

**CITY OF XENIA, OHIO
ORDINANCE 2018 – 08**

**AMENDING CHAPTER 881. AND ENACTING SECTIONS 881.98 AND 881.99 OF THE
CITY’S INCOME TAX CODE, AND DECLARING AN EMERGENCY**

WHEREAS, House Bill (HB) 49 of the 132nd General Assembly, the State’s general appropriations bill for the biennium passed on June 29, 2017, includes Section 803.100, purporting to require that municipalities adopt certain municipal income tax provisions that are also adopted within HB 49 to authorize State officials to collect and administer municipal net profits taxes;

WHEREAS, Section 803.100 of HB 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;

WHEREAS, although the municipal income tax provisions of HB 49, and Section 718.04(A) of the Ohio Revised Code, violate the Home Rule Amendment, the City nevertheless is compelled to adopt HB 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 HB 49 and Section 718.04(A) of the Ohio Revised Code;

WHEREAS, the City is a party to ongoing litigation seeking a declaration that the municipal income tax provisions of HB 49, 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 HB 49 municipal income tax provisions;

WHEREAS, the City, by enacting this Ordinance, does not concede the legality of House Bill 49’s municipal income tax provisions, nor the legality of Section 718.04(A) or other sections of Chapter 718. of the Ohio Revised Code, nor any other law that is subject to the suit in which the City of Xenia is participating, or may participate, against the State, and the City reserves its right to continue prosecution of that suit or any other lawsuit; and

WHEREAS, pursuant to that litigation, the City must adopt the State-mandated municipal income tax provisions on or before February 24, 2018.

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

Section 1. This Ordinance is an emergency for the reason that pursuant to the coercive provisions of law found in HB 49 and Section 718.04(A) of the Ohio Revised Code, and the need for the City to preserve its taxing authority in the event that the HB 49 municipal income tax provisions and Section 718.04(A) of the Ohio Revised Code are not declared to be unconstitutional.

Section 2. Section 881.15 of the City’s Income Tax Code is hereby amended, as required by the state-mandated provisions of HB 49, to read as set forth in the attached Exhibit A.

Section 3. The remaining provisions of Chapter 881. (881.01 – 881.14 and 881.16 – 881.17, are hereby amended, to read as set forth in the attached Exhibit A.

Section 4. Section 881.98 and Section 881.99 of the City's Income Tax Code are hereby enacted, to read as set forth in the attached Exhibit A.

Section 5. Existing Chapter 881. is hereby repealed.

Section 6. City Council hereby expressly finds and determines that it does not concede the legality of HB 49's municipal income tax provisions, nor Section 803.100 of HB 49, nor Section 718.04(A) of the Ohio Revised Code, nor any other law that is the subject of the action pending in Case Number 2017CV10258 in the Franklin County Court of Common Pleas, and that the City 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 City therein.

Section 7. If any provision of HB 49's municipal income tax provision is found to be unconstitutional or is stayed or enjoined, the provisions of the City's Income Tax Code adopted, enacted or affected by the provisions of Sections 2., 3., or 4. of this Ordinance shall be likewise stayed or enjoined.

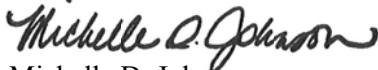
Section 8. The Finance Director is hereby directed to update the City of Xenia Income Tax Rules and Regulations to conform to the amendments and enactments made by this Ordinance.

Section 9. It is found that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 10. In accordance with Section 5.04 of the City's Charter, this Ordinance shall become effective upon its adoption.

ADOPTED: February 22, 2018

Attest:



Michelle D. Johnson
City Clerk



Michael D. Engle
President, Xenia City Council

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

~~(b)~~ **(a) Authority to Levy: The tax on income and the withholding tax established by this Chapter are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax on income and the withholding tax established by this Chapter are deemed to be** ~~This tax is levied in accordance with, and to be consistent with, the provisions and limitations of ORC Ohio R.C. Chapter 718. in accordance with the limitations of Ohio R.C. Chapter 718. These ordinances are~~ **This Chapter is adopted with the intent to conform to ORC Ohio R.C. Chapter 718., and is deemed to incorporate the provisions of ORC Chapter 718.** ~~and all other Ohio Revised Codes that govern municipal tax matters in effect 1-1-2016.~~

