(2) Makes an incomplete or intentionally false written report required by division (a) of this section;

(3) Fails to appear before the Tax Administrator or any duly authorized agent and to produce and disclose any tenant information pursuant to any order or subpoena of the Tax Administrator as authorized in this section; or

(4) Fails to comply with the provisions of this section or any order or subpoena of the Tax Administrator.

#### **881.24 SAVINGS CLAUSE.**

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

#### **881.25 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 provisions of this chapter are concerned, it shall continue effective until all of said taxes levied hereunder in the aforesaid periods are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Section 881.12 and Section 881.99 hereof.

(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 881.04 and 881.05 as though the same were continuing.

#### **881.26 ADOPTION OF RITA RULES AND REGULATIONS.**

The Village hereby adopts the Regional Income Tax Agency (RITA) Rules & Regulations, including amendments that may be made from time to time, for use as the Village's Income Tax Rules and Regulations. In the event of a conflict with any provision(s) of the Village Income Tax Ordinances and the RITA Rules & Regulations, the ordinance will supersede. Until and if the contractual relationship between the Village and RITA ceases, this Section 881.26 will supersede all other provisions within this chapter regarding promulgation of rules and regulations by the Tax Administrator.

#### **881.99 VIOLATIONS; PENALTIES.**

(a) Whoever violates Section 881.04, 881.16(a) or 881.17 by failing to remit the Village income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollar (\$1,000) or imprisonment for a term of up to six months, or both. If the individual that commits the violation is an employee, or official, of the Village, the individual is subject to discharge from employment or dismissal from office.

(b) Any person who discloses information received from the Internal Revenue Service in violation of Section 881.16(a) shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than five thousand dollars (\$5,000) plus the costs of prosecution, or imprisonment for a term not exceeding five years, or both. If the individual that commits the violation is an employee, or official, of the Village, the individual is subject to discharge from employment or dismissal from office.

(c) Each instance of access or disclosure in violation of Section 881.16(a) constitutes a separate offense.

(d) If not otherwise specified herein, no person shall:

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

(2) File any incomplete or false return;

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

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

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

(6) Refuse to disclose to the Tax Administrator any information with respect to the income or net profits of a taxpayer;

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

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

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

(e) Any person who violates any of the provisions in division (d) of this section shall be subject to the penalties provided for in division (a) of this section.



**VILLAGE OF YELLOW SPRINGS, OHIO  
ORDINANCE 2018-03**

**REPEALING CHAPTER 881 “EARNED INCOME TAX REGULATIONS EFFECTIVE BEGINNING JANUARY 1, 2016” OF THE CODIFIED ORDINANCES OF THE VILLAGE OF YELLOW SPRINGS, OHIO AND ENACTING NEW CHAPTER 881 “EARNED INCOME TAX REGULATIONS EFFECTIVE BEGINNING JANUARY 1, 2016” AND DECLARING AN EMERGENCY**

**Whereas**, in H.B. 49 of the 132nd General Assembly, the State’s general appropriations bill for the biennium, includes Section 803.100 purporting to require that municipalities, on or before January 31, 2018, adopt certain municipal income tax provisions that are also adopted within H.B. 49 to authorize State officials to collect and administer municipal net profits taxes; and

**Whereas**, Section 803.100 of H.B. 49 references and relies upon Section 718.04(A) of the Ohio Revised Code, which purports to make municipal income taxing authority conditional upon a municipality’s adoption of code sections as dictated by the State; and

**Whereas**, although the municipal income tax provisions of H.B. 49, and Section 718.04(A) of the Ohio Revised Code, violate the Home Rule Amendment, the Village nevertheless is compelled to adopt H.B. 49’s municipal income tax provisions to avoid any doubt or taxpayer challenge as to its ability to impose a municipal income tax under the terms of Section 803.100 of H.B. 49 and Section 718.04(A) of the Ohio Revised Code; and

**Whereas**, the Village is a party to ongoing litigation seeking a declaration that the H.B. 49 municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, and other provisions of Ohio law that usurp the powers of local self-government are unconstitutional, and to enjoin all actions by state officials to implement the H.B. 49 municipal income tax provisions, and a stay has been put in place that extends the deadline to make certain changes until February 24, 2018; and

**Whereas**, the Village, by enacting this Ordinance, does not concede the legality of H.B. 49’s municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, or any other law that is subject to the suit in which the Village is participating, and reserves its right to continue prosecution of that lawsuit.

**NOW, THEREFORE, COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO HEREBY ORDAINS THAT:**

**Section 1.** Chapter 881 entitled “Earned Income Tax Regulations Effective Beginning January 1, 2016” of the Codified Ordinances of the Village of Yellow Springs, Ohio be repealed.

**Section 2.** A new Chapter 881 entitled “Earned Income Tax Regulations Effective Beginning January 1, 2016” of the Codified Ordinances of the Village of Yellow Springs, Ohio be enacted to read as set forth on Exhibit A with new language underlined and **bolded**, which is attached hereto and incorporated herein.

**Section 3.** Village Council hereby expressly finds and determines that it does not concede the legality of H.B. 49’s municipal income tax provisions; Section 803.100 of H.B. 49; Section 718.04(A) of the Ohio Revised Code; or any other law that is the subject of the action pending in Case Number 17 CV 194026 in the Lorain County Court of Common Pleas or any other legal challenges filed in the State , and that the Village reserves its rights to continue its participation in and prosecution of said litigation, and any other

litigation challenging the State's authority to dictate municipal tax collection and administration, and that adoption of this Ordinance shall not prejudice the claims of the Village therein.

**Section 4.** This Ordinance shall take effect and be in full force at the earliest date permitted by law.

\_\_\_\_\_  
Brian Housh, President of Council

Passed:

Attest: \_\_\_\_\_  
Judy Kintner, Clerk of Council

**ROLL CALL**

Brian Housh \_\_\_\_ Judith Hempfling \_\_\_\_ Marianne MacQueen \_\_\_\_  
Kevin Stokes \_\_\_\_ Lisa Kreeger \_\_\_\_

## **EXHIBIT A**

### **881.01 AUTHORITY TO LEVY TAX; PURPOSE OF TAX.**

(a) To provide funds for the purpose of capital improvements and general operations of the Village of Yellow Springs (the "Village") there is hereby levied a tax on salaries, wages, commissions and other compensation and on net profits as hereinafter provided.

(b) The annual tax is levied at a rate of one and one-half percent. The tax is levied at a uniform rate on all persons residing in or earning or receiving income in the Village. The tax is levied on income, qualifying wages, commissions and other compensation, and on net profits as hereinafter provided in Section 881.03 and other sections as they may apply.

(c) The tax on income and the withholding tax established by this chapter are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax is levied in accordance with, and is intended to be consistent with, the provisions and limitations of Ohio R.C. Chapter 718. This chapter is effective for tax years beginning on or after January 1, 2016. Municipal taxable years beginning on or before December 31, 2015 are subject to Chapter 880, and any amendments thereto, and rules and regulations, and any amendments thereto, as they existed before January 1, 2016.

### **881.02 DEFINITIONS.**

(a) Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to Federal income taxation or in Ohio R.C. Title LVII, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to Federal income tax and in Ohio R.C. Title LVII and the use is not consistent, then the use of the term in the laws of the United States relating to Federal income tax shall control over the use of the term in Ohio R.C. Title LVII.

(b) The singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

(c) As used in this chapter:

(1) "Adjusted Federal taxable income," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division (c)(24)E. of this section, means a C corporation's Federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

A. Deduct intangible income to the extent included in Federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

B. Add an amount equal to five percent of intangible income deducted under division (c)(1)A. of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

C. Add any losses allowed as a deduction in the computation of Federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

D. 1. Except as provided in division (c)(1)D.2. of this section, deduct income and gain included in Federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

2. Division (c)(1)D.1. of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

E. Add taxes on or measured by net income allowed as a deduction in the computation of Federal taxable income;

F. In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of Federal taxable income;

G. Deduct, to the extent not otherwise deducted or excluded in computing Federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under Ohio R.C. 4313.02;

H. Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.

I. Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's Federal taxable income unless an affiliated group of corporations includes that net profit in the group's Federal taxable income in accordance with Section 881.05(v)(3)B.

J. Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's Federal taxable income unless an affiliated group of corporations includes that loss in the group's Federal taxable income in accordance with Section 881.05(v)(3)B.

If the taxpayer is not a C corporation, is not a disregarded entity that has made an election described in division (c)(48)B. of this section, is not a publicly traded partnership that has made the election described in division (c)(24)E of this section, and is not an individual, the taxpayer shall compute adjusted Federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States Treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (c)(1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of Federal self-employment tax.

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

B. "Assessment" does not include a notice denying a request for refund issued under Section 881.09(c)(3), a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (c)(2)A. of this section.

(3) "Audit" means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a Municipal income tax.

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

(5) "Calendar quarter" means the three-month period ending on the last day of March, June, September, or December.

(6) "Casino operator" and "casino facility" have the same meanings as in Ohio R.C. 3772.01.

(7) "Certified mail," "express mail," "United States mail," "postal service," and similar terms include any delivery service authorized pursuant to Ohio R.C. 5703.056.

(8) "Disregarded entity" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for Federal income tax purposes.

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

(10) "Employee" means an individual who is an employee for Federal income tax purposes.

(11) "Employer" means a person that is an employer for Federal income tax purposes.

(12) "Exempt income" means all of the following:

A. The military pay or allowances of members of the Armed Forces of the United States or members of their reserve components, including the national guard of any state.

B. Intangible income.

C. Social Security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, State, or Federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (c)(12)C. of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code.

D. The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

E. Compensation paid under Ohio R.C. 3501.28 or 3501.36 to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars (\$1,000) for the taxable year. Such compensation in excess of one thousand dollars (\$1,000) for the taxable year may be subject to taxation by a municipal corporation. A municipal

corporation shall not require the payer of such compensation to withhold any tax from that compensation.

F. Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations.

G. Alimony and child support received.

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

I. Income of a public utility when that public utility is subject to the tax levied under Ohio R.C. 5727.24 or 5727.30. Division (c)(12)I. of this section does not apply for purposes of Ohio R.C. Chapter 5745.

J. Gains from involuntary conversions, interest on Federal obligations, items of income subject to a tax levied by the State and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business.

K. Compensation or allowances excluded from Federal gross income under section 107 of the Internal Revenue Code.

L. Employee compensation that is not qualifying wages as defined in division (c)(35) of this section.

M. Compensation paid to a person employed within the boundaries of a United States Air Force base under the jurisdiction of the United States Air Force that is used for the housing of members of the United States Air Force and is a center for Air Force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.

N. All of the income of individuals under sixteen years of age.

O. 1. Except as provided in divisions (c)(12)O.2., 3., and 4. of this section, qualifying wages described in Section 881.04(c)(2) or (c)(5) to the extent the qualifying wages are not subject to withholding for the Village under either of those divisions.

2. The exemption provided in division (c)(12)O.1. of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

3. The exemption provided in division (c)(12)O.1. of this section does not apply to qualifying wages that an employer elects to withhold under Section 881.04(c)(4)B.

4. The exemption provided in division (c)(12)O.1. of this section does not apply to qualifying wages if both of the following conditions apply:

a. For qualifying wages described in Section 881.04(c)(2), the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in Section 881.04(c)(5), the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;

b. The employee receives a refund of the tax described in division (c)(12)O.4.a. of this section on the basis of the employee not performing services in that municipal corporation.

P. 1. Except as provided in division (c)(12)P.2. or 3. of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the Village on not more than twenty days in a taxable year.

2. The exemption provided in division (c)(12)P.1. of this section does not apply under either of the following circumstances:

a. The individual's base of operation is located in the municipal corporation.

b. The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (c)(12)P.2.b. of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 881.04(c).

3. Compensation to which division (c)(12)P. of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.

4. For purposes of division (c)(12)P. of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

Q. Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to Ohio R.C. 709.023 on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, Municipal income tax shall be payable only to the municipal corporation of residence.

R. Income the taxation of which is prohibited by the constitution or laws of the United States. Any item of income that is exempt income of a pass-through entity under division (c) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

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

(14) "Generic form" means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated Municipal income taxes, or annual Municipal income tax liability or for filing a refund claim.

(15) "Gross receipts" means the total revenue derived from sales, work done, or service rendered.

(16) "Income" means the following:

A. 1. For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident except as provided in division (c)(24)~~ED~~. of this section.

2. For the purposes of division (c)(16)A.1. of this section:

a. Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that

taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (c)(16)A.4. of this section;

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

3. Division (c)(16)A.2. of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (c)(16)E. of this section.

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

B. In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

C. For taxpayers that are not individuals, net profit of the taxpayer;

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

E. In accordance with a ballot issue, regarding S corporation language, approved by the voters in the election on November 4, 2003, a shareholder's share of net profits of an S corporation are taxable to the Village.

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

(18) "Internal Revenue Code" has the same meaning as in Ohio R.C. 5747.01.

(19) "Limited liability company" means a limited liability company formed under Ohio R.C. Chapter 1705 or under the laws of another state.

(20) "Municipal corporation" includes a joint economic development district or joint economic development zone that levies an income tax under Ohio R.C. 715.691, 715.70, 715.71, or 715.74.

(21) A. "Municipal taxable income" means the following:



1. For a person other than an individual, income apportioned or situated to the Village under Section 881.03, as applicable, reduced by any pre-2017 net operating loss carry forward available to the person for the Village.

2. a. For an individual who is a resident of the Village, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (c)(21)B. of this section, and further reduced by any pre-2017 net operating loss carry forward available to the individual for the municipal corporation.

b. For an individual who is a nonresident of the Village, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the municipal corporation under Section 881.03, then reduced as provided in division (c)(21)B. of this section, and further reduced by any pre-2017 net operating loss carry forward available to the individual for the Village.

B. In computing the Municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (c)(21)A.2.a. or (c)(21)B. of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for Federal income tax purposes for the taxable year, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for Federal income tax purposes, but only to the extent the expenses do not relate to exempt income. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation and are not related to exempt income.

(22) "Municipality" means the same as the Village of Yellow Springs. If the term Village is capitalized in the chapter, the reference is to the Village of Yellow Springs.

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

(24) A. "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (c)(24)A. of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (c)(24)C. of this section.

B. "Net profit" for a person other than an individual means adjusted federal taxable income reduced by any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017, subject to the limitations of division (C)(24)(c) of this section.

C. (i) The amount of such operating loss shall be deducted from net profit to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five (5) consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

(ii) No person shall use the deduction allowed by division (C)(24)(c) of this section to offset qualifying wages.

(iii)(a) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct more than fifty percent (50%) of the amount of the deduction otherwise allowed by division (C)(24)(c) of this section.

(b) For taxable years beginning in 2023 or thereafter, a person may deduct the full amount allowed by (C)(24)(c) of this section without regard to the limitation of division (C)(24)(c)(iii)(a) of this section.

(iv) Any pre-2017 net operating loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to (C)(24)(c) of this section.

(v) Nothing in division (C)(24)(c)(iii)(a) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (C)(24)(c)(iii)(a) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (C)(1)(h)(iii)(a) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (C)(24)(c)(iii)(a) of this section shall apply to the amount carried forward.

D. For the purposes of this chapter, and notwithstanding division (c)(24)B. of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

E. A publicly traded partnership that is treated as a partnership for Federal income tax purposes, and that is subject to tax on its net profits by the Village, may elect to be treated as a C corporation for the Village. The election shall be made on the annual return for the Village. The Village will treat the publicly traded partnership as a C corporation if the election is so made.

(25) "Nonresident" means an individual who is not a resident of the Village.

(26) "Ohio Business Gateway" means the online computer network system, created under Ohio R.C. 125.30, that allows persons to electronically file business reply forms with State agencies and includes any successor electronic filing and payment system.

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

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

(29) "Pension" means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form.

Pension does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, Wage and Tax Statement, or successor form.

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

(31) "Postal service" means the United States postal service.

(32) "Postmark date," "date of postmark," and similar terms include the date recorded and marked in the manner described in division (B)(3) of Ohio R.C. 5703.056.

(33) A. "Pre-2017 net operating loss carry forward" means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a

resolution or ordinance of the Village that was adopted by the Village before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in the Village in future taxable years.

B. For the purpose of calculating Municipal taxable income, any pre-2017 net operating loss carry forward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.

(34) "Publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.

(35) "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

A. Deduct the following amounts:

1. Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.

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

3. Any amount included in wages that is exempt income.

B. Add the following amounts:

1. Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.

2. Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. Division (c)(35)B.2. of this section applies only to those amounts constituting ordinary income.

3. Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (c)(35)B.3. of this section applies only to employee contributions and employee deferrals.

4. Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.

5. Any amount received that is treated as self-employment income for Federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code.

6. Any amount not included in wages if all of the following apply:

a. For the taxable year the amount is employee compensation that is earned outside the United States and that either is included in the taxpayer's gross income for Federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code;

b. For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;

c. For no succeeding taxable year will the amount constitute wages; and

d. For any taxable year the amount has not otherwise been added to wages pursuant to either division (c)(35)B. of this section or Ohio R.C. 718.03, as that section existed before the effective date of H.B. 5 of the 130th General Assembly, March 23, 2015.

(36) "Related entity" means any of the following:

A. An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock;

B. A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the taxpayer's outstanding stock;

C. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (c)(36)D. of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation's outstanding stock;

D. The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (c)(36)A. to C. of this section have been met.

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

(38) "Resident" means an individual who is domiciled in the municipal corporation as determined under Section 881.03(e).

