

Introduced by Nixon Councilman
 Seconded by Spotts Councilman
 Form Approved Arthur L. G. Director of Law

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Sally Clemans, Clerk

AN ORDINANCE AMENDING CHAPTER 880 OF THE CODIFIED ORDINANCES OF LIMA, OHIO, EARNED INCOME TAX, AND DECLARING AN EMERGENCY.

VOTE	1ST		2ND		3RD	
	Y	N	Y	N	Y	N
MAGNUS					✓	
NIXON					✓	
LEWIS					✓	
TEBBEN					✓	
PITTS					✓	
GLENN					✓	
TOWNSEND						
POTTS					✓	
HUFFMAN					✓	
TOTAL					8	0

WHEREAS, Council determines it is necessary to amend Chapter 880 of the Codified Ordinances of the City of Lima, Ohio regarding changes to the tax code; and,

WHEREAS, an emergency exists because it is necessary to enact this ordinance to provide for immediate enactment of said changes and to preserve the public peace, property, health, safety, and welfare, and provide for the efficient daily operation of municipal government, and by reason thereof, this ordinance shall take effect immediately upon its passage; Now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LIMA, OHIO, TWO-THIRDS OF THE MEMBERS ELECTED THERETO CONCURRING:

Section 1. Chapter 880 of the Codified Ordinances of Lima, Ohio, is hereby amended as follows:

**CHAPTER 880
EARNED INCOME TAX**

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|---|---|
| 880.01 Purpose | 880.13 Board of Review |
| 880.02 Definitions | 880.14 Allocation of Funds |
| 880.03 Imposition of Tax | 880.15 Credit for Tax Paid to Another Municipality Or Joint Economic Development District |
| 880.04 Effective Date | 880.16 Requirements for JEDD |
| 880.05 Return & Payment of Tax | 880.17 Separability & Savings Clause |
| 880.06 Collection at Source | 880.18 Collection of Tax After Termination of Chapter |
| 880.07 Declarations | 880.99 Penalty |
| 880.08 Duties of the Dir. of Taxation | |
| 880.09 Investigative Powers of the Director | |
| 880.10 Interest & Penalties | |
| 880.11 Collection of Unpaid Taxes | |
| 880.12 Violations | |

Section 880.01: Purpose

To provide funds for the purposes of general Municipal operations, maintenance, new equipment, extension and enlargement of Municipal services and facilities and capital improvements of the City, there is hereby levied a tax on salaries, qualifying wages, commissions and other compensation, net profits and other taxable income as hereinafter provided.

Section 880.02: Definitions

As used in this Chapter, and in the accompanying rules and regulations, unless the context clearly indicates or requires a different meaning:

- (a) “adjusted federal taxable income” means a C corporation’s federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:
 - (I) 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,
 - (II) Add an amount equal to five percent (5%) of intangible income deducted under section (I) of this definition, 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;
 - (III) 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;
 - (IV) (A) Except as provided in (IV)(B) of this definition, 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) Section (IV)(A) of this definition 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.
 - (V) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
 - (VI) In the case of a real estate investment trust and 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;
 - (VII) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except;
 - (A) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and

(B) Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

- (b) "Association" means any partnership, limited partnership, S-corporation, or other form of unincorporated enterprise owned by two or more persons.
- (c) "Board of Review" or "Board" means the Board created by and constituted as provided in Section 880.13.
- (d) "Business" means any enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity, including but not limited to the renting or leasing of property, real, personal or mixed.
- (e) "City" means the City of Lima.
- (f) "Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.
- (g) "Director of Taxation" means the Director of Taxation for the City of Lima or the persons designated and appointed by the Mayor to execute the duties of the Director of Taxation.
- (h) "Domicile" means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence.
- (I) "Employee" means one who works for wages, salary, commission, or other types of compensation in the service of an employer. Any person upon whom an employer is required to withhold for either Federal Income Tax or Social Security or on whose account payments are made under the Ohio Workmen's Compensation Law, shall prima facie be an employee.
- (j) "Employer" means any individual, partnership, association, corporation, governmental agency, board, body, bureau, department, subdivision, or unit, or any other entity, whether or not organized for profit, that employs one or more persons on a salary, wage, commission or other compensation basis. It does not include a person who employs only domestic help for such person's private residence.
- (k) "Fiscal year" means an accounting period of twelve months ending on any date other than December 31.
- (l) "Gross receipts" means total income of taxpayers from whatever source derived.
- (m) "Income from a pass-through entity" means partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from other pass-through entities.
- (n) "Intangible income" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale,

exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.