~~(a)~~ **(b) Purpose:** To provide funds for the purposes of capital improvements, general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities of the City, there shall be and is hereby levied an annual tax levied on every person residing in or earning or receiving municipal taxable income in the City of Xenia. "Person" includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity. **The City shall tax income at a uniform rate.**

(c) **Applicability:**

(1) Xenia's Chapter 881., and corresponding changes to ORC Chapter 718. Apply to municipal taxable years beginning on or after January 1, 2016. All provisions of this Chapter 881. Apply to taxable years beginning 2016 and succeeding taxable years is ~~in effect for all returns and payments due for tax year 2016 and beyond.~~

(2) (d) Enactment of this Chapter 881. does not repeal the existing sections of Xenia's Chapter 880. for any taxable year prior to 2016. For municipal taxable years beginning before January 1, 2016, the City shall continue to administer, audit and enforce the income tax of the City under Chapter 880., ORC Chapter 718., and ordinances and resolutions of the City as those ORC Chapters, ordinances and resolutions existed before January 1, 2016 is in effect for all returns and payments due for tax years prior to 2016.

(d) Rate of Tax: The rate of tax on income and the withholding tax established by this Chapter shall be two and one-quarter percent (2.25%), and shall continue at that rate until amended or repealed, as established by Ordinance 10-27, which was approved by the voters on November 2, 2010, and became effective on January 1, 2011

881.02 IMPOSITION OF DIRECT TAX.

The annual tax for the purposes specified in Section 881.01 shall be imposed on and after January 1, 2016, for tax year 2016 and beyond, at the rate of two and one-quarter percent (2.25%) per annum on taxable income for every person residing in or earning or receiving income in the City of Xenia, and that the tax shall be measured by municipal taxable income as defined in **ORC Ohio R.C. Chapter 718.** ~~This is a continuation of the tax rate in effect 1-1-2011 in Xenia Chapter 880.~~

881.03 IMPOSITION OF WITHHOLDING TAX.

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

Filing and payment requirements/deadlines for withholding businesses” (Article VIII), of the Income Tax Rules and Regulations ~~effective 1-1-2016. This is a continuation of the tax rate in effect 1-1-2011 in Xenia Chapter 880.~~

881.04 MUNICIPAL TAXABLE INCOME.

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

(b) **City Resident:** For an individual who is a resident of the City of Xenia, income reduced by income exempted, and increased by deductions excluded. Exempt income and deductions excluded are covered in the Xenia Income Tax Rules and Regulations ~~effective 1-1-2016~~. No loss carryforwards are permitted prior to tax year 2018. Loss carryforwards for tax years 2018 and beyond are covered in the Xenia Income Tax Rules and Regulations ~~effective 1-1-2016~~.

(c) **Non-Resident:** For an individual who is a non-resident of the City of Xenia, income reduced by exempt income to the extent otherwise included in the income and then, as applicable, apportioned situated to the City of Xenia under ~~ORC Ohio R.C.~~ 718.02. No loss carryforwards are permitted prior to tax year 2018. Loss carryforwards for tax years 2018 and beyond are covered in the Xenia Income Tax Rules and Regulations ~~effective 1-1-2016~~.

(d) **Individual:** In computing the City of Xenia taxable income of a taxpayer who is an individual, the taxpayer may subtract **federal** 2106 expenses if the appropriate documentation is provided and the allowable deduction is reduced by **two percent (2%)** ~~2 percent~~ of the total City taxable income. **Federal** 2106 deductions are covered in the Xenia Income Tax Rules and Regulations ~~effective 1-1-2016~~.

881.05 EFFECTIVE PERIOD.

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

(b) **Fiscal Year:** Where the fiscal year of the business, profession or other activity differs from the calendar year, the tax shall be applied to that part of the annual net profits for the fiscal year as shall be earned and accrued or received on and after January 1, 2016.