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

(40) "Schedule C" means Internal Revenue Service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(41) "Schedule E" means Internal Revenue Service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(42) "Schedule F" means Internal Revenue Service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(43) "Single member limited liability company" means a limited liability company that has one direct member.

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

(45) (A) "Tax Administrator" means the individual charged with direct responsibility for administration of an income tax levied by the Village in accordance with this chapter. Tax Administrator does not include the state tax commissioner.

(B) "Tax Commissioner" means the tax commissioner appointed under Section 121.03 of the Ohio Revised Code.

(46) "Tax return preparer" means any individual described in section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.

(47) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(48) A. "Taxpayer" means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (c)(48)B.1. of this section, a disregarded entity.

B. 1. A single member limited liability company that is a disregarded entity for Federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:

a. The limited liability company's single member is also a limited liability company.

b. The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.

c. Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of Ohio R.C. 718.01 as that section existed on December 31, 2004.

d. The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.

e. The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.

2. For purposes of division (c)(48)B.1.e. of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least four hundred thousand dollars (\$400,000).

(49) "Taxpayers' rights and responsibilities" means the rights provided to taxpayers in Sections 881.09, 881.12, 881.13, 881.19(b), 881.20, 881.21, and Ohio R.C. 5717.011 and 5717.03, and the responsibilities of taxpayers to file, report, withhold, remit, and pay Municipal income tax and otherwise comply with Ohio R.C. Chapter 718 and resolutions, ordinances, and rules and regulations adopted by the Village for the imposition and administration of a Municipal income tax.

(50) "Video lottery terminal" has the same meaning as in Ohio R.C. 3770.21.

(51) "Video lottery terminal sales agent" means a lottery sales agent licensed under Ohio R.C. Chapter 3770 to conduct video lottery terminals on behalf of the State pursuant to Ohio R.C. 3770.21.

### **881.03 IMPOSITION OF TAX.**

The income tax levied by the Village at a rate of one and one-half percent is levied on the Municipal taxable income of every person residing in and/or earning and/or receiving income in the Village.

Individuals.

(a) For residents of the Village, the income tax levied herein shall be on all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident. This is further detailed in the definition of income (Section 881.02(c)(16)).

(b) For nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(c) For residents and nonresidents, income can be reduced to "Municipal taxable income" as defined in Section 881.02(c)(21). Exemptions which may apply are specified in Section 881.02(c)(12).

Refundable Credit for Nonqualified Deferred Compensation Plan.

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

A. "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.

B. "Qualifying loss" means the amount of compensation attributable to a taxpayer's nonqualified deferred compensation plan, less the receipt of money and property attributable to distributions from the nonqualified deferred compensation plan. Full loss is sustained if no distribution of money and property is made by the nonqualified deferred compensation plan. The taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.

C. 1. "Qualifying tax rate" means the applicable tax rate for the taxable year for the which the taxpayer paid income tax to the Village with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

2. If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the Village each year with respect to the nonqualified deferred compensation plan.

D. "Refundable credit" means the amount of the Village income tax that was paid on the non-distributed portion, if any, of a nonqualified deferred compensation plan.

(2) If, in addition to the Village, a taxpayer has paid tax to other municipal corporations with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.

(3) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to the Village for all taxable years with respect to the nonqualified deferred compensation plan.

(4) The credit allowed under this division is allowed only to the extent the taxpayer's qualifying loss is attributable to:

A. The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or

B. The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

Domicile.

(e) (1) A. An individual is presumed to be domiciled in the Village for all or part of a taxable year if the individual was domiciled in the Village on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in the Village for all or part of the taxable year.

B. An individual may rebut the presumption of domicile described in division (e)(1)A. of this section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the Village for all or part of the taxable year.

(2) For the purpose of determining whether an individual is domiciled in the Village for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:

A. The individual's domicile in other taxable years;

B. The location at which the individual is registered to vote;

C. The address on the individual's driver's license;

D. The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;

E. The location and value of abodes owned or leased by the individual;

F. Declarations, written or oral, made by the individual regarding the individual's residency;

G. The primary location at which the individual is employed;

H. The location of educational institutions attended by the individual's dependents as defined in section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the residency of the individual or the individual's spouse in the municipal corporation where the educational institution is located;

I. The number of contact periods the individual has with the Village. For the purposes of this division, an individual has one "contact period" with the Village if the individual is away overnight from the individual's abode located outside of the Village and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the Village.

(3) All additional applicable factors are provided in the Rules and Regulations.

Businesses.

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

(1) Except as otherwise provided in division (f)(2) of this section, net profit from a business or profession conducted both within and without the boundaries of the Village shall be considered as having a taxable situs in the Village for purposes of Municipal income taxation in the same proportion as the average ratio of the following:

A. The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the Village during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

B. Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the Village to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under Section 881.04(c);

C. Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Village to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(2) A. If the apportionment factors described in division (f)(1) of this section do not fairly represent the extent of a taxpayer's business activity in the Village, the taxpayer may request, or the Tax Administrator of the Village may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

1. Separate accounting;
2. The exclusion of one or more of the factors;
3. The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;
4. A modification of one or more of the factors.

B. A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by Section 881.12(a).

C. The Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (f)(2)A. of this section, but only by issuing an assessment to the taxpayer within the period prescribed by Section 881.12(a).

D. Nothing in division (f)(2) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by the Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(3) As used in division (f)(1)B. of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

A. A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:

1. The employer;
2. A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
3. A vendor, customer, client, or patient of a person described in division (f)(3)A.2. of this section, or a related member of such a vendor, customer, client, or patient.



B. Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;

C. Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (f)(3)A. or B. of this section solely in order to avoid or reduce the employer's Municipal income tax liability. If the Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(4) For the purposes of division (f)(1)C. of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:

A. Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in the Village if, regardless of where title passes, the property meets any of the following criteria:

1. The property is shipped to or delivered within the Village from a stock of goods located within the Village.

2. The property is delivered within the Village from a location outside the Village, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village and the sales result from such solicitation or promotion.

3. The property is shipped from a place within the Village to purchasers outside the Village, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

B. Gross receipts from the sale of services shall be situated to the Village to the extent that such services are performed in the Village.

C. To the extent included in income, gross receipts from the sale of real property located in the Village shall be situated to the Village.

D. To the extent included in income, gross receipts from rents and royalties from real property located in the Village shall be situated to Village.

E. Gross receipts from rents and royalties from tangible personal property shall be situated to Village based upon the extent to which the tangible personal property is used in Village.

(5) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual, or by a disregarded entity owned by the individual, shall be subject to the Village's tax only if the property generating the net profit is located in the Village or if the individual taxpayer that receives the net profit is a resident of the Village. The Village shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.

(6) A. Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the Village, if applicable, based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the Village to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

B. An individual who is a resident of the Village shall report the individual's net profit from all real estate activity on the individual's annual tax return for the Village. The individual

may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such a credit is allowed under the Village's income tax ordinance.

(7) When calculating the ratios described in division (f)(1) of this section for the purposes of that division or division (f)(2) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

#### **881.04 COLLECTION AT SOURCE.**

##### Withholding Provisions.

(a) Each employer, agent of an employer, or other payer located or doing business in the Village shall withhold an income tax from the qualifying wages earned and/or received by each employee in the Village. Except for qualifying wages for which withholding is not required under Section 881.03 or division (b)(4) or (b)(6) of this section, the tax shall be withheld at the rate, specified in Section 881.03, of one and one-half percent. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

(b) (1) Except as provided in division (b)(2) of this section, an employer, agent of an employer, or other payer shall remit to the Tax Administrator of the Village the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer according to the following schedule:

A. Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the Village in the preceding calendar year exceeded two thousand three hundred ninety-nine dollars (\$2,399), or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the Village in any month of the preceding calendar quarter exceeded two hundred dollars (\$200.00).

Payments under division (b)(1)A. of this section shall be made to the Tax Administrator not later than fifteen days after the last day of each month for which the tax was withheld.

B. Any employer, agent of an employer, or other payer not required to make payments under division (b)(1)A. of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the last day of the month following the last day of each calendar quarter.

(2) If the employer, agent of an employer, or other payer is required to make payments electronically for the purpose of paying Federal taxes withheld on payments to employees under section 6302 of the Internal Revenue Code, 26 C.F.R. 31.6302-1, or any other Federal statute or regulation, the payment shall be made by electronic funds transfer to the Tax Administrator of all taxes deducted and withheld on behalf of the Village. The payment of tax by electronic funds transfer under this division does not affect an employer's, agent's, or other payer's obligation to file any return as required under this section.

(3) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by Tax Administrator and the Village as the return required of a non-resident employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer.

(4) An employer, agent of an employer, or other payer is not required to withhold the Village income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.

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

B. The failure of an employer, agent of an employer, or other payer to remit to the Village the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.

(6) Compensation deferred before June 26, 2003, is not subject to the Village income tax or income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

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

(8) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Tax Administrator listing:

A. The names, addresses, and Social Security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the Village during the preceding calendar year;

B. The amount of tax withheld, if any, from each such employee, the total amount of qualifying wages paid to such employee during the preceding calendar year;

C. The name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year;

D. Any other information required for Federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee;

E. Other information as may be required by the Tax Administrator.

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

(10) An employer is required to deduct and withhold the Village income tax on tips and gratuities received by the employer's employees and constituting qualifying wages, but only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.

(11) The Tax Administrator shall consider any tax withheld by an employer at the request of an employee, when such tax is not otherwise required to be withheld by this chapter, to be tax required to be withheld and remitted for the purposes of this section.

Occasional Entrant - Withholding.

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

A. "Employer" includes a person that is a related member to or of an employer.

B. "Fixed location" means a permanent place of doing business in this State, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.

C. "Principal place of work" means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, "principal place of work" means the worksite location in this State to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, "principal place of work" means the location in this State at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

If there is not a single municipal corporation in which the employee spent the greatest number of days in a calendar year performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (c)(2)A.1. of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's principal place of work with respect to those qualifying wages for the purposes of this section.

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

D. "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.

E. "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.

F. "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.

G. "Worksite location" means a construction site or other temporary worksite in this State at which the employer provides services for more than twenty days during the calendar year. "Worksite location" does not include the home of an employee.

(2) A. Subject to divisions (c)(3), (c)(5), (c)(6), and (c)(7) of this section, an employer is not required to withhold the Village income tax on qualifying wages paid to an employee for the performance of personal services in the Village if the employee performed such services in the Village on twenty or fewer days in a calendar year, unless one of the following conditions applies:

1. The employee's principal place of work is located in the Village.

2. The employee performed services at one or more presumed worksite locations in the Village. For the purposes of this division, "presumed worksite location" means a construction site or other temporary worksite in the Village at which the employer provides or provided services that can reasonably be, or would have been, expected by the employer to last more than twenty days in a calendar year. Services can reasonably be expected by the employer to last more than twenty days if either of the following applies at the time the services commence:

a. The nature of the services are such that it will require more than twenty days of the services to complete the services;

b. The agreement between the employer and its customer to perform services at a location requires the employer to perform the services at the location for more than twenty days.

3. The employee is a resident of the Village and has requested that the employer withhold tax from the employee's qualifying wages as provided in Section 881.04.

4. The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure.

B. For the purposes of division (c)(2)A. of this section, an employee shall be considered to have spent a day performing services in the Village only if the employee spent more time performing services for or on behalf of the employer in the Village than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:

1. Traveling to the location at which the employee will first perform services for the employer for the day;

2. Traveling from a location at which the employee was performing services for the employer to any other location;

3. Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;

4. Transporting or delivering property described in division (c)(2)B.3. of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;

5. Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.

(3) If the principal place of work of an employee is located in another Ohio municipal corporation that imposes an income tax, the exception from withholding requirements described in division (c)(2)A. of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to that municipal corporation.

(4) A. Except as provided in division (c)(4)B. of this section, if, during a calendar year, the number of days an employee spends performing personal services in the Village exceeds the twenty-day threshold, the employer shall withhold and remit tax to the Village for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in the Village.

B. An employer required to begin withholding tax for the Village under division (c)(4)A. of this section may elect to withhold tax for the Village for the first twenty days on which the employer paid qualifying wages to the employee for personal services performed in the Village.

(5) If an employer's fixed location is the Village and the employer qualifies as a small employer as defined in Section 881.02, the employer shall withhold Municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the Village, regardless of the number of days which the employee worked outside the corporate boundaries of the Village.

To determine whether an employer qualifies as a small employer for a taxable year, the employer will be required to provide the Tax Administrator with the employer's Federal income tax return for the preceding taxable year.

(6) Divisions (c)(2)A. and (c)(4) of this section shall not apply to the extent that a Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of Section 881.04.

### **881.05 ANNUAL RETURN; FILING.**

(a) An annual Village income tax return shall be completed and filed by every individual taxpayer sixteen years of age or older and any taxpayer that is not an individual for each taxable year for which the taxpayer is subject to the tax, whether or not a tax is due thereon.

(1) The Tax Administrator may accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer under Section 881.04 of this chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due the Village.

(2) Retirees having no Municipal taxable income for the Village income tax purposes may file with the Tax Administrator a written exemption from these filing requirements on a form prescribed by the Tax Administrator. The written exemption shall indicate the date of retirement and the entity from which retired. The exemption shall be in effect until such time as the retiree receives Municipal taxable income taxable to the Village, at which time the retiree shall be required to comply with all applicable provisions of this chapter.

(b) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(c) If an individual is unable to complete and file a return or notice required by the Village, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual.

(d) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust.

(e) The Village shall permit spouses to file a joint return.

(f) (1) Each return required to be filed under this division shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer. The return shall include the taxpayer's Social Security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.

(2) The Tax Administrator shall require a taxpayer who is an individual to include, with each annual return, and amended return, copies of the following documents: all of the taxpayer's

Internal Revenue Service form W-2, "Wage and Tax Statements," including all information reported on the taxpayer's Federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040 or, in the case of a return or request required by a qualified municipal corporation, Ohio form IT-1040; and, with respect to an amended tax return, any other documentation necessary to support the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.

(3) The Tax Administrator may require a taxpayer that is not an individual to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.

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

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

(g) (1) A. Except as otherwise provided in this chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of State individual income tax returns under division (G) of Ohio R.C. 5747.08. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the Village. No remittance is required if the net amount due is ten dollars (\$10.00) or less.

B. Except as otherwise provided in this chapter, each annual net profit return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth of the fourth month following the end of the taxpayer's taxable year. The taxpayer shall complete and file the return or notice on forms prescribed to the Village. No remittance is required if the net amount due is ten dollars (\$10.00) or less.

(2) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's Federal income tax return shall automatically receive an extension for the filing of the Village's income tax return. The extended due date of the Village's income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates. An extension of time to file under this division is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

A. A copy of the Federal extension request shall be included with the filing of the Village's income tax return.

B. A taxpayer that has not requested or received a six-month extension for filing the taxpayer's Federal income tax return may submit a written request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's Village income tax return. If the request is received by the Tax Administrator on or before the date the Village income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

(3) If the Tax Commissioner extends for all taxpayers the date for filing State income tax returns under division (G) of Ohio R.C. 5747.08, a taxpayer shall automatically receive an extension for the filing of the Village's income tax return. The extended due date of the Village's income tax return shall be the same as the extended due date of the State income tax return.

(4) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the Village, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this division, including taxpayers not otherwise required to file annual returns.

(5) To the extent that any provision in this division (g) of this section conflicts with any provision in divisions (n), (o), (p), or (q) of this section, the provisions in divisions (n), (o), (p), or (q) prevail.

(h) (1) For taxable years beginning after 2015, the Village shall not require a taxpayer to remit tax with respect to net profits if the net amount due is ten dollars (\$10.00) or less.

(2) Any taxpayer not required to remit tax to the Village for a taxable year pursuant to division (h)(1) of this section shall file with the Village an annual net profit return under division (f)(3) of this section, unless the provisions of division (h)(3) apply.

(3)A. A person may notify the Tax Administrator that the person does not expect to be a taxpayer subject to the Village's income tax ordinance for a taxable year if both the following apply:

1. The person was required to file a tax return with the Village for the immediately preceding taxable year because the person performed services at a worksite location (as defined in Section 881.4(c)(1)G.) within the Village.

2. The person no longer provides services in the Village and does not expect to be subject to the Village's income tax for the taxable year.

B. The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the Village. The affidavit shall also include the following statement: "The affiant has no plans to perform any services within the Village, make any sales in the Village, or otherwise become subject to the tax levied by the Village during the taxable year. If the affiant does become subject to the tax levied by the Village for the taxable year, the affiant agrees to be considered a taxpayer and to properly comply as a taxpayer with the Village income tax ordinance and rules and regulations." The person shall sign the affidavit under penalty of perjury.

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

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



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

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

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

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

Filing via Ohio Business Gateway.

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

(2) Any employer, agent of an employer, or other payer may report the amount of Municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio Business Gateway.

(3) Nothing in this section affects the due dates for filing employer withholding tax returns.

Extension for Service in or for the Armed Forces.

(n) Each member of the national guard of any state and each member of a reserve component of the Armed Forces of the United States called to active duty pursuant to an executive order issued by the President of the United States or an act of the Congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the Armed Forces, may apply to the Tax Administrator of the Village for both an extension of time for filing of the return and an extension of time for payment of taxes required by the Village during the period of the member's or civilian's duty service, and for 180 days thereafter. The application shall be filed on or before the 180th day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

(o) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the 181st day after the applicant's active duty or service terminates. The Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate.