- (o) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
- (p) "Joint Economic Development District" means districts created under the Ohio Revised Code sections 715.70 through 715.83, as amended from time to time.
- (q) "Limited liability company" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
- (r) "Net profits" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts described as net operating losses in the accompanying rules and regulations, required to be reported on schedule C, schedule E, or schedule F.
- (s) "Non-qualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.
- (t) "Nonresident" means any individual or entity domiciled outside the City.
- (u) "Nonresident incorporated business entity" means an incorporated business entity not having an office or place of business within the City.
- (v) "Nonresident unincorporated business entity" means any unincorporated business entity not having an office or place of business within the City.
- (w) "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.
- (x) "Owner" means a partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.
- (y) "Owner's proportionate share", with respect to each owner of a pass-through entity, means the ratio of (a)the owner's income from the pass-through entity that is subject to taxation by the City, to (b)the total income from that entity of all owners whose income from the entity is subject to taxation by the City.
- (z) "Pass-through entity" means a partnership, limited liability company, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code, excluding S corporations.
- (aa) "Person" means any individual, partnership, fiduciary, association, corporation, firm, company, business trust, estate, trust, limited liability company, governmental entity, or any other entity. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to an association, means the partners or members thereof, and as applied to a corporation, means the officers thereof, and in the case of any unincorporated entity or corporation not having any

- partner, member, or officer within the City, any employee or agent of such unincorporated entity or corporation who can be found within the City.
- (bb) "Place of business" means any bona fide office (other than a mere statutory office), factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity, individually or through one or more of his regular employees regularly in attendance.
 - (cc) "Principal place of business" means in the case of an employer having headquarter's activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated. In the case of any employer not having its headquarters' activities at a place of business within a taxing municipality, the term means the largest place of business located in a taxing municipality.
 - (dd) "Qualified plan" means a retirement plan satisfying the requirements under section 401 of the Internal Revenue Code.
 - (ee) "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with section 718.03(A) of the Ohio Revised Code.
 - (ff) "Resident" means any individual or entity domiciled in the City.
 - (gg) "Resident incorporated business entity" means an incorporated business whose office, place or operations or business situs is within the City.
 - (hh) "Resident unincorporated business entity" means any unincorporated business entity having an office or place of business within the City.
 - (ii) "Return preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.
 - (jj) "Rules and Regulations" means the Rules and Regulations adopted by the Director of Taxation pursuant to this Chapter.
 - (kk) "Schedule C" means Internal Revenue Service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.
 - (ll) "Schedule E" means Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.
 - (mm) "Schedule F" means Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.
 - (nn) "S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
 - (oo) "Taxable income" means qualifying wages paid by an employer or employers, compensation for personal services, other income defined by statute as taxable and/or adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this Chapter.

Taxable income shall include, but is not limited to:

1. Employee contributions to cost of fringe benefits.
2. Sick pay and vacation pay.
3. Income from wage-continuation plans.

4. Cost of group life term insurance over \$50,000.00.
 5. Severance pay.
 6. Tips.
 7. Contributions made by or on behalf of employees to a tax-deferred annuity plan (401K plans and similar plans).
 8. Disability pay if received as a benefit from employment (to include third party plans).
 9. Bonuses.
 10. Supplemental unemployment pay which is paid by employer (SUB-Pay).
 11. All other compensation unless specifically exempted by this section of the Codified Ordinances of the City of Lima.
- (pp) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code. Unless approved by the Director of Taxation, the taxable year of an individual shall be the calendar year.
- (qq) "Taxing municipality" means a municipality levying a tax on income earned by a nonresident working within such municipality or on income earned by its residents.
- (rr) "Taxpayer" means any person, subject to a tax on income levied by a municipal corporation and required hereunder to file a return or pay a tax. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.
- (ss) Words in the singular number include the plural number, and words in the masculine gender include the feminine and neuter genders, and all periods set forth shall be inclusive of the first and last mentioned dates.
- (tt) Nothing in these definitions 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. Nothing in these definitions shall be construed as limiting or removing the ability of the City to administer, audit, and enforce the provisions of its municipal income tax.