881.06 RETURN AND PAYMENT OF TAX.

(a) **Mandatory Filing:** On or before the date prescribed by ~~ORC Ohio R.C.~~ Chapter 718, every person and business entity subject to City of Xenia income tax shall, except as provided in the exceptions below, make and file with the Accounts Receivable Division an annual return on the form provided by the City of Xenia or a generic city income tax form, whether or not tax is due. This process is also known as mandatory filing. Additional rules related to the forms and other documentation required to be filed are included in the Xenia Income Tax Rules and Regulations ~~effective 1-1-2016~~.

(b) **Withholding Employers:** Withholding employers (in addition to any return required to be filed with respect to their own earnings or net profits) shall, on or before the date specified in the Income Tax Rules and Regulations, make a return and pay, to City of Xenia Income Tax Division, the full amount of the tax so deducted or withheld with respect to qualifying wages paid all of their employees subject to the tax under **this Chapter** ~~the Ordinance~~. Additional rules related to form and payment deadlines are included in the Xenia Income Tax Rules and Regulations ~~effective 1-1-2016~~.

881.07 TAXPAYER'S RIGHTS AND RESPONSIBILITIES.

“Taxpayer's rights and responsibilities” means the rights provided to taxpayers in ORC Ohio R.C. 718.11, 718.12, 718.19, 718.23, 718.36, 718.37, 5717.011 and 5717.03 and the responsibilities of taxpayers to file, report, withhold, remit and pay City of Xenia income taxes and otherwise comply with ORC Ohio R.C. Chapter 718, Xenia Ordinances and the Xenia Income Tax Rules and Regulations. The Xenia Income Tax Rules and Regulations ~~effective 1-1-2016~~ define the delinquent processes for both direct and withholding accounts along with the process for taxpayers to protest or appeal any decision of the Tax Administrator.

881.08 INTEREST AND PENALTIES.

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

(b) **Interest:** Interest for unpaid balances shall be applied as defined in the Xenia Income Tax Rules and Regulations.

881.09 COLLECTION OF UNPAID TAXES; REFUND OF OVERPAYMENTS.

(a) **Collections:** Collection of unpaid sums will follow the rules defined in the Xenia Income Tax Rules and Regulations ~~effective 1-1-2016~~.

(b) **Refunds:** Refunds of overpayments will follow the rules defined in the Xenia Income Tax Rules and Regulations ~~effective 1-1-2016~~. Where the total amount due or refund claimed for a tax year is less than ten dollars (\$10.00), such amount shall not be collected or refunded.

881.10 VIOLATIONS; STATUTE OF LIMITATIONS.

(a) **Limitations:** Actions upon violations of ORC Ohio R.C. Chapter 718 or the Xenia Ordinances or the Xenia Income Tax Rules and Regulations will be made in accordance with the limitations imposed under ORC Ohio R.C. 718.12. The Xenia Income Tax Rules and Regulations ~~effective 1-1-2016~~ define the delinquent processes for both direct and withholding accounts along with the penalties for noncompliance.

(b) **Violations:** No person shall:

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

881.11 ALLOCATION OF FUNDS.

The funds collected under the provisions of this Chapter shall be allocated in such manner as prescribed by ordinances and policies adopted by the City Council.

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

(a) **Reciprocity on Income:** Where a resident of the City of Xenia is subject to a municipal tax or joint economic development district tax (JEDD), on or measured by income, in another municipality or JEDD either located within or without the State of Ohio, he shall receive credit of the tax paid, not to exceed one and one-half percent (1.5%) against the tax imposed by this Chapter, of the earnings taxed by such municipality or JEDD with the exception of the Xenia Township - City of Xenia JEDD-1 tax. Residents of Xenia shall receive a credit of not to exceed two and one-quarter percent (2.25%) of the earnings taxed by the Xenia Township - City of Xenia JEDD-1 against the tax imposed by this Chapter.

(b) **Reciprocity on Other Compensation:** Resident individuals of the City of Xenia who are required to pay and do pay a tax to another municipality or joint economic development district tax (JEDD) on qualifying wages, commissions or other compensation, for work done or services performed in such other municipality, may claim a credit of the amount of tax paid by them or on their behalf to such other municipality or JEDD but not to exceed one and one-half percent (1.5%) of such income earned and taxed by the other municipality or JEDD with the exception of the Xenia Township - City of Xenia JEDD-1 tax. Credit for taxes paid to the Xenia Township - City of Xenia JEDD-1 shall not exceed two and one-quarter (2.25%) of the income taxed by the Xenia Township - City of Xenia JEDD-1.