However, taxes pursuant to a contract entered into under this division are not delinquent, and the Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(2) If the Tax Administrator determines that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the municipal corporation before the 181st day after the applicant's active duty or service terminates.

(3) Taxes paid pursuant to a contract entered into under division (o)(1) of this section are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(p) (1) Nothing in this division denies to any person described in this division the application of divisions (n) and (o) of this section.

(2) A. A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by a municipal corporation in accordance with this chapter. The length of any extension granted under division (p)(2)A. of this section shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this division, "qualifying taxpayer" means a member of the national guard or a member of a reserve component of the Armed Forces of the United States called to active duty pursuant to either an executive order issued by the President of the United States or an act of the Congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the Armed Forces.

B. Taxes whose payment is extended in accordance with division (p)(2)A. of this section are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (c)(2)A. of this section in calculating the penalty or interest due on any unpaid tax.

(q) For each taxable year to which division (n), (o), or (p) of this section applies to a taxpayer, the provisions of divisions (o)(2) and (o)(3) of this section, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.

#### Consolidated Municipal Income Tax Return.

(r) As used in this section:

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

(2) "Consolidated Federal income tax return" means a consolidated return filed for Federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

(3) "Consolidated Federal taxable income" means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated Federal income tax return, before consideration of net operating losses or special deductions.

"Consolidated Federal taxable income" does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (r)(1) of this section.

(4) "Incumbent local exchange carrier" has the same meaning as in Ohio R.C. 4927.01.

(5) "Local exchange telephone service" has the same meaning as in Ohio R.C. 5727.01.

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

(2) An election to discontinue filing consolidated Municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated Municipal income tax return election period in effect under division (s)(1) of this section. The election to discontinue filing a consolidated Municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (s)(1) or (s)(2) of this section is binding on all members of the affiliated group of corporations subject to a Municipal income tax.

(t) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated Federal income tax return for a taxable year shall file a consolidated Village income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the Village. A taxpayer that is required to file a consolidated Village income tax return for a taxable year shall file a consolidated Village income tax return for all subsequent taxable years, unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.

(u) A taxpayer shall prepare a consolidated Village income tax return in the same manner as is required under the United States Department of Treasury regulations that prescribe procedures for the preparation of the consolidated Federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(v) (1) Except as otherwise provided in divisions (v)(2), (v)(3), and (v)(4) of this section, corporations that file a consolidated Municipal income tax return shall compute adjusted Federal taxable income, as defined in Section 881.02, by substituting "consolidated Federal taxable income" for "Federal taxable income" wherever "Federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated Village income tax return shall make any adjustment otherwise required under Section 881.02(c)(1) to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated Federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least eighty percent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated Federal taxable income for a taxable year, the corporation filing a consolidated Village income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

A. Exclude the pass-through entity's net profit or loss from the consolidated Federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 881.05(r) through (y), exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the Village. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated Federal taxable income of the affiliated group.

B. Include the pass-through entity's net profit or loss in the consolidated Federal taxable income of the affiliated group and, for the purpose of making the computations required in Section 881.05(r) through (y), include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the Village. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated Federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than eighty percent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated Federal taxable income for a taxable year, all of the following shall apply:

A. The corporation filing the consolidated Municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated Federal taxable income of the affiliated group and, for the purposes of making the computations required in Section 881.05(r) through (y), exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to the Village;

B. The pass-through entity shall be subject to Village income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated Federal taxable income of the affiliated group.

(w) Corporations filing a consolidated Village income tax return shall make the computations required under Section 881.05(r) through (y) by substituting "consolidated Federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(x) Each corporation filing a consolidated Village income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by the Village in accordance with this chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

(y) Corporations and their affiliates that made an election or entered into an agreement with the Village before January 1, 2016, to file a consolidated or combined tax return with the Village may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.

### **881.06 CREDIT FOR TAX PAID TO OTHER MUNICIPALITIES.**

(a) Every individual taxpayer domiciled in the Village who is required to and does pay, or has acknowledged liability for, a municipal tax to another municipality on or measured by the same income, qualifying wages, commissions, net profits or other compensation taxable under this chapter may claim a nonrefundable credit upon satisfactory evidence of the tax paid to the other municipality. Subject to division (c) of this section, the credit shall not exceed the tax due the Village under this chapter.

(b) The Village shall grant a credit against its tax on income to a resident of the Village who works in a joint economic development zone created under Ohio R.C. 715.691 or a joint economic development district created under Ohio R.C. 715.70, 715.71, or 715.72 to the same extent that it grants a credit against its tax on income to its residents who are employed in another municipal corporation.

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

### **881.07 ESTIMATED TAXES.**

(a) As used in this section:

(1) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for the Village's income tax for the current taxable year.

(2) "Tax liability" means the total taxes due to the Village for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.

(b) (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least two hundred dollars (\$200.00). For the purposes of this section:

A. Taxes withheld for the Village from qualifying wages shall be considered as paid to the Village in equal amounts on each payment date unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case they shall be considered as paid on the dates on which the amounts were actually withheld.

B. An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, "date of the postmark" means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(2) Taxpayers filing joint returns shall file joint declarations of estimated taxes. A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. A taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the Tax Administrator.

(3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of Municipal income tax returns under Section 881.05(g) or on or before the fifteenth day of the fourth month after the taxpayer becomes subject to tax for the first time.

(4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.

(5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.

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

A. On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half percent of the tax liability for the taxable year;

B. On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five percent of the tax liability for the taxable year;

C. On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half percent of the tax liability for the taxable year;

D. For an individual, on or before the fifteenth day of the first month of the following taxable year, ninety percent of the tax liability for the taxable year. For a person other than an individual, on or before the fifteenth day of the twelfth month of the taxable year, ninety percent of the tax liability for the taxable year.

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

(3) On or before the fifteenth day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with Section 881.05.

(d) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to Section 881.18 upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (e) of this section. The amount of the underpayment shall be determined as follows:

A. For the first payment of estimated taxes each year, twenty-two and one-half percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

B. For the second payment of estimated taxes each year, forty-five percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

C. For the third payment of estimated taxes each year, sixty-seven and one-half percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

D. For the fourth payment of estimated taxes each year, ninety percent of the tax liability, less the amount of taxes paid by the date prescribed for that payment.

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

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

(1) The amount of estimated taxes that were paid equals at least ninety percent of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.

(2) The amount of estimated taxes that were paid equals at least 100 percent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the

immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a return with the Village under Section 881.05 for that year.

(3) The taxpayer is an individual who resides in the Village but was not domiciled there on the first day of January of the calendar year that includes the first day of the taxable year. (Ord. 2015-19. Passed 11-16-15.)

#### **881.08 ROUNDING OF AMOUNTS.**

A person may round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher, or other document required under this chapter. Any fractional part of a dollar that equals or exceeds fifty cents (\$.50) shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than fifty cents (\$.50) shall be dropped. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.

#### **881.09 REQUESTS FOR REFUNDS.**

(a) As used in this section, "withholding tax" has the same meaning as in Section 881.18.

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

(1) Overpayments of ten dollars (\$10.00) or more;

(2) Amounts paid erroneously if the refund requested is ten dollars (\$10.00) or more.

(c) (1) Except as otherwise provided in this chapter, requests for refund shall be filed with the Tax Administrator, on the form prescribed by the Tax Administrator within three years after the tax was due or paid, whichever is later. The Tax Administrator may require the requestor to file with the request any documentation that substantiates the requestor's claim for a refund.

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

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

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

(1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request.

(2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven days of such last day.

(3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven days of the last day for making the request.

(e) Interest shall be allowed and paid on any overpayment by a taxpayer of any Municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in Section 881.18(a)(4).

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

(a) Income tax that has been deposited with the Village, but should have been deposited with another municipality, is allowable by the Village as a refund but is subject to the three-year limitation on refunds.

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

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

(d) Nothing in this section permits any credit carry forward.

#### **881.11 AMENDED RETURNS.**

(a) (1) If a taxpayer's tax liability shown on the annual tax return for the Village changes as a result of an adjustment to the taxpayer's Federal or State income tax return, the taxpayer shall file an amended return with the Village. The amended return shall be filed on a form required by the Tax Administrator.

(2) If a taxpayer intends to file an amended consolidated Municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated Federal income tax return, the taxpayer shall notify the Tax Administrator before filing the amended return.

(b) (1) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due, together with any penalty and interest thereon. If the combined tax shown to be due is ten dollars (\$10.00) or less, no payment need be made. The amended return shall reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's Federal or State income tax return only:

A. To determine the amount of tax that would be due if all facts, figures, computations, and attachments were reopened; or



B. If the applicable statute of limitations for civil actions or prosecutions under Section 881.12 has not expired for a previously filed return.

(2) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations, and attachments were reopened; i.e., the payment shall be the lesser of the two amounts.

(c) (1) In the case of an overpayment, a request for refund may be filed under this division within the period prescribed by division (d) of this section for filing the amended return, even if it is filed beyond the period prescribed in that division if it otherwise conforms to the requirements of that division. If the amount of the refund is less than ten dollars (\$10.00), no refund need be paid by the Village. A request filed under this division shall claim refund of overpayments resulting from alterations only to those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's Federal or State income tax return, unless it is also filed within the time prescribed in Section 881.09.

(2) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations, and attachments were reopened. All facts, figures, computations, and attachments may be reopened to determine the refund amount due by inclusion of all facts, figures, computations, and attachments.

(d) Within sixty days after the final determination of any Federal or State tax liability affecting the taxpayer's Village tax liability, that taxpayer shall make and file an amended Village return showing income subject to the Village income tax based upon such final determination of Federal or State tax liability. The taxpayer shall pay any additional the Village income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is less than ten dollars (\$10.00).

### **881.12 LIMITATIONS.**

(a) (1) A. Civil actions to recover Municipal income taxes and penalties and interest on Municipal income taxes shall be brought within the later of:

1. Three years after the tax was due or the return was filed, whichever is later; or
2. One year after the conclusion of the qualifying deferral period, if any.

B. The time limit described in division (a)(1)A. of this section may be extended at any time if both the Tax Administrator and the employer, agent of the employer, other payer, or taxpayer consent in writing to the extension. Any extension shall also extend for the same period of time the time limit described in division (c) of this section.

(2) As used in this section, "qualifying deferral period" means a period of time beginning and ending as follows:

A. Beginning on the date a person who is aggrieved by an assessment files with the Board of Tax Review the request described in Section 881.21. That date shall not be affected by any subsequent decision, finding, or holding by any administrative body or court that the Board of Tax Review did not have jurisdiction to affirm, reverse, or modify the assessment or any part of that assessment.

B. Ending the later of the sixtieth day after the date on which the final determination of the Board of Tax Review becomes final or, if any party appeals from the determination of the Local Board of Tax Review, the sixtieth day after the date on which the final determination of the Board of Tax Review is either ultimately affirmed in whole or in part or ultimately reversed

and no further appeal of either that affirmation, in whole or in part, or that reversal is available or taken.

(b) Prosecutions for an offense made punishable under a resolution or ordinance imposing an income tax shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

(c) A claim for a refund of Municipal income taxes shall be brought within the time limitation provided in Section 881.09.

(d) (1) Notwithstanding the fact that an appeal is pending, the petitioner may pay all or a portion of the assessment that is the subject of the appeal. The acceptance of a payment by the Village does not prejudice any claim for refund upon final determination of the appeal.

(2) If upon final determination of the appeal an error in the assessment is corrected by the Tax Administrator, upon an appeal so filed or pursuant to a final determination of the Board of Tax Review, of the Ohio Board of Tax Appeals, or any court to which the decision of the Ohio Board of Tax Appeals has been appealed, so that the resultant amount due is less than the amount paid, a refund will be paid in the amount of the overpayment as provided by Section 881.09, with interest on that amount as provided by of Section 881.09(e).

(e) No civil action to recover the Village income tax or related penalties or interest shall be brought during either of the following time periods:

(1) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties;

(2) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.

### **881.13 AUDITS.**

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

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

(c) At all stages of an audit by the Tax Administrator, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. The Tax Administrator shall prescribe a form by which a taxpayer may designate such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the Tax Administrator. If a taxpayer has not submitted such a form, the Tax Administrator may accept other evidence, as the Tax Administrator considers appropriate, that a person is the authorized representative of a taxpayer.

A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner.

This division does not authorize the practice of law by a person who is not an attorney.

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

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

(f) If the Tax Administrator fails to substantially comply with the provisions of this section, the Tax Administrator, upon application by the taxpayer, shall excuse the taxpayer from penalties and interest.

#### **881.14 SERVICE OF ASSESSMENT.**

(a) As used in this section:

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

(2) "Undeliverable address" means an address to which the postal service or an authorized delivery service under Ohio R.C. 5703.056 is not able to deliver an assessment of the Tax Administrator, except when the reason for non-delivery is because the addressee fails to acknowledge or accept the assessment.

(b) Subject to division (c) of this section, a copy of each assessment shall be served upon the person affected thereby either by personal service, by certified mail, or by a delivery service authorized under Ohio R.C. 5703.056. With the permission of the person affected by an assessment, the Tax Administrator may deliver the assessment through alternative means as provided in this section, including, but not limited to, delivery by secure electronic mail.

(c) (1) A. If certified mail is returned because of an undeliverable address, a Tax Administrator shall utilize reasonable means to ascertain a new last known address, including the use of a change of address service offered by the postal service or an authorized delivery service under Ohio R.C. 5703.056. If the Tax Administrator is unable to ascertain a new last known address, the assessment shall be sent by ordinary mail and considered served. If the ordinary mail is subsequently returned because of an undeliverable address, the assessment remains appealable within sixty days after the assessment's postmark.

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

(2) If mailing of an assessment by a Tax Administrator by certified mail is returned for some cause other than an undeliverable address, the Tax Administrator shall resend the assessment by ordinary mail. The assessment shall show the date the Tax Administrator sends the assessment and include the following statement:

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

Unless the mailing is returned because of an undeliverable address, the mailing of that information is prima facie evidence that delivery of the assessment was completed ten days after the Tax Administrator sent the assessment by ordinary mail and that the assessment was served.

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

(d) (1) A person disputing the presumption of delivery and service under division (c) of this section bears the burden of proving by a preponderance of the evidence that the address to which the assessment was sent by certified mail was not an address with which the person was associated at the time the Tax Administrator originally mailed the assessment. For the purposes of this section, a person is associated with an address at the time the Tax Administrator originally mailed the assessment if, at that time, the person was residing, receiving legal documents, or conducting business at the address; or if, before that time, the person had conducted business at the address and, when the assessment was mailed, the person's agent or the person's affiliate was conducting business at the address. For the purposes of this section, a person's affiliate is any other person that, at the time the assessment was mailed, owned or controlled at least twenty percent, as determined by voting rights, of the addressee's business.

(2) If a person elects to appeal an assessment on the basis described in division (d)(1) of this section, and if that assessment is subject to collection and is not otherwise appealable, the person must do so within sixty days after the initial contact by the Tax Administrator or other Village official, or the designee of either, with the person. Nothing in this division prevents the Tax Administrator or other official from entering into a compromise with the person if the person does not actually file such an appeal with the Local Board of Tax Review.

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

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

(g) Additional regulations as detailed in the Rules and Regulations shall apply.

### **881.15 ADMINISTRATION OF CLAIMS.**

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

(b) Nothing in this chapter prohibits a Tax Administrator from doing either of the following if such action is in the best interests of the municipal corporation:

(1) Compromise a claim;

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

(c) The Tax Administrator's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable.

(d) A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall be to the benefit of only the parties to the compromise or agreement, and shall not eliminate or otherwise affect the liability of any other person.

(e) A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was

obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due.

#### **881.16 TAX INFORMATION CONFIDENTIAL.**

(a) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this chapter is confidential, and no person shall access or disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the Village as authorized by this chapter. The Tax Administrator or a designee thereof may furnish copies of returns filed or otherwise received under this chapter and other related tax information to the Internal Revenue Service, the Tax Commissioner, and tax administrators of other municipal corporations.

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

#### **881.17 FRAUD.**

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

#### **881.18 INTEREST AND PENALTIES.**

(a) As used in this section:

(1) "Applicable law" means this chapter, the resolutions, ordinances, codes, directives, instructions, and rules adopted by the Village provided they impose or directly or indirectly address the levy, payment, remittance, or filing requirements of the Village.

(2) "Federal short-term rate" means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year.

(3) "Income tax," "estimated income tax," and "withholding tax" means any income tax, estimated income tax, and withholding tax imposed by the Village pursuant to applicable law, including at any time before January 1, 2016.

(4) "Interest rate as described in division (a) of this section" means the Federal short-term rate, rounded to the nearest whole number percent, plus five percent. The rate shall apply for the calendar year next following the July of the year in which the Federal short-term rate is determined in accordance with division (a)(2) of this section.

(5) "Return" includes any tax return, report, reconciliation, schedule, and other document required to be filed with a the Tax Administrator or the Village by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.

(6) "Unpaid estimated income tax" means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.

(7) "Unpaid income tax" means income tax due but not paid by the date the income tax is required to be paid under applicable law.

(8) "Unpaid withholding tax" means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.

(9) "Withholding tax" includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee's qualifying wages.

(b) (1) This section applies to the following:

A. Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;

B. Income tax, estimated income tax, and withholding tax required to be paid or remitted to the Village on or after January 1, 2016.