Section 880.03: Imposition of Tax

- (a) Subject to the provisions of Section 880.15, an annual tax for the purposes specified in Section 880.01 shall be imposed as follows:

1. On and after January 1, 1967 to and including December 31, 1982, at the rate of one percent (1%) per year upon the following:

A. All salaries, wages, commissions and other compensation earned on and after January 1, 1967 to and including December 31, 1982, by residents of the City;

B. All salaries, wages, commissions, and other compensation earned on or after January 1, 1967 to and including December 31, 1982, by nonresidents for work done or services performed or rendered in the City.

C. (I) The portion attributable to the City of the net profits earned on and after January 1, 1967 to and including December 31, 1982, by all resident unincorporated businesses, professions or other activities, derived from work done, services performed or rendered and business or other activities conducted in the City;

(ii) The portion of the distributive share of the net profits earned on and after January 1, 1967 to and including December 31, 1982, by a resident partner or the owner of a resident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity;

D. (I) The portion attributable to the City of the net profits earned on and after January 1, 1967 to and including December 31, 1982, by all nonresident unincorporated businesses, professions or other activities, derived from work done, services performed or rendered and business or other activities conducted in the City, whether or not such unincorporated business entities have an office or place of business in the City;

(ii) The portion of the distributive share of the net profits earned on and after January 1, 1967 to and including December 31, 1982, by a resident partner or the owner of a nonresident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity; and

E. The portion attributable to the City of the net profits earned on and after January 1, 1967 to and including December 31, 1982, by all corporations, derived from work done, services performed or rendered and business or other activities conducted in the City, whether or not such corporations have an office or place of business in the City.

2. On and after January 1, 1983, at the rate of one and one-half percent (1.5%) per year upon the following:

A. All qualifying wages, commissions, other compensation, and other taxable income earned or received by residents of the City;

B. All qualifying wages, commissions, other compensation, and other taxable income earned or received by nonresidents for work done or services performed or rendered in the City;

- C.
 - (I) The portion attributable to the City of the net profits earned by all resident unincorporated businesses, pass-through, professions or other activities, derived from work done, services performed or rendered and business or other activities conducted in the City;
 - (ii) The portion of the distributive share of the net profits earned by a resident partner or the owner of a resident unincorporated business entity or pass-through entity not attributable to the City and not levied against such unincorporated business entity;
 - D.
 - (I) The portion attributable to the City of the net profits earned by all nonresident unincorporated businesses, pass-through entities, professions or other activities, derived from work done, services performed or rendered and business or other activities conducted in the City, whether or not such unincorporated business entities have an office or place of business in the City;
 - (ii) The portion of the distributive share of the net profits earned by a resident partner or the resident owner of a nonresident unincorporated business entity not attributable to the City and not levied against such unincorporated business entity; and
 - E. The portion attributable to the City of the net profits earned by all corporations that are not pass-through entities, derived from work done, services performed or rendered and business or other activities conducted in the City, whether or not such corporations have an office or place of business in the City.
- (b) The portion of the net profits attributable to the City of a taxpayer conducting a business, profession or other activity both within and without the boundaries of the City shall be determined as provided in Ohio Revised Code 718.02 and in accordance with the Rules and Regulations adopted by the Director of Taxation pursuant to this Chapter.
 - (1) A taxpayer shall be permitted to utilize any current year's business loss to offset that year's W-2 income to the extent of the amount of tax otherwise payable by that taxpayer in that tax year. This offset shall apply only to the W-2 income of the taxpayer who incurs the business loss.
 - (c) The tax provided for herein shall not be levied upon the sources of income specified in Ohio Revised Code 718.01 to the extent that such net profits are exempted from municipal income taxes under such section. The tax provided for herein shall not be levied upon the sources of income specifically excepted in the accompanying Rules and Regulations.
 - (d) The tax provided for herein shall be levied upon all gambling income as reported

on Internal Revenue Service Form W-2G, Form 5754 and or any other Form required by the Internal Revenue Service that reports winnings from gambling, prizes and lottery winnings, and all income attributable to wagers of any kind, including winnings received from the Ohio State Lottery.