(c) **Credits:** If tax or withholding is paid to a municipal corporation on taxable income, and if a second municipal corporation imposes a tax on that taxable income after the time period allowed for a refund of the tax or withholding paid to the first municipal corporation, the second municipal corporation shall allow a nonrefundable credit, against the tax or withholding the second municipality claims is due with respect to such taxable income, equal to the tax or withholding paid to the first municipal corporation with respect to such taxable income. If the tax rate in the second municipal corporation is less than the tax rate in the first municipal corporation, then the credit shall be calculated using the tax rate in effect in the second municipal corporation.

(d) **Rules and Regulations:** Additional information about credits is included in the Xenia Income Tax Rules and Regulations ~~effective 1-1-2016~~.

881.13 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.

(a) **Levy and Collection of Tax:** This Chapter shall continue effective, insofar as the levy of taxes and the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this Chapter are concerned, until all of such taxes levied hereunder are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this Chapter have been fully terminated, subject to the limitations contained in Sections 881.09 and 881.10 **of this Chapter**.

(b) **Returns:** Annual returns due for all (or any part of) the last effective year of this Chapter shall be due on the date provided in **ORC** ~~Ohio R.C.~~ Chapter 718 as though the same were continuing.

881.14 RULES AND REGULATIONS.

The provisions of the Rules and Regulations referred to in this Chapter, known officially as the Xenia Income Tax Rules and Regulations, ~~dated effective 1-1-2016~~, are hereby approved, adopted and incorporated herein by reference and made a part of this Chapter along with any supplements or amendments thereto hereafter approved by the City Council by **ordinance, resolution, or administrative**

motion. The Rules and Regulations applicable to each tax year shall govern the application and administration of rules and regulations for that tax year. The Tax Administrator is directed to carry out the administration of his or her office in conformity with the provisions of this Chapter, ORC Ohio R.C. Chapter 718 and the Xenia Income Tax Rules and Regulations.

881.15 RETURNS FILED PURSUANT TO OPT-IN PROVISIONS OF ORC CHAPTER 718.
SEPARABILITY

(a) Election to Opt-In to State System: Certain taxpayers may elect to be subject to ORC 718.80 to 718.95, in lieu of the provisions set forth in the City of Xenia's Income Tax Rules and Regulations, when eligible to do so under State statute. The State Tax Commissioner shall administer the tax pursuant to ORC 718.80 to 718.95 and any applicable provision of ORC Chapter 5703.

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

~~If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal, invalid or not permissible under Ohio R.C. Chapter 718, effective 1-1-2016, such unconstitutionality, illegality or invalidity shall affect only such sentence, clause, section or part of this chapter and shall not affect or impair any of the remaining sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of the City Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.~~

881.16 INCOME TAX REBATE PROGRAM.

(a) Eligibility: Where a qualifying non-retail business is subject to the provisions of Section 881.03 of this Chapter (Imposition of Withholding Tax) it may be eligible for the City Income Tax Rebate Program. Qualifying businesses will be non-retail businesses including, but not limited to, manufacturing, distribution, research and development, or technology firms. The incentive program is available to qualifying new businesses or qualifying existing businesses.

(b) Rebate Program:

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

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

881.17 **[RESERVED]**
PENALTY.

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

~~(b) The refusal to produce books, papers, records and copies of federal income tax returns, or the refusal to submit to such examination, by any employer or person subject or presumed to be subject to the tax, or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Accounts Receivable Division authorized hereby, shall be deemed to be in violation of this chapter guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six months, or both, for each offense. Each disclosure shall constitute a separate offense.~~

881.98 SEVERABILITY.

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

881.99 PENALTIES.

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

(b) The refusal to produce books, papers, records and copies of federal income tax returns, or the refusal to submit to such examination, by any employer or person subject or presumed to be subject to the tax, or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Accounts Receivable Division authorized hereby, shall be deemed to be in violation of this chapter guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six (6) months, or both, for each offense. Each disclosure shall constitute a separate offense.