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

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

(1) Interest shall be imposed at the rate described in division (a) of this section, per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax.

(2) A. With respect to unpaid income tax and unpaid estimated income tax, the Village may impose a penalty equal to fifteen percent of the amount not timely paid.

B. With respect to any unpaid withholding tax, the Village may impose a penalty not exceeding fifty percent of the amount not timely paid.

(3) With respect to returns other than estimated income tax returns, the Village may impose a penalty of twenty-five dollars (\$25.00) for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed one hundred fifty dollars (\$150.00) for each failure.

(d) Nothing in this section requires the Village to refund or credit any penalty, amount of interest, charges, or additional fees that the Village has properly imposed or collected before January 1, 2016.

(e) Nothing in this section limits the authority of the Village to abate or partially abate penalties or interest imposed under this section when the Tax Administrator determines, in the Tax Administrator's sole discretion, that such abatement is appropriate.

(f) By the 31st day of October of each year the Village shall publish the rate described in division (a) of this section applicable to the next succeeding calendar year.

(g) The Village may impose on the taxpayer, employer, any agent of the employer, or any other payer the Village's post-judgment collection costs and fees, including attorney's fees.

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

### Authority.

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

(1) A. Exercise all powers whatsoever of a query nature as provided by law, including, the right to inspect books, accounts, records, memorandums, and Federal and State income tax returns, to examine persons under oath, to issue orders or subpoenas for the production of books, accounts, papers, records, documents, and testimony, to take depositions, to apply to a court for attachment proceedings as for contempt, to approve vouchers for the fees of officers and witnesses, and to administer oaths.

B. The powers referred to in this division of this section shall be exercised by the Tax Administrator only in connection with the performance of the duties respectively assigned to the Tax Administrator under the Village's income tax ordinance;

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

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

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

(5) Exercise the authority provided by law relative to consenting to the compromise and settlement of tax claims;

(6) Exercise the authority provided by law relative to the use of alternative apportionment methods by taxpayers in accordance with Section 881.03;

(7) A. Make all tax findings, determinations, computations, and orders the Tax Administrator is by law authorized and required to make and, pursuant to time limitations provided by law, on the Tax Administrator's own motion, review, re-determine, or correct any tax findings, determinations, computations, or orders the Tax Administrator has made.

B. If an appeal has been filed with the Board of Tax Review or other appropriate tribunal, the Tax Administrator shall not review, re-determine, or correct any tax finding, determination, computation, or order which the Tax Administrator has made, unless such appeal or application is withdrawn by the appellant or applicant, is dismissed, or is otherwise final;

(8) Destroy any or all returns or other tax documents in the manner authorized by law;

(9) Enter into an agreement with a taxpayer to simplify the withholding obligations described in Section 881.04.

### Verification of Accuracy of Returns and Determination of Liability.

(b) (1) A Tax Administrator, or any authorized agent or employee thereof may examine the books, papers, records, and Federal and State income tax returns of any employer, taxpayer, or other person that is subject to, or that the Tax Administrator believes is subject to, the provisions of this chapter for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due under this chapter. Upon written request by the Tax Administrator or a duly authorized agent or employee thereof, every employer, taxpayer, or other person

subject to this section is required to furnish the opportunity for the Tax Administrator, authorized agent, or employee to investigate and examine such books, papers, records, and Federal and State income tax returns at a reasonable time and place designated in the request.

(2) The records and other documents of any taxpayer, employer, or other person that is subject to, or that a Tax Administrator believes is subject to, the provisions of this chapter shall be open to the Tax Administrator's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the Tax Administrator, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The Tax Administrator may require any person, by notice served on that person, to keep such records as the Tax Administrator determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by the Village or for the withholding of such tax.

(3) The Tax Administrator may examine under oath any person that the Tax Administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Tax Administrator may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and Federal and State income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

(4) No person issued written notice by the Tax Administrator compelling attendance at a hearing or examination or the production of books, papers, records, or Federal or State income tax returns under this section shall fail to comply.

#### Identification Information.

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

(2) A. If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within thirty days of making the request, nothing in this chapter prohibits the Tax Administrator from imposing a penalty upon the person to whom the request was directed pursuant to Section 881.18, in addition to any applicable penalty described in Section 881.99.

B. If a person required by the Tax Administrator to provide identifying information does not notify the Tax Administrator of a change with respect to that information as required under Section 881.19(c) within thirty days after filing the next tax document requiring such identifying information, nothing in this chapter prohibits the Tax Administrator from imposing a penalty pursuant to Section 881.18.

C. The penalties provided for under divisions (c)(2)A. and B. of this section may be billed and imposed in the same manner as the tax or fee with respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in Section 881.99 for a violation of Section 881.17 and any other penalties that may be imposed by the Tax Administrator by law.



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

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

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

(c) A taxpayer is not relieved of tax liability for any activity or transaction related to a request for an opinion that contained any misrepresentation or omission of one or more material facts.

(d) A Tax Administrator may refuse to offer an opinion on any request received under this section. Such refusal is not subject to appeal.

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

(f) An opinion of the Tax Administrator issued under this section is not subject to appeal.

### **881.21 BOARD OF TAX REVIEW.**

(a) (1) The Board of Tax Review shall consist of three members. Two members shall be appointed by Council, but such appointees may not be employees, elected officials, or contractors with the Village at any time during their term or in the five years immediately preceding the date of appointment. One member shall be appointed by the Village Manager. This member may be an employee of the Village, but may not be the Director of Finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(2) The term for members of the Board of Tax Review of the Village shall be two years. There is no limit on the number of terms that a member may serve if the member is reappointed by the legislative authority. The Board member appointed by the Village Manager shall serve at the discretion of the administrative official.

(3) Members of the Board of Tax Review appointed by the legislative authority may be removed by the legislative authority by majority vote for malfeasance, misfeasance, or nonfeasance in office. To remove such a member, the legislative authority must give the member a copy of the charges against the member and afford the member an opportunity to be publicly heard in person or by counsel in the member's own defense upon not less than ten days' notice. The decision by the legislative authority on the charges is final and not appealable.

(4) A member of the Board of Tax Review who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.

(5) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within sixty days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the Board of Tax Review shall impair the power and authority of the remaining members to exercise all the powers of the Board of Tax Review.

(6) If a member is temporarily unable to serve on the Board of Tax Review due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the

Board of Tax Review in the member's place. The appointment of such an individual shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

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

(c) Any person who has been issued an assessment may appeal the assessment to the Board of Tax Review by filing a request with the Board of Tax Review. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within sixty days after the taxpayer receives the assessment.

(d) The Board of Tax Review shall schedule a hearing to be held within sixty days after receiving an appeal of an assessment under division (c) of this section, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board of Tax Review and may be represented by an attorney at law, certified public accountant, or other representative. The Board of Tax Review may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within 120 days after the first day of the hearing unless the parties agree otherwise.

(e) The Board of Tax Review may affirm, reverse, or modify the Tax Administrator's assessment or any part of that assessment. The Board of Tax Review shall issue a final determination on the appeal within ninety days after the Board of Tax Review's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within fifteen days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the Board of Tax Review's final determination as provided in Ohio R.C. 5717.011.

(f) The Board of Tax Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Ohio R.C. 149.43. Hearings requested by a taxpayer before a Board of Tax Review created pursuant to this section are not meetings of a public body subject to Ohio R.C. 121.22.

#### **881.22 AUTHORITY TO CREATE RULES AND REGULATIONS.**

(a) Nothing in this chapter prohibits the legislative authority of the Village, or a Tax Administrator pursuant to authority granted to the Administrator by resolution or ordinance, to adopt rules to administer an income tax imposed by the Village in accordance with this chapter. Such rules shall not conflict with or be inconsistent with any provision of this chapter. Taxpayers are hereby required to comply not only with the requirements of this chapter, but also to comply with the Rules and Regulations.

(b) All rules adopted under this section shall be published and posted on the internet.

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

(a) Beginning on January 31, 2017 and each year thereafter, all owners of real property who rent or otherwise lease real property located in the Village to any person or business for residential dwelling or commercial purposes, including all or any part of houses, apartments, rooms and other rental accommodations during any part of a calendar year after January 1, 2016,

shall file a written report with the Tax Administrator disclosing the name, address and telephone number, if available, of each residential or commercial tenant known to have occupied any part of a house, apartment, room or other residential dwelling or commercial rental property during the preceding calendar year.

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

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

(1) Fails, refuses or neglects to timely file a written report required by division (a) of this section;

(2) Makes an incomplete or intentionally false written report required by division (a) of this section;

(3) Fails to appear before the Tax Administrator or any duly authorized agent and to produce and disclose any tenant information pursuant to any order or subpoena of the Tax Administrator as authorized in this section; or

(4) Fails to comply with the provisions of this section or any order or subpoena of the Tax Administrator.

#### **881.24 SAVINGS CLAUSE.**

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

#### **881.25 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 provisions of this chapter are concerned, it shall continue effective until all of said taxes levied hereunder in the aforesaid periods are fully paid and any and all suits and prosecutions for the collection of said taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Section 881.12 and Section 881.99 hereof.

(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 881.04 and 881.05 as though the same were continuing.

### **881.26 ADOPTION OF RITA RULES AND REGULATIONS.**

The Village hereby adopts the Regional Income Tax Agency (RITA) Rules & Regulations, including amendments that may be made from time to time, for use as the Village's Income Tax Rules and Regulations. In the event of a conflict with any provision(s) of the Village Income Tax Ordinances and the RITA Rules & Regulations, the ordinance will supersede. Until and if the contractual relationship between the Village and RITA ceases, this Section 881.26 will supersede all other provisions within this chapter regarding promulgation of rules and regulations by the Tax Administrator.

### **881.27 FILING NET PROFIT TAXES; ELECTION TO BE SUBJECT TO PROVISIONS OF CHAPTER.**

**(A) A taxpayer may elect to be subject to sections 881.27 to 881.42 in lieu of the provisions set forth in the remainder of this chapter. Notwithstanding any other provision of this chapter, upon the taxpayer's election, both of the following shall apply:**

**(1) The Tax Commissioner shall serve as the sole administrator of the municipal net profit tax for which the taxpayer as defined in 881.28(C) of the Codified Ordinances is liable for the term of the election;**

**(2) The Tax Commissioner shall administer the tax pursuant to sections 718.80 to 718.95 of the Revised Code, sections 881.27 to 881.42 of this chapter, and any applicable provision of Chapter 5703. of the Revised Code.**

**(B)**

**(1) A taxpayer shall make the initial election on or before the first day of the third month after the beginning of the taxpayer's taxable year by notifying the Tax Commissioner and the Village, on a form prescribed by the Tax Commissioner.**

**(2)**

**(a) The election, once made by the taxpayer, applies to the taxable year in which the election is made and to each subsequent taxable year until the taxpayer notifies the Tax Commissioner and the Village of its termination of the election.**

**(b) A notification of termination shall be made, on a form prescribed by the Tax Commissioner, on or before the first day of the third month of any taxable year.**

**(c) Upon a timely and valid termination of the election, the taxpayer is no longer subject to sections 881.27 to 881.42, and is instead subject to the provisions set forth in the remainder of this chapter.**

**(C) The Tax Commissioner shall enforce and administer sections 881.27 to 881.42 of this chapter. In addition to any other powers conferred upon the Tax Commissioner by law, the Tax Commissioner may:**

**(1) Prescribe all forms necessary to administer those sections;**

**(2) Adopt such rules as the Tax Commissioner finds necessary to carry out those sections;**

**(3) Appoint and employ such personnel as are necessary to carry out the duties imposed upon the Tax Commissioner by those sections.**

**(D) The Tax Commissioner shall not be considered a tax administrator, as that term is defined in section 718.01 of the Revised Code and section 881.02 of the this chapter.**

### **881.28 DEFINITIONS.**

If a term used in sections 881.27 to 881.42 is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall have control over the use of the term in Title LVII of the Revised Code, unless the term is defined in Chapter 5703. of the Revised Code, in which case the definition in that chapter shall control. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States related to federal income taxes. If a term is defined in both this section and section 881.02, the definition in this section shall control for all uses of that term in sections 881.27 to 881.42 of this chapter.

As used in sections 881.27 to 881.42 of this chapter only:

(A) "Municipal taxable income" means income apportioned or sitused to the municipal corporation under section 881.29 of the Codified Ordinances, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the municipal corporation.

(B) "Adjusted federal taxable income," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation as described in division (D)(5) of section 718.01 of the Revised Code and section 881.02, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(2) Add an amount equal to five per cent of intangible income deducted under division (B)(1) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code.

(3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.

(4)

(a) Except as provided in division (B)(4)(b) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.

(b) Division (B)(4)(a) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.

(6) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.

(7) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Revised Code.

**(8) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.**

**(9) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (E)(3)(b) of section 881.33.**

**(10) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with division (E)(3)(b) of section 881.33.**

**If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (c)(48)(B) of section 881.02, and is not a publicly traded partnership that has made the election described in division (c)(24)(E) of section 881.02, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.**

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

**(C) "Taxpayer" has the same meaning as in section 881.02, except that "taxpayer" does not include natural persons or entities subject to the tax imposed under Chapter 5745. of the Revised Code. "Taxpayer" may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.**

**(D) "Tax return" or "return" means the notifications and reports required to be filed pursuant to sections 881.27 to 881.42 for the purpose of reporting municipal income taxes, and includes declarations of estimated tax.**

**(E) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the calculation of the taxpayer's adjusted federal taxable income is based pursuant to this chapter. If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of sections 881.27 to 881.42 is changed accordingly but may consist of an aggregation of more than one taxable year for federal income tax purposes. The Tax Commissioner may prescribe by rule an appropriate period as the taxable year for a taxpayer that has had a change of its taxable year for federal income tax purposes, for a taxpayer that has two or more short taxable years for federal income tax purposes as the result of a change of ownership, or for a new taxpayer that would otherwise have no taxable year.**

**(F) "Assessment" means a notice of underpayment or nonpayment of a tax issued pursuant to section 881.37.**

**881.29 APPLICABILITY; TAXABLE SITUS; APPORTIONMENT.**

**This section applies to any taxpayer that is engaged in a business or profession in the Village and that has made the election under section 881.27.**

**(A) Except as otherwise provided in division (B) of this section, net profit from a business or profession conducted both within and without the boundaries of the Village shall be considered as having a taxable situs in the Village for purposes of municipal income taxation in the same proportion as the average ratio of the following:**

**(1) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the Village during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.**

**As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;**

**(2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the Village to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under section 881.04;**

**(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Village to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.**

**(B)**

**(1) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the Village, the taxpayer may request, or the Tax Commissioner may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:**

**(a) Separate accounting;**

**(b) The exclusion of one or more of the factors;**

**(c) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation;**

**(d) A modification of one or more of the factors.**

**(2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Commissioner denies the request in an assessment issued within the period prescribed by division (A) of section 881.37.**

**(3) The Tax Commissioner may require a taxpayer to use an alternative apportionment method as described in division (B)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by division (A) of section 881.37.**

**(C) As used in division (A)(2) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:**

**(1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:**

**(a) The employer;**

**(b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;**

**(c) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.**

**(2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;**

**(3) Any other location, if the Tax Commissioner determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the Tax Commissioner makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Commissioner's determination was unreasonable.**

**(D) For the purposes of division (A)(3) of this section, receipts from sales and rentals made and services performed shall be situated to the Village as follows:**

**(1) Gross receipts from the sale of tangible personal property shall be situated to the Village only if, regardless of where title passes, the property meets either of the following criteria:**

**(a) The property is shipped to or delivered within the Village from a stock of goods located within the Village.**

**(b) The property is delivered within the Village from a location outside the Village, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Village and the sales result from such solicitation or promotion.**

**(2) Gross receipts from the sale of services shall be situated to the Village to the extent that such services are performed in the Village.**

**(3) To the extent included in income, gross receipts from the sale of real property located in the Village shall be situated to the Village.**

**(4) To the extent included in income, gross receipts from rents and royalties from real property located in the Village shall be situated to the Village.**

**(5) Gross receipts from rents and royalties from tangible personal property shall be situated to the Village based upon the extent to which the tangible personal property is used in the Village.**

**(E) Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the Village in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the Village based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the Village to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.**



(F) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under divisions (c)(12)L. and (c)(35)B. of section 881.02 by the Village or substantially similar provision of the codified ordinances of another municipal corporation, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to the Village. In no case shall a taxpayer be required to add to its net profit that was apportioned to the Village any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to the Village under this section.

(G) When calculating the ratios described in division (A) of this section for the purposes of that division or division (B) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

### 881.30 INFORMATION PROVIDED TO TAX ADMINISTRATORS; CONFIDENTIALITY.

(A) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by sections 881.27 to 881.42 is confidential, and no person shall disclose such information, except for official purposes, in accordance with a proper judicial order, or as provided in section 4123.271 or 5703.21 of the Revised Code. The Tax Commissioner may furnish the internal revenue service with copies of returns filed. This section does not prohibit the publication of statistics in a form which does not disclose information with respect to particular taxpayers.

(B) In May and November of each year, the Tax Commissioner shall provide the Village tax administrator with the following information for every taxpayer that filed tax returns with the commissioner under sections 881.27 to 881.42 and that had municipal taxable income apportionable to the Village under this chapter for any prior year:

(1) The taxpayer's name, address, and federal employer identification number;

(2) The taxpayer's apportionment ratio for, and amount of municipal taxable income apportionable to, the Village pursuant to section 881.29;

(3) The amount of any pre-2017 net operating loss carryforward utilized by the taxpayer;

(4) Whether the taxpayer requested that any overpayment be carried forward to a future taxable year;

(5) The amount of any credit claimed under section 718.94 of the Revised Code.