Section 880.04: Effective Date

The tax provided for in this Chapter shall be levied, collected and paid with respect to the qualifying wages, commissions other compensation, and other taxable income earned on and after January 1, 1967, and with respect to the net profits of businesses, professions or other activities earned on and after January 1, 1967.

If, by operation of law, the commencement date for the levy, collection and payment of the tax provided for in this Chapter is postponed, the alternate date for the commencement of the levy, collection and payment of such tax shall be the beginning of the first month of any calendar quarter after such legal impediment is removed.

Section 880.05: Return and Payment of Tax

- (a) Each taxpayer or person who engages in business or whose salaries, wages, commissions and other compensations are subject to tax imposed by this Chapter shall, whether or not a tax is due thereon, make and file a return on or before April 15 of the year following the effective date of this Chapter and on or before April 15 of each year thereafter, with the Director of Taxation on a form or forms furnished by or obtainable upon request from such Director of Taxation, setting forth:
1. The aggregate amount of salaries, wages, commissions and other compensation earned by him and/or gross income from such business less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to such tax;
 2. The amount of tax imposed by this Chapter on such earnings and profits; and
 3. Such other pertinent statements, information returns or other information as the Director of Taxation may require; including a statement that the figures used in the return for Federal Income Tax adjusted to set forth only such income as is taxable under the provisions of this Chapter.
- (b) When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the end of such fiscal year or other period.
- (c) The Director of Taxation may extend the time for filing the annual return upon the request of the taxpayer for a period ending the last day of the month following the month to which the due date of the federal income tax return has been extended.

However, a tentative return, accompanied by payment of the amount of tax shown to be due thereon shall be filed by the date the return is normally due. No penalty or interest shall be assessed in those cases in which the return is filed and the final tax paid within the period as extended.

- (d) The return shall also show the amount of the tax imposed by this Chapter on such earnings and profits. The taxpayer making a return shall, at the time of the filing thereof, pay to the Director of Taxation the amount of tax shown due thereon. However, credit shall be allowed for:

1. Any portion of the tax due which has been deducted at the source pursuant to section 880.06;
2. Any portion of the tax which has been paid by the taxpayer pursuant to section 880.07; and
3. Any credit permitted by section 880.15 for tax paid to another municipality or Joint Economic Development District.

Within three (3) months from the final determination of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the City tax based upon such final determination of Federal tax liability and shall pay any additional tax shown due thereon or make claim for the refund of any overpayment.

- (e) The Director of Taxation is hereby authorized to provide by regulation, subject to the approval of the Board of Review, that the return of an employer, showing the amount of tax deducted by such employer from the qualifying wages, commissions other compensation and other taxable income of an employee and paid by him to the Director of Taxation, may be accepted as the return required of any employee whose sole income, subject to the tax under this Chapter, is such qualifying wages, commissions, other compensation, and other taxable income.
- (f) In the case of a corporation which carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or if any person operates a division, branch, factory, office, laboratory or activity thereof within the City which constitutes only a portion of its total business, the Director of Taxation shall require such additional information as may be necessary to ascertain whether the net profits apportionable to the City are distorted by the shifting of income, the apportionment of expenses or other methods available to a common control. If the Director of Taxation finds that any net profits apportionable to the City are distorted by reason of transactions with stockholders, with such other corporations or with such division, branch, factory, office, laboratory or activity or by some

other method, he shall adjust such transactions so as to produce a fair and proper apportionment of net profits to the City. If necessary, the Director of Taxation may require the filing of a consolidated return.

- (g) Any taxpayer who has overpaid the amount of tax to which the City is entitled under the provisions of this Chapter may have such overpayment applied against any subsequent liability hereunder or, at his election, indicated on the return, refunded. However, no additional tax or refund less than Five Dollars(\$5.00) shall be collected or refunded.