(C) Not later than thirty days after each distribution made to municipal corporations under section 718.83 of the Revised Code, the Tax Commissioner shall provide to the Village a report stating the name and federal identification number of every taxpayer that made estimated payments that are attributable to the Village and the amount of each such taxpayer's estimated payment.

(D) The information described under divisions (B) and (C) of this section shall be provided to the individual or individuals designated by the Village tax administrator under section 718.83(D) of the Revised Code.

(E)

(1) The City/Village expects that the Tax Commissioner will, pursuant to section 718.84(E) of the Revised Code, provide tax returns and other information it receives in the performance of its administration of the municipal net profits tax for taxpayers making the election provided in section 881.27. The tax administrator shall review these returns and information, as well as the information received pursuant to divisions (B) and (C) of this section, and has discretion to refer any taxpayer for audit by the Tax Commissioner. Such referral shall be made on a form prescribed by the commissioner and shall include any information that forms the basis for the referral.

(2) if the Tax Commissioner declines to audit a taxpayer referred by the tax administrator under this section, the Village reserves its right to pursue any and all remedies, whether at law or in equity, to ensure that the correct tax liability has been calculated and paid by the taxpayer.

### 881.31 FILING OF ANNUAL RETURN; REMITTANCE; DISPOSITION OF FUNDS.

#### (A)

(1) For each taxable year, every taxpayer shall file an annual return. Such return, along with the amount of tax shown to be due on the return less the amount paid for the taxable year under section 881.35, shall be submitted to the Tax Commissioner, on a form and in the manner prescribed by the commissioner, on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year.

(2) If a taxpayer has multiple taxable years ending within one calendar year, the taxpayer shall aggregate the facts and figures necessary to compute the tax due under this chapter, in accordance with sections 881.28, 881.29, and, if applicable, 881.33 onto its annual return.

(3) The remittance shall be made payable to the treasurer of state and in the form prescribed by the Tax Commissioner. If the amount payable with the tax return is ten dollars or less, no remittance is required.

#### (B)

(1) Each return required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's identification number. Each return shall be verified by a declaration under penalty of perjury.

#### (2)

(a) The Tax Commissioner may require a taxpayer to include, with each annual tax return, amended return, or request for refund filed with the commissioner under sections 881.27 to 881.42, copies of any relevant documents or other information.

(b) A taxpayer that files an annual tax return electronically through the Ohio business gateway or in another manner as prescribed by the Tax Commissioner shall either submit the documents required under this division electronically as prescribed at the time of filing or, if electronic submission is not available, mail the documents to the Tax Commissioner. The department of taxation shall publish a method of electronically submitting the documents required under this division on or before January 1, 2019.

(3) After a taxpayer files a tax return, the Tax Commissioner may request, and the taxpayer shall provide, any information, statements, or documents required to determine and verify the taxpayer's municipal income tax.

#### (D)

#### (1)

(a) Any taxpayer that has duly requested an automatic extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a tax return with the commissioner under this section. The extended due date of the return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates.

(b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the commissioner grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the commissioner receives the request on or before the date the municipal income tax return is due, the commissioner shall grant the taxpayer's extension request.

(c) An extension of time to file under division (D)(1) of this section is not an extension of the time to pay any tax due unless the Tax Commissioner grants an extension of that date.

(2) If the commissioner considers it necessary in order to ensure payment of a tax imposed in accordance with section 881.01, the commissioner may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.

(E) Each return required to be filed in accordance with this section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Commissioner about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the commissioner to contact the preparer or other person concerning questions that arise during the examination or other review of the return and authorizes the preparer or other person only to provide the commissioner with information that is missing from the return, to contact the commissioner for information about the examination or other review of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the commissioner and has shown to the preparer or other person.

(F) When income tax returns or other documents require the signature of a tax return preparer, the Tax Commissioner shall accept a facsimile or electronic version of such a signature in lieu of a manual signature.

### **881.32 ELECTRONIC FILING.**

(A) All taxpayers that have made the election allowed under section 881.27 shall file any tax return or extension for filing a tax return, and shall make payment of amounts shown to be due on such returns, electronically, either through the Ohio business gateway or in another manner as prescribed by the Tax Commissioner.

(B) A taxpayer may apply to the commissioner, on a form prescribed by the commissioner, to be excused from the requirement to file returns and make payments electronically. For good cause shown, the commissioner may excuse the applicant from the requirement and permit the applicant to file the returns or make the payments by nonelectronic means.

(C) The Tax Commissioner may adopt rules establishing the following:

(1) The format of documents to be used by taxpayers to file returns and make payments by electronic means;

(2) The information taxpayers must submit when filing tax returns by electronic means.

### **881.33 CONSOLIDATED RETURNS.**

#### **(A) As used in this section:**

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

**(2) "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.**

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

**(4) "Incumbent local exchange carrier" has the same meaning as in section 4927.01 of the Revised Code.**

**(5) "Local exchange telephone service" has the same meaning as in section 5727.01 of the Revised Code.**

#### **(B)**

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

**(2) An election to discontinue filing consolidated tax returns under this section must be made on or before the fifteenth day of the fourth month of the year following the last year of a five-year consolidated tax return election period in effect under division (B)(1) of this section. The election to discontinue filing a consolidated tax return is binding for a five-year period beginning with the first taxable year of the election.**

**(3) An election made under division (B)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.**

**(4) When a taxpayer makes the election allowed under section 881.27, a valid election made by the taxpayer under division (s) of section 881.05 is binding upon the Tax Commissioner for the remainder of the five-year period.**

**(5) When an election made under section 881.27 is terminated, a valid election made under this section is binding upon the tax administrator for the remainder of the five-year period.**

**(C) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated tax return for that taxable year if the Tax Commissioner determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and**

that there has been a distortive shifting of income or expenses with regard to allocation of net profits to a municipal corporation. A taxpayer that is required to file a consolidated tax return for a taxable year shall file a consolidated tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the commissioner to file a separate return or a taxpayer has experienced a change in circumstances.

(D) A taxpayer shall prepare a consolidated tax return in the same manner as is required under the United States department of treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(E)

(1) Except as otherwise provided in divisions (E)(2), (3), and (4) of this section, corporations that file a consolidated tax return shall compute adjusted federal taxable income, as defined in section 881.28, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated tax return shall make any adjustment otherwise required under division (B) of section 881.28 to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

(a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 881.29, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in section 881.29, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than eighty per cent of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

(a) The corporation filing the consolidated tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated

group and, for the purposes of making the computations required in section 881.29, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situated to a municipal corporation;

(b) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with sections 881.27 to 881.42 on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(F) Corporations filing a consolidated tax return shall make the computations required under section 881.29 by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(G) Each corporation filing a consolidated tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts applicable under section 881.27 to 881.42 or Chapter 5703. of the Revised Code to the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

#### 881.34 FAILURE TO PAY TAX.

If a taxpayer that has made the election allowed under 881.27 fails to pay any tax as required under sections 881.27 to 881.42, or any portion of that tax, on or before the date prescribed for its payment, interest shall be assessed, collected, and paid, in the same manner as the tax, upon such unpaid amount at the rate per annum prescribed by section 5703.47 of the Revised Code from the date prescribed for its payment until it is paid or until the date an assessment is issued under section 881.37, whichever occurs first.

#### 881.35 DECLARATION OF ESTIMATED TAXES.

(A) As used in this section:

(1) "Combined tax liability" means the total amount of a taxpayer's income tax liabilities to all municipal corporations in this state for a taxable year.

(2) "Estimated taxes" means the amount that the taxpayer reasonably estimates to be the taxpayer's combined tax liability for the current taxable year.

(B)

(1) Except as provided in division (B)(4) of this section, every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Commissioner, if the amount payable as estimated taxes is at least two hundred dollars.

(2) Except as provided in division (B)(4) of this section, a taxpayer having a taxable year of less than twelve months shall make a declaration under rules prescribed by the commissioner.

(3) The declaration of estimated taxes shall be filed on or before the fifteenth day of the fourth month after the beginning of the taxable year or on or before the fifteenth day of the fourth month after the taxpayer becomes subject to tax for the first time.

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

**(C) Each taxpayer shall file the declaration of estimated taxes with, and remit estimated taxes to, the Tax Commissioner at the times and in the amounts prescribed in division (C)(1) of this section. Remitted taxes shall be made payable to the treasurer of state.**

**(1) The required portion of the combined tax liability for the taxable year that shall be paid through estimated taxes shall be as follows:**

**(a) On or before the fifteenth day of the fourth month after the beginning of the taxable year, twenty-two and one-half per cent of the combined tax liability for the taxable year;**

**(b) On or before the fifteenth day of the sixth month after the beginning of the taxable year, forty-five per cent of the combined tax liability for the taxable year;**

**(c) On or before the fifteenth day of the ninth month after the beginning of the taxable year, sixty-seven and one-half per cent of the combined tax liability for the taxable year;**

**(d) On or before the fifteenth day of the twelfth month of the taxable year, ninety per cent of the combined tax liability for the taxable year.**

**(2) If the taxpayer determines that its declaration of estimated taxes will not accurately reflect the taxpayer's tax liability for the taxable year, the taxpayer shall increase or decrease, as appropriate, its subsequent payments in equal installments to result in a more accurate payment of estimated taxes.**

**(3)**

**(a) Each taxpayer shall report on the declaration of estimated taxes the portion of the remittance that the taxpayer estimates that it owes to each municipal corporation for the taxable year.**

**(b) Upon receiving a payment of estimated taxes under this section, the commissioner shall immediately forward the payment to the treasurer of state. The treasurer shall credit the payment in the same manner as in division (B) of section 718.85 of the Revised Code.**

**(D)**

**(1) In the case of any underpayment of estimated taxes, there shall be added to the taxes an amount determined at the rate per annum prescribed by section 5703.47 of the Revised Code upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:**

**(a) For the first payment of estimated taxes each year, twenty-two and one-half per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;**

**(b) For the second payment of estimated taxes each year, forty-five per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;**

**(c) For the third payment of estimated taxes each year, sixty-seven and one-half per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;**

**(d) For the fourth payment of estimated taxes each year, ninety per cent of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment.**

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

(3) All amounts collected under this section shall be considered as taxes collected under sections 881.27 to 881.42 and shall be credited and distributed to municipal corporations in accordance with section 718.83 of the Revised Code.

(E) An underpayment of any portion of a combined tax liability shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:

(1) The amount of estimated taxes that were paid equals at least ninety per cent of the combined tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.

(2) The amount of estimated taxes that were paid equals at least one hundred per cent of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of twelve months and the taxpayer filed a municipal income tax return for that year.

### **881.36 ADDITIONAL PENALTIES.**

(A) In addition to any other penalty imposed by sections 881.27 to 881.42 or Chapter 5703. of the Revised Code, the following penalties shall apply:

(1) If a taxpayer required to file a tax return under sections 881.27 to 881.42 fails to make and file the return within the time prescribed, including any extensions of time granted by the Tax Commissioner, the commissioner may impose a penalty not exceeding twenty-five dollars per month or fraction of a month, for each month or fraction of a month elapsing between the due date, including extensions of the due date, and the date on which the return is filed. The aggregate penalty, per instance, under this division shall not exceed one hundred fifty dollars.

(2) If a person required to file a tax return electronically under sections 881.27 to 881.42 fails to do so, the commissioner may impose a penalty not to exceed the following:

(a) For each of the first two failures, five per cent of the amount required to be reported on the return;

(b) For the third and any subsequent failure, ten per cent of the amount required to be reported on the return.

(3) If a taxpayer that has made the election allowed under section 881.27 fails to timely pay an amount of tax required to be paid under this chapter, the commissioner may impose a penalty equal to fifteen per cent of the amount not timely paid.

(4) If a taxpayer files what purports to be a tax return required by sections 881.27 to 881.42 that does not contain information upon which the substantial correctness of the return may be judged or contains information that on its face indicates that the return is substantially incorrect, and the filing of the return in that manner is due to a position that is frivolous or a desire that is apparent from the return to delay or impede the administration of sections 881.27 to 881.42, a penalty of up to five hundred dollars may be imposed.

(5) If a taxpayer makes a fraudulent attempt to evade the reporting or payment of the tax required to be shown on any return required under sections 881.27 to 881.42, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred per cent of the tax required to be shown on the return.

(6) If any person makes a false or fraudulent claim for a refund under section 881.38, a penalty may be imposed not exceeding the greater of one thousand dollars or one hundred



per cent of the claim. Any penalty imposed under this division, any refund issued on the claim, and interest on any refund from the date of the refund, may be assessed under section 881.37 without regard to any time limitation for the assessment imposed by division (A) of that section.

(B) For purposes of this section, the tax required to be shown on a tax return shall be reduced by the amount of any part of the tax paid on or before the date, including any extensions of the date, prescribed for filing the return.

(C) Each penalty imposed under this section shall be in addition to any other penalty imposed under this section. All or part of any penalty imposed under this section may be abated by the Tax Commissioner. The commissioner may adopt rules governing the imposition and abatement of such penalties.

(D) All amounts collected under this section shall be considered as taxes collected under sections 881.27 to 881.42 and shall be credited and distributed to municipal corporations in the same proportion as the underlying tax liability is required to be distributed to such municipal corporations under section 718.83 of the Revised Code.

### **881.37 ASSESSMENTS AGAINST TAXPAYER.**

(A) If any taxpayer required to file a return under sections 881.27 to 881.42 fails to file the return within the time prescribed, files an incorrect return, or fails to remit the full amount of the tax due for the period covered by the return, the Tax Commissioner may make an assessment against the taxpayer for any deficiency for the period for which the return or tax is due, based upon any information in the commissioner's possession.

The Tax Commissioner shall not make or issue an assessment against a taxpayer more than three years after the later of the date the return subject to assessment was required to be filed or the date the return was filed. Such time limit may be extended if both the taxpayer and the commissioner consent in writing to the extension. Any such extension shall extend the three-year time limit in section 881.38 for the same period of time. There shall be no bar or limit to an assessment against a taxpayer that fails to file a return subject to assessment as required by sections 881.27 to 881.42, or that files a fraudulent return. The commissioner shall give the taxpayer assessed written notice of the assessment as provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the taxpayer assessed files with the Tax Commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment signed by the authorized agent of the taxpayer assessed having knowledge of the facts, the assessment becomes final, and the amount of the assessment is due and payable from the taxpayer to the treasurer of state. The petition shall indicate the taxpayer's objections, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the Tax Commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the taxpayer has an office or place of business in this state, the county in which the taxpayer's statutory agent is located, or Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment against the taxpayer assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for municipal income taxes," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the Tax Commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

If the assessment is not paid in its entirety within sixty days after the day the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the commissioner issues the assessment until the assessment is paid or until it is certified to the attorney general for collection under section 131.02 of the Revised Code, whichever comes first. If the unpaid portion of the assessment is certified to the attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(D) All money collected under this section shall be credited to the municipal income tax fund and distributed to the municipal corporation to which the money is owed based on the assessment issued under this section.

(E) If the Tax Commissioner believes that collection of the tax will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the taxpayer liable for the tax. Immediately upon the issuance of the jeopardy assessment, the commissioner shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (C) of this section. Notice of the jeopardy assessment shall be served on the taxpayer assessed or the taxpayer's legal representative in the manner provided in section 5703.37 of the Revised Code within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the taxpayer assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(F) Notwithstanding the fact that a petition for reassessment is pending, the taxpayer may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the treasurer of state does not prejudice any claim for refund upon final determination of the petition.

If upon final determination of the petition an error in the assessment is corrected by the Tax Commissioner, upon petition so filed or pursuant to a decision of the board of tax appeals or any court to which the determination or decision has been appealed, so that the amount due from the taxpayer under the corrected assessment is less than the portion paid, there shall be issued to the taxpayer, its assigns, or legal representative a refund in the amount of the overpayment as provided by section 881.38, with interest on that amount as provided by that section.

#### 881.38 REFUND APPLICATIONS.

(A) An application to refund to a taxpayer the amount of taxes paid on any illegal, erroneous, or excessive payment of tax under sections 881.27 to 881.42, including assessments, shall be filed with the Tax Commissioner within three years after the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (A) of section 881.37. The application shall be filed in the form prescribed by the Tax Commissioner.

(B)

(1) On the filing of a refund application, the Tax Commissioner shall determine the amount of refund to which the applicant is entitled. The amount determined shall be based on the amount overpaid per return or assessment. If the amount is greater than ten dollars and not less than that claimed, the commissioner shall certify that amount to the director of budget and management and the treasurer of state for payment from the tax refund fund created in section 5703.052 of the Revised Code. If the amount is greater than ten dollars but less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(2) Upon issuance of a refund under this section, the commissioner shall notify each municipal corporation of the amount refunded to the taxpayer attributable to that municipal corporation, which shall be deducted from the municipal corporation's next distribution under section 718.83 of the Revised Code.

(C) Any portion of a refund determined under division (B) of this section that is not issued within ninety days after such determination shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the ninety-first day after such determination until the day the refund is paid or credited. On an illegal or erroneous assessment, interest shall be paid at that rate from the date of payment on the illegal or erroneous assessment until the day the refund is paid or credited.