Section 880.06: Collection at Source

- (a) Any employer within or doing business within the City who employs one or more persons on a salary, wage, commission or other compensation basis shall, at the time of the payment thereof, deduct therefrom the tax of one and one-half percent (1.5%) of the qualifying wages due from him to such employee on or after January 1, 1983, and may, when such amount is less than three hundred dollars (\$300.00) per month, on or before the last day of the month following the close of each calendar quarter, make a return and pay to the Director of Taxation the amount of tax so deducted. In the event the total monthly deductions are three hundred dollars (\$300.00) per month or more, the employer shall make a return and pay such amount to the Director of Taxation on or before the fifteenth (15th) day of the month following the month in which such deductions are made. Such return shall be on a form prescribed by or acceptable to the Director of Taxation and shall be subject to the rules and regulations prescribed therefore by the Director of Taxation. The Director of Taxation may revoke quarterly filing when there is reason to believe that the reasons for such payment have changed, were judged incorrectly, were not met, or when in the best interest of the City to do so. Notice of withdrawal of the quarterly filing status shall be made in writing and, in such case, the employer must begin to file in accordance with this section.
- (b) The employer collecting such tax shall be deemed to hold the same, until payment thereof is made by such employer to the City, as a trustee for the benefit of the City. Any tax so collected by such employer from his employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer. Each employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax, in fact, has been withheld.
- (c) No person shall be required to withhold the tax on the wages or other compensation paid to domestic servants employed exclusively in or about such person's residence.

Section 880.07: Declarations

- (a) Any person who anticipates any taxable income which is not subject to section 880.06 or who engages in any business, profession, enterprise or activity shall file

a declaration setting forth his estimated income or the estimated profit or loss from such business activity together with the estimated tax thereon, if any.

- (b) Such declarations shall be filed on or before April 15 of each year during the life of this Chapter or within four months of the date the taxpayer becomes subject to the tax for the first time.
- (c) Such declarations shall be filed upon a form furnished by or obtainable from the Director of Taxation, or on an acceptable generic form, which form may require a statement that the figures used in making such declaration are the figures used in making the declaration of the estimate for the Federal Income Tax, adjusted to set forth only such income as is taxable under the provisions of this Chapter.
- (d) Such declaration shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax. For taxpayers who are individuals at least a similar amount shall be paid on or before the last day of the seventh (7th), tenth (10th) and thirteenth (13th) months after the beginning of each taxable year. For taxpayers who are not individuals, at least a similar amount shall be paid on or before the fifteenth (15th) day of the sixth (6th), ninth (9th), and twelfth (12th) months after the beginning of each taxable year. The mere submission of a declaration estimating a tax liability shall not constitute filing unless accompanied by the required payment.
- (e) Such declaration shall indicate that the estimated tax is being withheld under the provisions of section 880.06 or is being paid to another municipality under a similar ordinance.
- (f) Any taxpayer who has a fiscal year or period differing from the calendar year shall file a declaration within four months after the start of each fiscal year or period, accompanied by payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax shown due thereon, and shall make quarterly payments each three months thereafter.
- (g) An amended declaration shall be filed on or before January 31 of any year or, in the case of a taxpayer filing on the basis of a fiscal year, on or before the date fixed by regulation of the Director of Taxation, if it appears that the original declaration made for such year underestimates the taxpayer's income by twenty percent (20%) or more. At such time a payment which, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability shall be made. If, upon the filing of the return required by section 880.05, it appears that the taxpayer did not pay eighty percent (80%) of his tax liability, as shown on such return, on or before January 31 or the date fixed by regulation, whichever is applicable, the difference between eighty percent (80%) of his tax liability and

the amount of estimated tax which he actually paid on or before the date due shall be subject to the interest and penalty provided in section 880.10. However, any taxpayer whose declared tax is equal to or greater than the tax paid in the previous year shall not be assessed any interest or penalty for any increased tax found to be due in the current year.