#### 881.39 AMENDED RETURNS.

(A) If any of the facts, figures, computations, or attachments required in an annual return filed by a taxpayer that has made the election allowed under section 881.27 and used to determine the tax due under sections 881.27 to 881.42 must be altered as the result of an adjustment to the taxpayer's federal income tax return, whether initiated by the taxpayer or the internal revenue service, and such alteration affects the taxpayer's tax liability under those sections, the taxpayer shall file an amended return with the Tax Commissioner in such form as the commissioner requires. The amended return shall be filed not later than sixty days after the adjustment is agreed upon or finally determined for federal income tax purposes or after any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first. If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the commissioner before filing the amended return.

(B) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. An amended return required by this section is a return subject to assessment under section 881.37 for the purpose of assessing any additional tax due under this section, together with any applicable penalty and interest. The amended return shall not reopen those facts,

figures, computations, or attachments from a previously filed return no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal tax return.

(C) In the case of an overpayment, an application for refund may be filed under this division within the sixty-day period prescribed for filing the amended return, even if that period extends beyond the period prescribed in section 881.38, if the application otherwise conforms to the requirements of that section. An application filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return unless it is also filed within the time prescribed in section 881.38. The application shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return.

#### **881.40 EXAMINATION OF RECORDS AND OTHER DOCUMENTS AND PERSONS.**

(A) The Tax Commissioner, or any authorized agent or employee thereof, may examine the books, papers, records, and federal and state income tax returns of any taxpayer or other person that is subject to sections 881.27 to 881.42 for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due as required under those sections. Upon written request by the commissioner or a duly authorized agent or employee thereof, every taxpayer or other person subject to this section is required to furnish the opportunity for the commissioner, authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.

(B) The records and other documents of any taxpayer or other person that is subject to sections 881.27 to 881.42 shall be open to the Tax Commissioner's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The commissioner may require any person, by notice served on that person, to keep such records as the commissioner determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by a municipal corporation.

(C) The Tax Commissioner may examine under oath any person that the commissioner reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The commissioner may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and federal income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

(D) No person issued written notice by the Tax Commissioner compelling attendance at a hearing or examination or the production of books, papers, records, or federal income tax returns under this section shall fail to comply.

#### **881.41 CREDITS.**

**(A) A credit, granted by resolution or ordinance of the Village pursuant to section 718.15 or 718.151 of the Revised Code, shall be available to a taxpayer that has made the election allowed under section 881.27, against the municipal corporation's tax on income. A municipal corporation shall submit the following information to the Tax Commissioner on or before the later of January 31, 2018, or the thirty-first day of January of the first year in which the taxpayer is eligible to receive the credit:**

**(1) A copy of the agreement entered into by the Village and taxpayer under section 718.15 or 718.151 of the Revised Code;**

**(2) A copy of the ordinance or resolution authorizing the agreement entered into between the Village and the taxpayer.**

**(B)**

**(1) Each taxpayer that claims a credit shall submit, with the taxpayer's tax return, documentation issued by the Village granting the credit that confirms the eligibility of the taxpayer for the credit, the amount of the credit for which the taxpayer is eligible, and the tax year to which the credit is to be applied.**

**(2) Such documentation shall be provided in the form prescribed by the Tax Commissioner.**

**(3) Nothing in this section shall be construed to authorize the Tax Commissioner to enter into an agreement with a taxpayer to grant a credit, to determine if a taxpayer meets the conditions of a tax credit agreement entered into by the Village and taxpayer under section 718.15 or 718.151 of the Revised Code, or to modify the terms or conditions of any such existing agreement.**

#### **881.42 RECKLESS VIOLATIONS; PENALTIES.**

**(A) Except as provided in division (B) of this section, whoever recklessly violates division (A) of section 881.30 shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars or imprisonment for a term of up to six months, or both.**

**(B) Each instance of access or disclosure in violation of division (A) of section 881.30 constitutes a separate offense.**

**(C) These specific penalties shall not be construed to prevent the Village from prosecuting any and all other offenses that may apply.**

#### **881.99 VIOLATIONS; PENALTIES.**

(a) Whoever violates Section 881.04, 881.16(a) or 881.17 by failing to remit the Village income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollar (\$1,000) or imprisonment for a term of up to six months, or both. If the individual that commits the violation is an employee, or official, of the Village, the individual is subject to discharge from employment or dismissal from office.

(b) Any person who discloses information received from the Internal Revenue Service in violation of Section 881.16(a) shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than five thousand dollars (\$5,000) plus the costs of prosecution, or imprisonment for a term not exceeding five years, or both. If the individual that commits the violation is an employee, or official, of the Village, the individual is subject to discharge from employment or dismissal from office.

(c) Each instance of access or disclosure in violation of Section 881.16(a) constitutes a separate offense.

(d) If not otherwise specified herein, no person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (2) File any incomplete or false return;
- (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;
- (4) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his books, records, papers and Federal and State income tax returns relating to the income or net profits of a taxpayer;
- (5) Fail to appear before the Tax Administrator and to produce his books, records, papers or Federal and State income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator;
- (6) Refuse to disclose to the Tax Administrator any information with respect to the income or net profits of a taxpayer;
- (7) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator authorized hereby;
- (8) Give to an employer false information as to his true name, correct Social Security number, and residence address, or fail to promptly notify an employer of any change in residence address and date thereof;
- (9) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

(e) Any person who violates any of the provisions in division (d) of this section shall be subject to the penalties provided for in division (a) of this section.

**VILLAGE OF YELLOW SPRINGS, OHIO**

**Resolution 2018-02**

**ADOPTING RULES AND PROCEDURES FOR COUNCIL**

**WHEREAS**, the Charter for the Village of Yellow Springs, Ohio, calls for Council to adopt rules and procedures governing its meetings; and,

**WHEREAS**, Council for the Village of Yellow Springs has engaged in review and revision of their Rules and Procedures in meetings open to the public and welcoming of public input,

**NOW, THEREFORE, COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO, HEREBY RESOLVES THAT:**

**Section 1.** The attached rules (Exhibit A) and procedures are hereby adopted.

**Section 2.** These rules and procedures shall take effect at the earliest date permitted by law.

\_\_\_\_\_  
Brian Housh, President of Council

Passed:

Attest: \_\_\_\_\_  
Judy Kintner, Clerk of Council

Roll Call:

Housh \_\_\_\_\_ MacQueen \_\_\_\_\_ Hempfling \_\_\_\_\_  
Stokes \_\_\_\_\_ Kreeger \_\_\_\_\_

February 1, 2016

**VILLAGE OF YELLOW SPRINGS COUNCIL  
RULES AND PROCEDURES**

**Ethics**

Council Members shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced. Each member of Council, the Village Manager and Clerk of Council shall become familiar and comply with the most current version of the Ohio Ethics Laws (O.R.C. Ch. 102 summarized in Attachment 1) and Related Statutes (O.R.C. Ch. 2921 summarized in Attachment 2), specifically, as they apply to elected officials and public employees of Villages. The President of Council will ensure that each Council member receives a copy of the Ohio Ethics Laws and Related Statutes upon his or her election or appointment. Any Council member or Employee who believes that he/she may have a conflict of interest with a pending issue should seek the advice of the Village Solicitor or Ohio Ethics Commission prior to entering into any discussion or voting on that issue.

**Meetings**

All meetings of Council shall be properly advertised and, with the exception of executive sessions (see below), shall be open to the public regardless of whether they are regularly scheduled meetings, special meetings or emergency meetings. Three (3) Council members constitute a quorum, which is required to hold any meeting.

*Regularly Scheduled Council Meetings* will convene at 7:00 p.m. on the first and third Mondays monthly (except when Monday is a recognized holiday, in which case the meeting will be held on Tuesday of that week) in Council Chambers (unless otherwise advertised) located on the second floor of the John Bryan Community Center. The Clerk of Council will present a meeting schedule for the coming year at a regular Council meeting by December of the preceding year. Additionally, notice specifying time, place and agenda shall be published the week prior to the regularly scheduled meeting in a local newspaper of general circulation. Council will endeavor to conclude the regular meeting by 9:00 p.m.

*Work Sessions* may be called at times when Council wishes to hear more extensively from staff or advisors and wishes to facilitate additional citizen response and input than can be afforded in a Regular Meeting of Council. A Work Session agenda shall be noticed as is a Regular Meeting agenda, and may omit some agenda items seen on the Regular Meeting agenda in the interest of increasing time for participation regarding the topic of the Work Session. Legislation may be heard at a Work Session and must be noticed per Charter specification.

*Special Meetings* may be called by the President of Council, by two Council members, or by an affirmative vote of the majority of Council taken at any Regular or Special Meeting, to conduct non-emergency Council business that should be addressed before the next regularly scheduled meeting. All news media outlets that have requested such notification will receive 24-hour minimum advance notification of any Special Meeting with time, place and purpose of the meeting being stated. No other matters may be put to a vote after notice is given.

*Emergency Meetings* may be called by the President of Council to address issues that are time-sensitive and must be addressed immediately. All such meetings shall comply fully with the requirements of Ordinance 2009-20, which is summarized in Attachment 3.

Emergency Meeting notices will be displayed in the first floor lobby of the John Bryan Community Center and at the Yellow Springs Public Library within the same time period that



## Exhibit A

news media notification is made.

All Council members will be notified of the time, place and purpose of each Special Meeting or Emergency Meeting. The President of Council, Village Manager and Clerk of Council may jointly coordinate the notification of Council members.

The Clerk of Council shall be responsible for ensuring that advance notification of all meetings is accomplished and notices are displayed as described above.

*Executive Sessions* may be called at any meeting on affirmative vote of the majority of Council members present to deal with matters relating to personnel, real estate, litigation and other such matters as permitted by the laws of the State of Ohio. (Charter, Section 14, summarized in Attachment 4, and Chapter 121.22 of the ORC: <http://codes.ohio.gov/orc/121.22>).

Additionally, state law permits the following reasons to hold executive sessions:

1. Preparing for, conducting or reviewing collective bargaining strategy.
2. Matters required to be kept confidential by federal law, federal rules or state statutes.
3. Specialized details of security arrangements in which disclosure of the information to be discussed in executive session might reveal information that could be used to commit, or avoid prosecution for, a violation of the law.

Council may invite such persons to Executive Session as may be required for advice and information.

### **Meeting Agenda & Materials**

The Clerk of Council shall work with the President of Council and the Village Manager in constructing the agenda for each Council meeting. Items to be considered for the agenda will be accepted until 5:00 p.m. on the Thursday ten days prior to the next scheduled meeting.

The Clerk of Council shall cause to be placed into the possession of each member of Council and the Village Manager, seventy-two (72) hours in advance of the regular meeting, a packet containing the meeting agenda, minutes of the previous meeting, proposed/pending legislation, reports and communications. The same information will be placed in the Bryan Center lobby, online at [www.yso.com](http://www.yso.com), on the Village Facebook page, and at the Public Library, in advance of a regularly scheduled meeting.

The Clerk of Council will work with the Village Manager to provide comprehensive reports and other information as deemed appropriate to Council members by the most efficient means possible as soon as those items become available. When time allows, those materials will be added to the information available to the public. Meeting materials will also be available on a table outside Council Chambers on the day of the meeting.

### **Meeting Minutes**

The Clerk of Council will prepare and maintain full and accurate minutes of all meetings. These minutes shall provide sufficient facts and information to permit an understanding of the rationale behind Council decisions.

### **Order of Business**

1. Call to Order
2. Roll Call
3. Announcements
4. Review of Minutes
5. Review of Agenda

## Exhibit A

6. Review Petitions/Communications
7. Public Hearings/Legislation
8. Hear Citizens' Concerns
9. Hear Special Reports
10. Discuss Old Business
11. Discuss New Business
12. Standing Reports (Third Monday only)
13. Manager's Report
14. Chief of Police Report
14. Clerk's Report
15. Agenda Planning
16. Executive Session
17. Adjournment

Council may decide during the Agenda Review at the beginning of the meeting to vary from this order as needed.

### **Recess**

The presiding officer may call for a seven (7) minute recess, for the convenience of the Council and citizen participants at his or her discretion, or at the request of another Council person or staff participant, especially when a regular meeting extends beyond two and one half hours and is expected to continue for more than one half (1/2) hour. The meeting will reconvene promptly after seven (7) minutes.

### **Decorum**

While the Council is in session, order and decorum must be preserved. Therefore, Council members and citizen participants shall observe rules for debate and participation outlined below, and shall not, by conversation or other means delay or interrupt the proceedings or disturb duly recognized speakers. Council will endeavor to communicate Council rules during meetings, but persons who ignore or violate Council rules or refuse to follow the orders of the presiding officer may be asked to leave the premises.

### **Rules of Debate**

Council meetings will be conducted using [Robert's](#) Rules of Order as a general guideline. The President, Vice President or other member of the Council who may be presiding shall not be deprived of any rights and privileges of a Council member (move, second and debate, etc.) by reason of acting as the presiding officer.

Council members shall wait until the presiding officer has recognized them before speaking. A member, once recognized, shall not be interrupted except under the general guidelines of parliamentary debate.

### **Citizen Participation**

Village Council, in convening its meetings, shall provide for, encourage and assist public participation. Procedures for public participation are intended to promote dialogue, the full sharing of information and perspectives, and thoughtful analysis of the issues before Council.

Comments from the public are welcomed at two different times during the course of a regular meeting: (1) Comments on items not on the Agenda will be heard under Citizens Concerns, and (2) Comments on all items listed on the Agenda will be heard during Council's consideration of said item, subject to the following guidelines:

## Exhibit A

1. The presiding officer must recognize citizens wishing to speak. When they have been recognized, they shall go to the microphone, give their name, and state the subject of their concern or comment.
2. Comments shall be addressed to the presiding officer. No conversations will be carried on between individual citizens in attendance or with individual Council members, except as recognized by the presiding officer.
3. The use of profane or threatening language or gestures while making comments will not be tolerated.
4. Individual comments should be limited to three (3) minutes with only one (1) comment per person. Persons with other views on the same subject will be given equal time for response. The presiding officer may terminate continued discussion at any point in the discussion after opposing views have been equally addressed.
5. A Sign-In sheet will be made available outside Council Chambers. Please write your name and the topic you wish to discuss.
6. Citizens should address all staff and/or personnel matters to the Village Manager prior to coming to Council.
7. All cell phones shall be silenced during meetings.

### **Public Hearings**

The second reading of each proposed ordinance is designated a Public Hearing, **the official opportunity for citizens to be heard**. Citizens are encouraged to comment and make inquiries as to the nature or impact of the ordinance or to offer their approval if that is their desire. The presiding officer will open the floor to public hearing after the second reading and following a motion to adopt and a seconding by Council. Following the public hearing, Council will hold a discussion and take appropriate action.

**In time-sensitive situations, an ordinance may be declared an emergency, which means it will go into effect immediately rather than in thirty days as is standard for an ordinance. An Emergency Ordinance can have one or more readings with the final reading including a Public Hearing.**

Resolutions will not normally require public hearing. However, the scope of the particular resolution may be such that it warrants such a hearing. When that is the case, the process will follow the same procedure for the second reading of an ordinance.

Reports to Council from commissions or task forces may also be designated public hearings, at which time the public is encouraged to express its views and opinions on the subject matter to Council.

Public comments should be limited to three (3) minutes with only one (1) comment per person. Persons with other views on the same subject will be given equal time for response. The presiding officer may terminate continued discussion at any point in the discussion after opposing views have been equally addressed.

### **Other Agenda Items**

The presiding officer may recognize members of the public who are in attendance during discussion of other agenda items, when and to the extent it is appropriate.

### **Letters to Council**

Letters to Council must be received by the Clerk of Council by 10:00 a.m. on the Friday preceding a regularly scheduled meeting to be considered in that meeting. Items received after 10:00 a.m., unless having direct bearing on a topic slated for discussion, will be held without review or action until the following regularly scheduled meeting unless it is determined that such

## Exhibit A

delay would create an emergency or require special action on the part of Council or Village staff. Regarding the aforementioned: Items having direct bearing on a topic of consideration for that meeting will be made available to Council Members at the Council table and by e-mail if received electronically. To the extent possible, Council Members will endeavor to review all such material prior to the start of the Council Meeting.

### **Reserved Time Participation**

Any group or individual wishing to make an oral presentation to Council may, by notifying the Clerk of Council not later than 10:00 a.m. on the Thursday ten days before the next regularly scheduled meeting, make a request to Council to be placed on the agenda. A short summary defining the intention of the presentation must be provided to the Clerk at that time.

Any such addition to the Agenda requires the approval of Council. Council may elect to defer the presentation to the following meeting, to request further information regarding the group or the presentation, or, if appropriate, to deny the request altogether. In the latter instance, the group or individual may still elect to speak during Citizen Concerns.

Any materials for inclusion in the Council packet must be delivered to the Clerk of Council not later than 11:00 a.m. on the Thursday preceding the meeting.

Please contact the Clerk of Council regarding this procedure. Appropriate time periods for public review and comment will be determined for each report.



Manager's Report, January 16, 2018

### **Planning and Zoning Office**

Beginning January 22, 2018, Planning and Zoning Officer Denise Swinger will begin working full-time, with office hours from 8:00 A.M. to 4:00 P.M. While the position is considered a full-time position as far as the organizational chart is considered, we initially thought that Denise could fulfill this position working 30 hours a week. However, because the office is so busy, Denise regularly works between 33 and 36 hours a week. I expect the Planning & Zoning office to be even busier in 2018, as we have initiated a Complete Streets Policy, will begin work on our Active Transportation Plan, will begin a review of the Comprehensive Plan and, possibly, continue our discussions on sidewalks. After consideration of alternatives, increasing Denise's hours to 40 per week seemed the best alternative.