- (h) A declaration may be amended at any time. In the event that an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.
- (I) On or before April 15 of the year following that for which such declaration or amended declaration was filed an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with the provisions of section 880.05.

Section 880.08: Duties of the Director of Taxation

- (a) The Director of Taxation shall collect and receive the tax imposed by this Chapter in the manner prescribed herein from the taxpayers, and shall keep an accurate record for a minimum of six (6) years showing the amount received by him from each taxpayer required to file a declaration or make a return and the date of such receipt. Unneeded records shall be disposed of in accordance with Ohio Revised Code 149.39.
- (b) The Director of Taxation is hereby charged with the enforcement of the provisions of this Chapter, including the interpretation and enforcement of the Rules and Regulations, and is hereby empowered, subject to the approval of the Board of Review, to adopt, promulgate and enforce rules and regulations relating to the administration and enforcement of the provisions hereof, including provisions for the re-examination and correction of returns and payments.
- (c) In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Director of Taxation shall fix the amount of tax actually due the City from the taxpayer and shall send to such taxpayer by certified mail a written statement showing the amount of tax so fixed, together with the interest and penalties thereon, if any.

Section 880.09: Investigative Powers of the Director of Taxation; Confidential Information

- (a) The Director of Taxation, or any authorized employee, is hereby authorized to examine the books, papers, records and Federal Income Tax returns of any employer, any person, any taxpayer, or any taxpayer the Director of Taxation believes is subject to the tax provided for in this Chapter for the purpose of verifying the accuracy of any return made or, if no return was made, ascertaining the tax due under this Chapter. Each such person shall furnish, upon the written request of the Director of Taxation or his duly authorized agent or employee, the means, facilities and opportunity for making the examinations and investigations

authorized herein.

- (b) The Director of Taxation is hereby authorized to order any person, presumed to have knowledge of the facts, to appear in his office and to examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income. For such purposes, the Director of Taxation may compel the production of books, papers, records, and Federal Income Tax returns and the attendance of any person before him, whether as a party or a witness, whenever he believes that such person has knowledge of such income or information pertinent to such inquiry.
- (c) The refusal to produce such books, papers, records or Federal Income Tax returns or to submit to such examination by any employer or person subject or presumed to be subject to the tax, or by any officer, agent or employee of any person subject to the tax or required to withhold the tax, or the failure of any person to comply with the provisions of this section or with any order or subpoena of the Director of Taxation authorized herein, shall be deemed a violation of this Chapter, punishable as provided in section 880.99.
- (d) Any information gained as the result of any return, investigation, hearing or verification required or authorized by this Chapter shall be confidential, except for official purposes or in accordance with proper judicial order. No person shall divulge such information. The Director of Taxation may furnish copies of returns filed under this Chapter to the Internal Revenue Service and to the State Tax Commissioner. Any individual divulging such information in violation of this section shall be subject to the provisions set forth in the Rules and Regulations.

Section 880.10: Interest and Penalties

- (a) All taxes imposed and all moneys withheld by employers, under this Chapter, and remaining unpaid after they have become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of twelve percent (12%) per year.
- (b) In addition to the interest provided in subsection (a) hereof, penalties for nonpayment of taxes and moneys required to be withheld by employers, under this Chapter are hereby imposed as follows:
 - 1. In the case of a taxpayer upon whom such taxes are imposed, the penalty shall be ten percent (10%) of the unpaid tax, if paid during the first (1st) month after the same becomes due, and two percent (2%) additional per month or fraction thereof after the first (1st) month. The maximum penalty under this subsection shall not exceed twenty percent (20%). However, no penalty shall be assessed on an additional tax assessment made by the Director of Taxation when a return has been filed in good faith and the tax paid thereon within the time prescribed herein. No penalty or interest shall be assessed on any additional tax assessment resulting

from a Federal audit, provided that an amended return is filed and the additional tax paid within three (3) months after the final determination of Federal tax liability.

2. In the case of an employer required to withhold taxes from employees under this Chapter, the penalty shall be ten percent (10%) of the unpaid withholding, if paid during the first (1st) month after the same becomes due, and three percent (3%) additional per month or fraction thereof after the first (1st) month. The maximum penalty under this subsection shall not exceed twenty-five (25%) percent.

- (c) Upon recommendation of the Director of Taxation, the Board of Review may abate the penalties and interest, or both. Upon appeal from the refusal of the Director of Taxation to recommend abatement of the penalties or interest, the Board of Review may nevertheless abate the penalties or interest, or both.

Section 880.11: Collection of Unpaid Taxes

- (a) All taxes imposed by this Chapter shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Except in the case of fraud, omission of a substantial portion of income subject to this tax in excess of twenty-five percent (25%) of that required to be reported or failure to file a return, an additional assessment shall not be made after three (3) years from the time of payment of any tax due hereunder. However, in those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitation, the period within which an additional assessment may be made by the Director of Taxation shall be one (1) year from the time of the final determination of the Federal tax liability.
- (b) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date of payment thereof or within three (3) months from the final determination of the Federal tax liability, whichever is later.

Section 880.12: Violations

- (a) No person shall:
1. Willfully fail, neglect or refuse to make any return or declaration required by this Chapter;
 2. Knowingly make any incomplete, false or fraudulent return;
 3. Willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this Chapter;
 4. Willfully fail, neglect or refuse to withhold the tax from his employees or to

remit such withholding to the Director of Taxation;

5. Refuse to permit the Director of Taxation or any duly authorized agent or employee to examine his books, records, papers and Federal Income Tax returns relating to the income or net profits of a taxpayer;

6. Fail to appear before the Director of Taxation and to produce his or his employer's books, records, papers or Federal Income Tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Director of Taxation;

7. Refuse to disclose to the Director of Taxation any information with respect to the income or net profits of a taxpayer;

8. Willfully fail to comply with any of the provisions of this Chapter or any order or subpoena of the Director of Taxation authorized hereby;

9. Unlawfully attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this Chapter.

10. Willfully give to an employer by an employee false information as to his true name, correct social security number and residence address, or the failure of such employee to promptly notify an employer of any change in residence address and date thereof;

11. Failure on the part of an employer to maintain proper records of employees' residence addresses, total wages paid and City tax withheld, or to knowingly give the Director of Taxation false information;

12. Willfully fail or willfully refuse to make any payment on the estimated tax for any year or part of any tax year as required in this Chapter;

13. Fail to cause the tax withheld from qualifying wages of the employees pursuant to this Chapter to be paid to the City in accordance with the provisions of this Chapter;

Any taxpayer violating the preceding shall be guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned not more than six (6) months or both, for each offense.

- (b) All prosecutions under this section shall be commenced within three (3) years after the tax was due or the return was filed, whichever is later. In the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported in any of the offenses listed herein,

prosecutions may be commenced within six (6) years after the commission of the offense.

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

Section 880.13: Board of Review

- (a) A Board of Review, consisting of the Director of Law, the Mayor and the Auditor is hereby created. All rules and regulations, and any amendments thereto, which are adopted by the Director of Taxation under the authority conferred by this Chapter, shall be approved by the Board of Review before the same become effective. After such approval, such rules, regulations, amendments and changes shall be filed with the Clerk of Council and shall be open to public inspection.
- (b) The Director of Law shall be the Chairman of the Board, and the Auditor shall serve as the Secretary thereof. A majority of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions.
- (c) All hearings by the Board may be conducted privately. The provisions of section 880.09 with reference to the confidential character of information required to be disclosed by this Chapter shall apply to such matters as may be heard before the Board on appeal.
- (d) Any person dissatisfied with any ruling or decision of the Director of Taxation made under the authority conferred by this Chapter may appeal therefrom to the Board within thirty (30) days from the announcement of such ruling or decision by the Director of Taxation. The imposition of penalty and interest as prescribed in this Chapter is not a sole basis for an appeal.
- (e) The Board shall schedule a hearing within forty-five (45) days after receiving an appeal notice, unless the taxpayer waives such a hearing. The taxpayer, if requested, may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative. The Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. The Board shall issue a decision on the appeal within ninety (90) days after the hearing on the appeal and send notice to the taxpayer involved within fifteen (15) days after issuing the decision.
- (e) Any person dissatisfied with any ruling or decision of the Board may appeal therefrom to a court of competent jurisdiction as provided in section 5717.011 of the Ohio revised Code.