### **Water Main Breaks, Electrical Outages and Sewer Back-ups**

As I'm sure everyone knows, we have had an inordinate number of water main breaks, as well as electrical outages and sewer main back-ups. A lot of these issues are weather-related, as the freezing and thawing in the ground wreaks havoc with old pipes and causes trees to damage electric lines. Some of the issues are related to the aging infrastructure here in the Village. Either way, I would like to express my sincere appreciation and admiration for the Village work crews, who have responded in freezing temperatures to make repairs, as needed. Well done!!!

### **Chili-Soup Cook-off**

It's back! We would like to bring back the *friendly* employee competition of the chili-soup cook-off and to, once again, ask Council to be our judges. If Council would please look at your schedules for Fridays in February that you might be available to judge this exciting contest, I would appreciate that feedback.

I'm happy to answer any questions. Thank you! Patti Bates

MAYOR'S MONTHLY REPORT TO COUNCIL

DATE: 12-29-17  
TO: Council, Manager, Chief of Police  
FROM: David Foubert  
RE: December 2017 Monthly Report

There were 7 traffic, no DUI, no misdemeanor and 14 parking citations filed with Mayor's Court in December for a total of 430 citations filed to date in 2017.

NO ACTIVITY IN BOND ACCOUNT

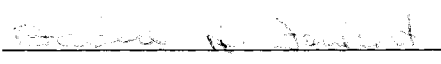
MAYOR'S ACCOUNT

Violations Bureau:		
Fines	590.00	6705.00
Parking	190.00	4285.00
Court Fines	535.00	11560.00
Weddings		100.00
Ending Balance	1315.00	22650.00
-----		
Remitted to Other Agencies		
Victims of Crime	72.00	958.00-
Indigent Defense	210.00	2705.00-
Drug Law Enforcement	28.00	367,50-
Child Restraint		30.00-
Seatbelt		71.00-
Indigent Drivers	12.00	156.50-
Refund of Overpayment of Fine		30.00-
Remited to Computer Fund	81.00	1120.00
Remitted to Village GF	912.00	17212.00

-----  
Comparison Figures from December 2016

There were 5 traffic, no DUI, no misdemeanor and 24 parking citations filed with Mayor's Court in December for a total of 501 citations filed to date in 2016.

Remitted to Computer Fund	40.00	1748.00
Remitted to General Fund	750.00	19991.00

  
-----  
David H. Foubert, Mayor

# Yellow Springs Police Department Activity Report for the month of December 2017

## (A) Calls for Service Information

Total number of calls for service received ----- 646

## (B) Offenses Information

Total offenses reported ----- 175

Village Policing-----19

## (C) Felony criminal citation, misdemeanor criminal citations, and traffic citations (moving, parking, and warning citations).

Total citations issued ----- 86

## (D) Stolen Property Value

Value of reported stolen property ----- \$90.00

Value of property recovered ----- \$0.00

## (E) Accident Information

Accidents without injury -----4

Accidents with injury -----0

Accidents hit skip -----1

Accidents fatal ----- 0

## (F) Domestic Violence Information

Domestic violence/disputes incidents -----2

## (G) Overdose information

Number of Overdoses-----1

Number of Narcans used--0



TO: Village Council and Village Manager Patti Bates  
FROM: Denise Swinger, Planning, Zoning & Economic Sustainability  
DATE: January 12, 2018  
RE: Report of Activities from December 13, 2017 to January 12, 2018

Meetings:

Meeting re: Medical Marijuana Dispensary locations w/interested party  
Meeting w/resident re: construction of an Accessory Dwelling Unit  
Meeting w/representatives from Antioch College re: Pocket Neighborhood Development  
Meeting w/resident and surveyor re: minor subdivision and road access easement  
Meeting re: Active Transportation Plan

Permits Issued:

1 Single Family Dwelling  
1 Change of Use  
2 Commercial Bldgs. – new construction (Cresco and MTRF)  
1 Commercial Bldg. – addition (YSB Private Party)  
1 Temporary Bldg. (Cresco)  
1 Sign  
1 Conditional Use – Brew Pub and Bldg. Addition (YSB Private Party)  
10 Transient Guest Lodging establishments

Violations:

No new violations in this time period.

Other:

Due to a change in the acreage, a replat needed to be refiled for the Cresco property. This was done by Mike Heintz of Heintz Engineering at the request of Cresco Lab and recorded on Tuesday, January 9, 2018.

I am expecting two interns from Wright State University for spring semester. They should start work sometime in January through April for a minimum of 10 hours per week. I will introduce them to staff and council after they have been placed. They will be working on reviewing the current text amendments made over the past two years to ensure they were correctly changed by American Legal, as well as assisting with new text amendments saved for future review by the Planning Commission and Council. They will also be working with our new plotter to scan documents for both the Public Works and Planning files.

Due to the holidays and my vacation time off, I have no additional information of activities to report at this time.

Respectfully submitted,

Denise Swinger





Assistant Village Manager Report  
Submitted by Melissa Dodd  
January 16, 2018

### **Lodging Tax Update**

Currently there are a number of informational pieces on the Village website that I have created related to lodging tax. If you hover over "Find It Fast" at the top of the Village home page, you can quickly locate "Lodging Tax Information" in the drop down where everything is.

The starting point for operators is to fill out a Transient Lodging Permit Application. This can be submitted electronically through the website, or printed and sent to the attention of Denise Swinger in Planning and Zoning. Note that there is a \$25 application fee.

Tax forms will be available once the filing period gets closer.

I will also have open office hours for anyone who would like to come and have the ability to ask questions and get answers from myself regarding this new tax. Those open office hours will be Monday, January 18, 2018 from 12-3pm and Wednesday, January 24, 2018 from 9am-12pm. You can just come to the Utility Office window and ask for me.

Reminder that all existing lodging establishments have until January 31, 2018 to submit their permit applications.

### **Bryan Center Rental Information**

Bryan Center rental policies were requested by Council and I am including some information along with this report. There will be 3 attachments for review by Council. Attached you will find the Rental Reservation form, Rental Guidelines and Responsibilities and finally an internal policy document.

We are open to feedback on any of this information provided.

### **Utility Billing Software Conversion**

Tomorrow, January 17<sup>th</sup> we will be doing a third data extraction to start our parallel month working within the new utility billing system. We will be entering all of our transactions into our old system as well as our new system to work out any final issues. At this point we are hopeful to fully convert in the next month or two if all goes well! I will keep you posted.

### **Utility Office Window Hours**

Just a reminder that the Utility Office window is now open from 8am to 5pm Monday through Friday. We will no longer be open until 6pm on bill due day. Please continue to use the variety of methods available when the window is not open which includes online, phone and drive up box to pay your bill.



January 16th 2018

*The Police Department is pleased to announce:*

*We are in the process of interviewing qualified applicants for two full time officer positions.*

*I am happy to answer any questions.*

*Regards,*

*Brian Carlson,  
Chief of Police  
937-767-7206  
chief@yso.com*

1-16-2018

To: Council

From: Judy Kintner

Re: Clerk's Report for January 16, 2018

Business as usual for the Clerk's office over the past several weeks.

--Judy Kintner

## Yellow Springs Environmental Commission

Minutes

June 15, 2017

5:45 – 7:00 PM

Meet in Bryan Center

Attendance: Marianne MacQueen, Nadia Malarkey, Bettina Stolsenberg, Tom Dietrich, George Coder

- I. Welcome, Introduction of Guests
- II. Agenda Review, 1 minute
- III. Approve May Meeting Minutes, 3 minutes
  - a. Discussion—update to name attributions instead of initials
  - b. Motion: Marianne
  - c. Second: Duard
  - d. Vote: Yays: 6 Nays: 0
- IV. Report updates on existing goals, 30 minutes total – 6 minutes each
  - a. Glass Farm Conservation Area, Tom
    - i. On track
    - ii. Prairie seeds planted
    - iii. Had subcommittee meeting, set milestones.
    - iv. Algae—suggestion of adding copper sulfate to control. 1 gallon, 20:1. George to ask Ohio EPA if this is allowed to apply to the wetland, since it is waters of the state.
    - v. Nadia question about preventing algae growth by reducing runoff with fertilizers. Look for ways to address in the future development planned.
    - vi. Bob McClain got rained out on installing the gravel. But has equipment there.
    - vii. Marianne said sediment clogging the outlet control pipe. Need to address. Tom to brainstorm with Jason.
  - b. Lawn ordinance update, Duard
    - i. Passed with some adjustment from Council.
    - ii. YS News article two weeks ago had some factual errors, titled “Managed Prairies”. Duard issued complaint, but no corrections in this week’s paper.
  - c. Climate Action Plan
    - i. Plan update
      1. moving ahead but behind schedule.
      2. Need buy-in from Energy Board on the Energy Section
      3. Village staff and Patti Bates agreed to move forward on Water and Wastewater Sections
      4. Transportation Section is 90% written by Duard
      5. Buildings Section- no progress. Alex interested but has not committed time to it.
      6. Solid Waste Section- need leadership.
      7. Duard provided content to Judi to post a “Call for input” on the village website, but nothing happened since then because no

village staff had web development capability to convert content into compatible format. What we need now is not more ideas, we need to recruit local talent to volunteer to assist in developing certain plan sections.

8. Identify barriers and how to help move it forward.
    - a. Write a letter to editor to help recruit--- Duard to draft and send for comment. Timing is good with the announcement of the Paris Accord news. Need to focus on “qualified” people, since need for knowledge and leadership on specific issues of Buildings and Solid Waste.
    - b. Marianne will ask Council to direct Energy Board to provide more support on Energy Section.
  - ii. ICLEI Membership—not following their approach and
    1. Motion to no longer continue our membership with ICLEI, Duard. Second, Marianne. Vote: Yays: 6, Nays: 0.
  - d. Reduce Waste and Increase Recycling in the Village, Bettina
    - i. Setting up meetings in next weeks with Greene Co Solid Waste District (Dana) and Rumpke (Brent).
    - ii. Is planning to write article for local newspaper
    - iii. Maybe other education and outreach efforts—local seminars at Glen Helen, YS Senior Center, Library, etc.
  - e. Pesticide Reduction, Nadia
    - i. Hired local contractor to do applications of organic products on the lawn test site. Nadia is documenting progress.
    - ii. Planning Organics workshop (Chip Osborne) for end of summer or fall
    - iii. Working on getting an article in newspaper to advertise the organic turf management project and the future workshop.
    - iv. Pollinator regeneration project—volunteered to do a presentation to “reboot” the project that originally started with TLT and Antioch College as partners. Need to set a date and advertise in advance—maybe do it at Glen Helen. Gathering handouts from Xerxes Society, Beyond Pesticides, and others to provide. Door hangers idea-- Nadia will check on cost.
  - f. Village Source Water Protection Plan
    - i. Postponed in Deanna’s absence
- V. Council Report, Marianne
- a. Paris Climate Accord—resolution supporting it, will be read and voting on 6/19/17
  - b. Tree City (Village) proposal
    - i. Started with Judith Hempfling’s idea to plant more trees to help offset energy consumption in the village.
    - ii. Council generally supported, except Marianne, and YS Tree Committee got involved to have input. Tabled the idea to gather info.
    - iii. Marianne requesting input from EC and will share info on Tree City USA details—what’s required, benefits, etc.
- VI. Environmental Risk Assessment Discussion, 15 minutes
- a. Postponed in Deanna’s absence

- VII. Next Meeting date, Chairperson, and draft agenda
  - a. July 20, 2017
  - b. Deanna will chair
  - c. Draft Agenda
    - i. Welcome, Introduction of Guests
    - ii. Agenda Review, 1 minute
    - iii. Approve June Meeting Minutes, 3 minutes
    - iv. Report updates on existing goals, 30 minutes total – 6 minutes each
    - v. Tree City Proposal Discussion
    - vi. Environmental Risk Assessment Brainstorming, 15 minutes
    - vii. Next Meeting date, Chairperson, and draft agenda
- VIII. Adjourned, 7:07 pm

<b>Meeting Date-- 2017</b>	<b>Chairperson</b>
June 15	Marianne
July 20	Deanna
August 17	Bettina
September 21	Duard
October 19	Nadia
November 16	Marianne
December 21	Deanna

**Environmental Commission Meeting**  
**July 20, 2017**

Chair Deanna Newsom call the meeting to order at 5:45 P.M. Present were: Deanna Newsom, Bettina Stolsenberg, Marianne MacQueen, George Coder, Duard Headley and Patti Bates. Nadia Malarkey entered the meeting at 5:50.

MacQueen asked to adjust the agenda to allow ample time for discussion of the Climate Action Plan as the primary agenda item.

Stolsenberg asked if landlords of apartment buildings could be required to provide recycling opportunities for tenants. Bates replied she did not believe so but would check with legal.

MacQueen asked Bates to briefly explain the status of the Tree City application. Bates explained that Council had deferred the application and instead asked staff and boards/commission to work more closely with the Tree Committee on initiatives.

Newsom called for the approval of minutes. Malarkey noted a correction in Section 4C-I-2 to read “buy-in” instead of “buyoff.” Malarkey made a motion to approve as amended, MacQueen second, all ayes, minutes approved as corrected.

Headley spoke regarding the status of the Climate Action Plan, as there had not been many volunteering time to help complete the amended plan and therefore progress was stalled. Many feel we are just creating another plan and not taking action to make a difference. Headley expressed a need to reevaluate the plan process to include deliverable actions.

Bates suggested a Climate Impact Program, with monthly or bi-monthly “actions” to impact climate change. Such actions could be anything from tree planting in coordination with the Tree Committee to events showing hybrid and electric vehicles brought by local dealerships to recycling events. MacQueen suggested developing a youth cycling program/project as a possibility, perhaps with other groups such as Mothers Out Front involved. The goal would be to encourage walking/cycling to school. Headley expressed preference for events or actions that would have a bigger impact, noting that half of our impact on climate change comes from vehicle emissions. There followed a discussion about changing behavior to have a larger impact.

Malarkey asked about the Resiliency Network’s plan for a local food hub, which Headley felt had stalled. Malarkey to check on that.

Headley noted that there is no shortage of opportunities. Newsom reiterated that the thought is to come up with larger-impact actions and implement them. Headley confirmed this. Malarkey reminded everyone that we should consider mitigation as an actionable item, as well.

MacQueen spoke about creating an “incident” for people to react to. Bates suggested a mock incident, similar to emergency management training activities. Malarkey suggested a spoof by Joel Levinson.



MacQueen suggested getting Mothers Out Front involved and said she would follow up on this. Newsom mentioned asking the Active Transportation Committee to become involved to help reduce emissions. Malarkey suggested showcasing success stories.

Headley to reframe possible opportunities and look at a possible Climate Impact Program or Series. Newsom suggested looking at research and plotting different items would help. Headley produced such a graph he had been working on and will refine for further use.

Note was made that Stolensberg to chair the next meeting and she will send out agenda ahead of time. One item will be exploring impact assessment.

Meeting adjourned at 7:10 P.M.

Respectfully Submitted, Patti bates

September 21, 2017 Environmental Commission Minutes

Attendees: Duard Headley, George Coder, Deanna Newsome, Patti Bates, Marianne MacQueen  
Guest: Christina Reedy (Mothers Out Front)

Time: 5:45 to 7 pm

Facilitator: Duard Headley

1. **Vernay:** Patti reported on conversations she had with Joel Vardo from Vernay and Kevin Kallini from the firm monitoring Vernay's wells. Vernay had submitted a final management plan but the EPA wanted more testing because of their new understanding of vapor intrusion (vapors from the chemicals in questions coming up through the soil). Results of the most recent test are expected in November. Vernay expects to resubmit a remediation plan to the EPA the first qtr of 2018 and the EPA (hopefully) will give approval by the end of 2018. We will continue discussion of how EC can effectively be involved at the next meeting and Megan Bachman has been invited to attend.
2. **Source Water Protection Plan:** Deanna reported on the summary update of the 2001 plan which will be called an addendum to the plan. Items discussed included
  - a. Morris Bean as the most critical potential contaminate. We agreed to provide a summary of any changes. Marianne will contact Vickie Hennessy about this and Patti will provide Deanna with a MB contact.
  - b. We examined the time of travel map and made a preliminary assessment that the Vernay plume is outside the capture zone boundary, or at least so far as to create very minimal risk.
  - c. Educating the public: 1) let citizens know we are "on top of this"; 2) where our water comes from; 3) how to protect our water source
    - i. We will use the opening of the new water plant as a kick-off to inform the community of the Source Water Protection Plan. We will seek EPA brochures to adapt for YS. Marianne will brief Council on our plans.
3. **Glass Farm Conversation Project:** The project should be essentially complete by the end of 2017. What has been or is being accomplished includes prairie grasses and flowers now growing, walking paths created, stone benches being installed, honeysuckle cut along King St., signs being planned, and one more planting of native species along creek bed and a bridge over the stream.
4. **Upcoming events:**
  - a. Alternative to Pesticides workshop is being planned for some time after the first of 2018.
  - b. Repair Café will be Saturday 9/23/17
  - c. Mother's Out Front will host a Pollinator workshop (with Nadia) in early December.