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

Section 880.14: Allocation of Funds

Notwithstanding any of the other provisions of this Chapter, all of the revenue collected under this Chapter shall be allocated to the General Fund of the City beginning with revenue received on January 1, 1967, and thereafter.

Section 880.15: Credit for Tax Paid to Another Municipality

- (a) When a resident of the City is subject to a municipal income tax in another municipality, he shall not pay a total municipal income tax on the same income greater than the tax imposed at the highest rate to which he is subject.
- (b) Any individual taxpayer who resides in the City, who received net profits, salaries, wages, commissions, other compensation, or other taxable income for work done or services performed or rendered outside the City, and who paid a municipal income tax on the income taxable under this Chapter to another municipality shall be allowed a credit against the tax imposed by this Chapter as determined by the wages tax was withheld on at another municipality's taxable rate, not to exceed Lima's tax rate of 1.5%.

Section 880.16: Requirements for Joint Economic Development Districts

Specific provisions of this Chapter may be modified as they apply to Joint Economic Development Districts if the modifications are passed by Council in an ordinance which either specifically approves a Joint Economic Development District contract or specifically amends this Chapter.

Section 880.17: Separability and Savings Clause

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

SECTION 880.18: COLLECTION OF TAX AFTER TERMINATION OF CHAPTER

- (a) This Chapter shall, until repealed, continue in full force and effect insofar as the levy of taxes is concerned and insofar as the collection of any tax levied hereunder and any action or proceeding for collecting such tax or enforcing any of the provisions of this Chapter are concerned. It shall continue in full force and effect until any tax levied in the aforesaid period is fully paid and any suit or prosecution for the collection of such tax or for the punishment of any violation of this Chapter has been fully terminated, subject to the limitations in sections 880.11 and 880.12.
- (b) Annual returns for the last year, or portion thereof, in which this tax is levied shall be filed within four (4) months from the last day such levy ends. Any tax shown due thereon which is not paid and collected under the provisions of section 880.06 or 880.07 shall be paid with such annual return, except in those cases in which the time for filing returns and/or paying taxes due has been extended in accordance with section 880.05.

Section 880.99: Penalty

- (a) Whoever violates any of the provisions of this Chapter for which no penalty is otherwise provided shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six (6) months, or both, for each offense.
- (b) Whoever violates any of the provisions of section 880.09(d) shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

Section 2. Existing Chapter 880 is hereby amended as set forth above, and any previous sections or ordinances in conflict herewith are hereby repealed. The provisions herein shall be effective for tax year 2006.

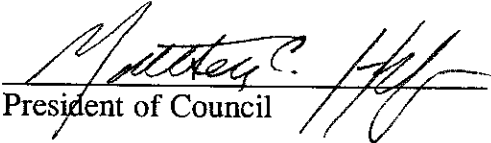
Section 3. The provisions for business loss offset provided in §880.03(b)(1) shall also be retroactive to include only tax year 2005, and any taxpayer affected thereby must file an amended return on or before April 15, 2007 to be eligible for the said offset for the 2005 tax year.

Section 4. Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the adoption of this ordinance were taken in an open meeting and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings held in compliance with the law.

Section 5. The Clerk of Council is authorized and directed to cause publication of this Ordinance to be made in a summary manner as provided by the City Charter.

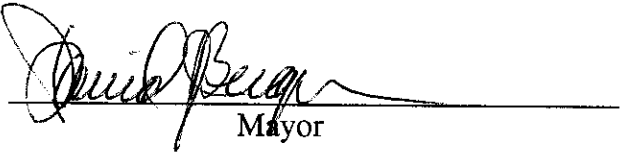
Section 6. For the reasons set forth in the preamble hereto which is made a part hereof, this Ordinance is hereby determined to be an emergency measure and shall take effect and be in force forthwith provided that it receives the affirmative vote of two-thirds of the members elected to Council; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed: December 18, 2006



President of Council

Approved: December 18, 2006



Mayor

Attest: 

Clerk