Submitted by Marianne MacQueen

## **Environmental Commission Minutes, 16 November 2017**

Time: 5:45 to 7 pm

Facilitator: Nadia Malarkey

Attendees: Duard Headley, George Coder, Deanna Newsom, Patti Bates, Nadia Malarkey

**1. Source Water Protection Plan:** George Coder presented the clean water video that he created, and feedback was provided by committee members. Options were discussed for narrating the video and customizing it for Yellow Springs. Deanna Newsom reported on her visit to Morris Bean to learn about how they addressed the recommendations made in the 2001 Source Water Protection Plan. She will report on Morris Bean's activities in the current SWP plan update, and will address the other company- or industry-specific recommendations made in the 2001 report in "phase 2" of the update (to take place in 2018). She will have a final version of the update for the commission to review before the next meeting.

**2. Glass Farm Wetlands update:** Work is underway on a beaver flow device (though there are currently no beavers). Patti Bates noted that the village will not be leasing out the 73 acres of farmland owned by the village that is adjacent to Glass Farm. Nadia Malarkey noted that Walnut Creek was an Ohio company that is a good resource related to regenerating soil.

**3. Climate action plan:** Duard Headley reported that the next priority is to meet with the Energy Board. Patti Bates is discussing affordability and energy conservation ideas with "Go Sustainable" (an Ohio non-profit that helps communities lower their energy costs and be more sustainable). There was discussion of the recent assessment of large trees and hazard trees, and Nadia Malarkey suggested an assessment of large heritage, carbon-capturing trees. Patti noted that if they're on private property there is little that can be mandated by the village in terms of protection.

**4. Date for talk on Pollinator Regeneration Plan:** Nadia Malarkey is working on date for the workshop for city managers and other practitioners about organic lawncare, along with a meeting for landowners. These will likely take place in February/March. It is hoped that the YS News will run an article about it. Nadia met with Mother's Out Front to discuss doing a talk about pollinator regeneration at a film showing they are organizing. The commission members discussed whether the commission should endorse this talk, and agreed that it would be a good idea. Nadia will write to Marianne MacQueen to ask for endorsement by council.

Submitted by Deanna Newsom



*The Economic Sustainability Commission provides information and makes recommendations to Council regarding economic development for the Village of Yellow Springs, identifying primary opportunities for economic development in the Village and strategies to support these efforts and facilitating a forum for incubating ideas and networking among diverse groups working on economic development in the Village.*

## **Economic Sustainability Commission Minutes**

### **Wednesday November 1, 2017**

### **Council Chambers, John Bryan Community Center**

Attendees: Luciana Lieff, Karen Wintrow, Brian Housh, Sammy Saber, Susan Jennings, Saul Greenberg, Henry Myers, Emily Seibel.

- Minutes from October approved

#### **RLF**

- Council has voted to move forward with RLF
- Melissa to work with Village Solicitor and Credit Union regarding RLF details
- Sammy shared the Appendix A questions
- Karen suggested to rearrange the order of some of the questions
- Karen suggested to change the creation of jobs question to:
  - Will any jobs be created? If so, how many?
- Due to the low dollar amount of the loans, these loans will be geared towards stimulating the economy, and not towards job creation
- Saul suggested to add a conditional clause or “ESC discretion” to the RLF document
- Council will try to get the RLF set up before the end of the year, depending on the need to create an ordinance or resolution
  - To be decided by legal counsel
- Brian suggested adding the four village values to Appendix A questionnaire
- Brian to work on RLF package to be presented to Council on November 20, 2017
- RLF package will consist of RLF form, Appendix A, Appendix B, Resource Sheet
  - Karen to provide Resource Sheet from Chamber of Commerce
- Credit Union to attend to the financial part of the RLF application
- ESC to attend to the mission part of the RLF application
- Remove “economic development” from RLF form
- If larger loans are offered in the future, ESC to create a Business Development RLF and a separate application

#### **Village Revenue Generation Opportunities**

- Henry proposed the creation of a subgroup to look into options for revenue generation for the village
- Henry to ask Dino and Sammy to join the subgroup with him
- Subgroup to research pros and cons list of going after unreported income

- Saul suggested hiring someone like economist Michael Shuman to do consultation for an action plan for specific needs of the Village and Village organizations
- Susan mentioned some of Michael's ideas such as:
  - People with IRA funds investing locally
  - Cooperative buying
  - Recruiting resources for local businesses
- Susan to share Michael Shuman's presentation slides with ESC for future discussion

**Next meeting December 6, 2017, at 7pm, Council Chambers**



To: Yellow Springs Village Council

From: Susan Jennings, Community Solutions

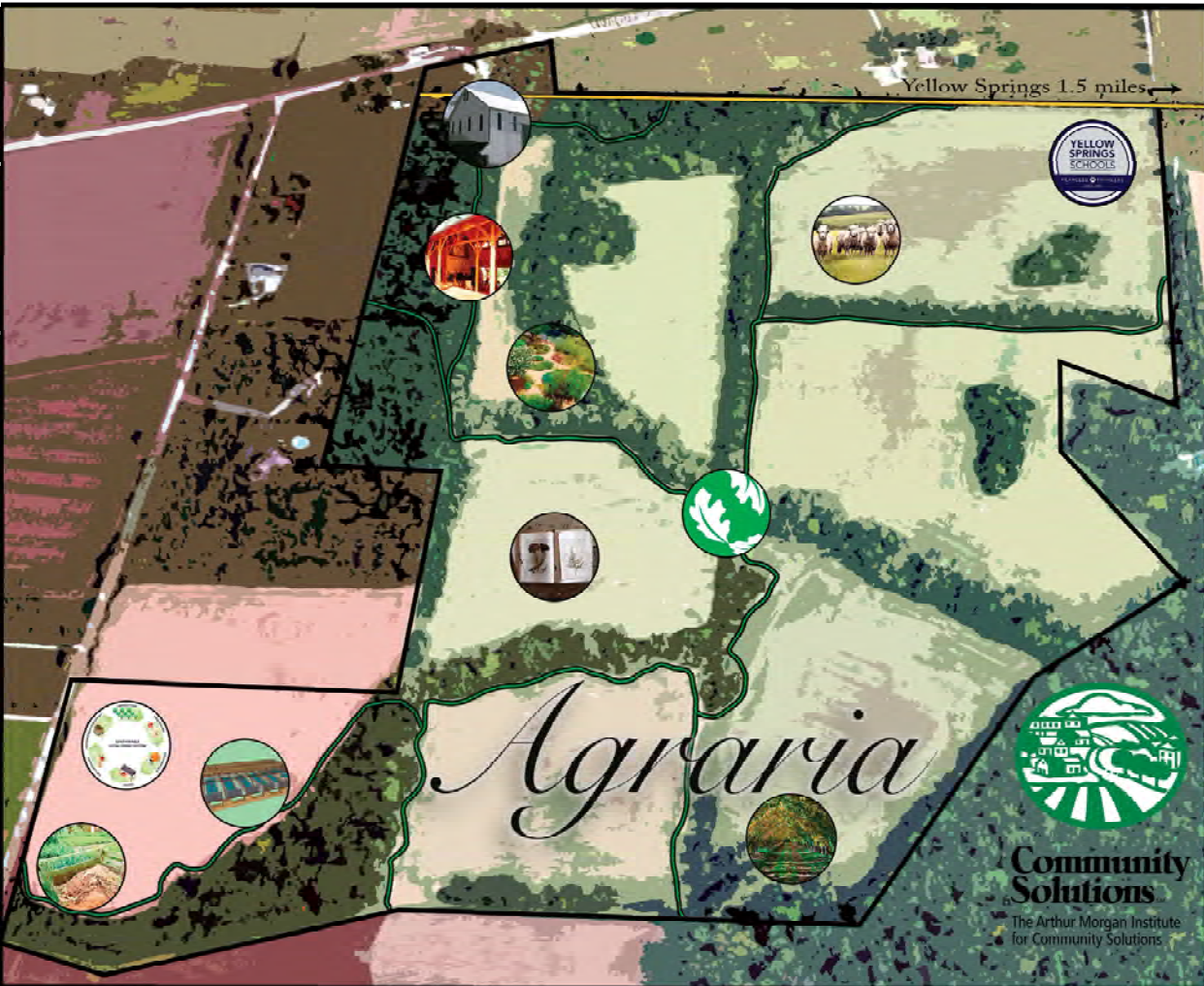
Date: January 12, 2018

RE: Grant Letter of Support

Community Solutions is applying to the Recreational Trails Program and the Clean Ohio Trail Fund Program for funds to build a bike path from our barn at Agraria to the Yellow Springs High School. Our goal with the path is to provide safe and easy access for students and community members to come to Agraria for classes and events. We are working with the YS High School on the development of a sustainable agriculture program to be offered to students, and also plan to host classes doing research on the Jacoby Creek Restoration. We will be working with Rails to Trails and the Active Transportation Task Force on the project. The path will cross the northern boundary of Agraria (see attached map), and will also cross land owned by Rick and Mary Donahoe, who have given their permission. If the YS School Board agrees, the path will also cross the YS High School southern property boundary, ending at E. Enon Road.

We would appreciate it if the Council would provide a letter of support to be included with the grant, which is due on February 1<sup>st</sup>.

If I can provide any further information, please don't hesitate to ask.



-  Education
-  Barn
-  Fencing and Pasture Animals
-  Agroforestry
-  Education Pavilion
-  Demonstration Garden
-  Nature Conservancy
-  Yellow Springs Schools
-  Greenhouse
-  Compost
-  Regional Food Systems



**Community Solutions**  
 The Arthur Morgan Institute  
 for Community Solutions

## Our Vision for Agraria



**Education**—Agraria will serve as a living laboratory for citizen scientists of all ages. Anticipated classes and workshops, in partnership with local schools, Antioch, Central State University, and the University of Dayton, include:

- Ecological—ecosystem functions, watersheds, soil biology, local flora and fauna.
- Skillsharing—homesteading, foraging, woodworking, chicken-tending.
- Philosophical—Eco-psychology; Biophilia; Eco-spirituality.
- Current Issues—Critical Agrarianism; Climate Change; and New Economics.



**Barn**—Agraria's 7000 sq ft bank barn is an oaken beauty. Nearly 100 years old, the barn is in terrific shape, but needs some loving care to bring it into regular use as an event space. Plans are to update wiring, investigate and repair the roof and walls, add compost toilets and a catering space, and grace it with lighting and ceiling fans.



**Fencing and pastured animals**—Raising animals will enable us to research the soil-building potential of intensive rotational grazing and poly-cultural landscapes. We expect to add perimeter fences as well as interior movable fences, and pasture cattle, sheep, and chickens.



**Agroforestry and other Carbon Farming sites**— Multi-story plantings, including trees, bushes, and understory build soil and symbiotic relationships with each other. We'll be creating several different landscapes, beginning with the Jacoby Creek riparian barrier and moving outward to silvopasture and pasture cropping.



**Educational Pavilion**—Building an open-air structure in our upper field will extend our gateway space into our restored landscape in view of the Jacoby Creek and our Demonstration Gardens and pond. The pavilion will be home to art and biodiversity classes, concerts, weddings, and convivial gatherings.



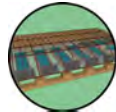
**Nature Conservancy**—We are partnering with this national organization on a restoration of Jacoby Creek, which will be a national model of pairing conservation with agriculture. Plans include a re-meandering of the creek, removal of invasive species, and replanting with natives. We'll be doing concurrent research on soil and water quality in partnership with Xylem and area universities.



**Yellow Springs Schools**— Agraria is just ¼ mile west of the Yellow Springs High School. We've planned a bike path to bring students safely to Agraria and are at work envisioning hoop houses, hands-on classwork, and longitudinal research involving students of all ages. Classes from Mills Lawn and McKinney Middle School are already involved in studies on and of Agraria.



**Demonstration gardens and plaques**—Our upper field and forest walk will be cultivated to provide an educational and aesthetic experience close to Agraria's gateway. Pollinator, food forest, medicinal and dye gardens will give visitors a sense of what is possible in small urban or suburban spaces.



**Strawbale Greenhouse and Forest Nursery**—Native Plantings are an important antidote to biodiversity loss. Our greenhouse and forest nursery will include trees, shrubs, wetlands species and medicinal plants, both for our own use, and for sale.



**Compost/Biochar/Soil Amendments**—A farm-scale windrow composting system will enable us to provide compost for our own fields, as well as regional gardeners. Using biochar and other amendments, we'll be able to create brews that directly address the deficiencies in rural and urban soils.



**Support for Regional Food System**—Agraria will be a center for support of the regional food system. Growing and food safety classes, tool lending, soil amendments, and the development of closed-loop systems could support and foster regional small farmers. A Farm-to-School partnership with Springfield Public Schools could expand with Agraria support for community gardens in Springfield and Dayton.

For more information, see [www.communitysolution.org](http://www.communitysolution.org) or call 937-767-2161.





**Public Health**  
Prevent. Promote. Protect.

## **Greene County Public Health**

*Melissa Howell, MS, MBA, MPH, RN, RS, Health Commissioner*  
*Robert P. Dillaplain, MD, Medical Director*

# **Press Release**

**For Immediate Release**  
**January 11, 2018**

**Contact: Laurie Fox, Public Information Officer**  
**937-374-5669/866-858-3588; lfox@gcph.info**

## **Keep Radon Out of Your Home**

**XENIA, OH** – January is National Radon Action Month, when Ohio residents are urged to test their homes for radon.

Soil in central Ohio can have high levels of radon gas. According to the Environmental Protection Agency, radon is the second leading cause of lung cancer, and it can seep into homes. To help protect residents, the Greene County Public Health offers homeowners free test kits. These easy-to-use home test kits are available at via [www.uchd.net/radon](http://www.uchd.net/radon).

“Winter is the best time to get a test kit,” said Jeff Webb, Environmental Health Director at Greene County Public Health. “During these colder months, our homes are closed up, trapping gases inside and providing more accurate radon readings.”

Radon results from the decay of uranium found in nearly all soils. Radon cannot be seen, smelled or tasted, making testing the only way to determine if it is in your home. Radon can leak into homes through cracks in foundations, openings around sump pumps and drains, construction joints and cracks in walls.

It is estimated that nearly one home in every 15 in the U.S. has an elevated radon level. Elevated levels have been found in all areas of the country, especially central Ohio. Radon is measured in picocuries per liter (pCi/L) and the EPA has identified 4 pCi/L as a recommended action level.

“Greene County has been designated as a zone one area on the EPA’s radon map,” Webb said. “This means the EPA predicts that homes within our area could have high radon levels. Therefore it is important all homeowners in our area test for radon gas.”

According to the University of Toledo’s Ohio Radon Information System, 11,259 Greene County homes have been tested for radon. The maximum reading for Greene County was 590 pCi/L, the minimum Greene County reading was 0.1 pCi/L, with an average reading of 7.14 pCi/L.

If your home registers high levels of radon, it can be removed from your home through a variety of mitigation

*-more-*

*360 Wilson Drive • Xenia, Ohio 45385*  
*(937) 374-5600 • toll free (866) 858-3588 • Fax (937) 374-5675*  
*[www.gcph.info](http://www.gcph.info)*



**Public Health**  
Prevent. Promote. Protect.

## **Greene County Public Health**

*Melissa Howell, MS, MBA, MPH, RN, RS, Health Commissioner*  
*Robert P. Dillaplain, MD, Medical Director*

systems. According to the EPA, mitigation systems can cost between \$800 and \$2,500 with an average cost of \$1,200. More information on radon mitigation can be found at [www.epa.gov/radon](http://www.epa.gov/radon) by clicking on the “Publications and Resources link” and viewing the EPA publication *Consumer’s Guide to Radon*.

To get a free test kit, homeowners can log onto [www.uchd.net/radon](http://www.uchd.net/radon). After completing a short online form, a free test kit will be mailed within a few weeks.

Radon test kits are easy to use. Place the small, non-obtrusive test kit in the lowest living level of the home for three to seven days. Then, seal the kit and mail it to the certified laboratory for analysis. Confidential results are available online a few days later or can be mailed to the homeowner within approximately two weeks.

For more information, please visit [www.uchd.net/radon](http://www.uchd.net/radon) or [www.epa.gov/radon](http://www.epa.gov/radon).

### ***Local Radon Assistance:***

The Regional Air Pollution Control Agency (RAPCA) is a sub-grantee of Ohio’s State Indoor Radon Grant. Through this grant, RAPCA can provide assistance with radon testing questions, link homeowners to free or discounted radon test kits, and make referrals to other organizations handling radon issues. RAPCA can be contacted using the information below:

*Reibold Bldg*

*117 S Main St*

*Dayton, OH 45422*

*Office Hours 8am - 4:30pm, Mon - Fri*

*Main: (937) 225-4435*

*Toll Free Number: (800) 458-2115*

*Main Fax: (937) 225-3486*

*AirLine: (937) 223-3222*

### ***About Greene County Public Health:***

*Our services are designed to protect and improve the health of the community. We provide convenient and affordable, population-based programs and services to children and pregnant women, WIC, special services to families with medical and developmental needs, school inspections, general operations, nuisance abatement, rabies, and other environmental health investigations. We ensure food and water are safe, protection from disease, and readiness to respond to emergencies. The organization was created by Ohio Revised Code 3707 and 3709 in 1920. Our mission is to prevent disease, protect our environment, and promote healthy communities and wellness in Greene County.*

**Greene County Public Health...**  
**Your Trusted Local Public Health Authority Since 1920**

###

360 Wilson Drive • Xenia, Ohio 45385  
(937) 374-5600 • toll free (866) 858-3588 • Fax (937) 374-5675  
[www.gcph.info](http://www.gcph.info)