

TEMPORARY ORDINANCE NO. 3-18

PERMANENT ORDINANCE NO. _____

AN ORDINANCE TO ~~AMEND AND~~ **REPEAL AND** REPLACE LANCASTER CODIFIED ORDINANCE PART ONE – ADMINISTRATIVE CODE, TITLE NINE – TAXATION, **AND TO ESTABLISH A NEW CHAPTER 183** ~~CHAPTER 182~~ OF THE CODIFIED ORDINANCES OF THE CITY OF LANCASTER, ~~AND TO REPEAL EXISTING PART ONE – ADMINISTRATIVE CODE, TITLE NINE – TAXATION, CHAPTER 182~~ AND TO DECLARE AN EMERGENCY

WHEREAS, House Bill (H.B.) 49 of the 132nd General Assembly, the State’s general appropriations bill for the biennium, includes uncodified 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, on December 21, 2017, Judge David Cain of the Franklin County Court of Common Pleas issued an order in Franklin County Common Pleas Case Number 2017 CV 10258 extending the deadline set by Section 803.100 of H.B. 49 to February 24, 2018; and

WHEREAS, on February 12 and 13, 2018, Judge Cain held a hearing on the motion for preliminary injunction made by the coalition of municipalities challenging H.B. 49’s municipal income tax provisions, and the Judge stated his intention to issue a decision prior to February 24, 2018; and

WHEREAS, Judge Cain issued a Final Judgment Entry on February 21, 2018 denying preliminary injunction and ruling in favor of Defendants on all claims. Plaintiffs intend to appeal the decision of the trial court to the Tenth District Court of Appeals; 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 City of Lancaster, Ohio nevertheless is now compelled to adopt H.B. 49’s municipal income tax provisions immediately 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 City of Lancaster, Ohio remains a party to the ongoing litigation seeking a declaration that 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

WHEREAS, the City of Lancaster, Ohio, 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 City of Lancaster, Ohio is participating, and reserves its right to continue prosecution of that lawsuit;

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO:

SECTION 1. That Part One – Administrative Code, Title Nine - Taxation, ~~Chapter 182~~ be repealed ~~amended~~ and replaced **and establish a new Chapter 183** pursuant to Exhibit “A” attached hereto and incorporated by reference herein, for tax years starting on or after January 1, 2018.

~~SECTION 2. That existing Part One – Administrative Code, Title Nine – Taxation, Chapter 182 is repealed in its entirety.~~

~~SECTION 3. That, more specifically, sections 182.24 through 182.39 inclusive of Chapter 182 of the Codified Ordinances of the City of Lancaster, Ohio shall hereby be enacted to read as set forth in Exhibit A of this Ordinance, attached hereto and incorporated by reference herein, for tax years starting on or after January 1, 2018.~~

SECTION 4.2. That the City of Lancaster, Ohio 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 in Case Number 2017 CV 10258 in the Franklin County Court of Common Pleas, and that the City of Lancaster, Ohio 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 of Lancaster, Ohio therein.

SECTION 5.3. That this Ordinance is declared to be emergency legislation, necessary for the immediate preservation of the public peace, health, and safety, which shall be effective upon passage, such emergency arising from the coercive provisions of law found in H.B. 49 and Section 718.04(A) of the Ohio Revised Code and the need for the City of Lancaster, Ohio to preserve its taxing authority in the event that the H.B. 49 municipal income tax provisions and Section 718.04(A) of the Ohio Revised Code are not declared to be unconstitutional.

SECTION 6.4. That the Council hereby finds that this Ordinance was deliberated upon and passed in open meetings in compliance with Section 121.22 of the Ohio Revised Code.

SECTION 7.5. That if any provision of the H.B 49 municipal income tax provisions is found unconstitutional, or is stayed or enjoined, that the provisions adopted in Section 1 and Section 3 of this Ordinance shall likewise be stayed.

Passed: _____ after _____ reading. Vote: Yeas _____ Nays _____

Approved: _____

President of Council

Clerk: _____

Mayor

Offered by: _____

Second by: _____

Requested by Finance Committee

CHAPTER 1823
Municipal Income Tax Effective January 1, 2016~~18~~

- 1823.01 Authority to levy tax; purposes of tax; rate.
- 1823.011 Authority to levy tax.
- 1823.012 Purposes of tax; rate.
- 1823.013 Allocation of funds.
- 1823.014 Statement of procedural history; state mandated changes to Municipal income tax.
- 1823.02 Effective date.
- 1823.03 Definitions.
- 1823.04 Income subject to tax for individuals.
- 1823.041 Determining Municipal taxable income for individuals.
- 1823.042 Domicile.
- 1823.043 Exemption for member or employee of General Assembly and certain judges.
- 1823.05 Collection at source.
- 1823.051 Collection at source; withholding from qualifying wages.
- 1823.052 Collection at source; occasional entrant.
- 1823.053 Collection at source; casino and VLT.
- 1823.054 Collection of unpaid taxes and refunds of overpayments.
- 1823.06 Income subject to net profit tax.
- 1823.061 Determining Municipal taxable income for taxpayers who are not individuals.
- 1823.062 Net profit; income subject to net profit tax; alternative apportionment.
- 1823.063 Consolidated Federal Income Tax return.
- 1823.064 Tax credit for businesses that foster new jobs in Ohio.
- 1823.065 Tax credits to foster job retention.
- 1823.07 Declaration of estimated tax.
- 1823.08 Credit for tax paid.
- 1823.081 Credit for tax paid to another municipality.
- 1823.082 Refundable credit for qualifying loss.
- 1823.083 Credit for person working in Joint Economic Development District or Zone.
- 1823.084 Credit for tax beyond statute for obtaining refund.
- 1823.09 Annual return.
- 1823.091 Return and payment of tax.
- 1823.092 Return and payment of tax; individuals serving in combat zone.
- 1823.093 Use of Ohio Business Gateway; types of filings authorized.
- 1823.094 Extension of time to file.
- 1823.095 Amended returns.
- 1823.096 Refunds.
- 1823.10 Penalty, interest, fees and charges.
- 1823.11 Audit.
- 1823.12 Rounding.
- 1823.13 Authority and powers of the Tax Administrator.
- 1823.131 Authority of Tax Administrator; administrative powers of the Tax Administrator.
- 1823.132 Authority of Tax Administrator; compromise of claim and payment over time.
- 1823.133 Authority of Tax Administrator; right to examine.

<p>1823.134 Authority of Tax Administrator; requiring identifying information.</p> <p>1823.14 Confidentiality.</p> <p>1823.15 Fraud.</p> <p>1823.16 Opinion of the Tax Administrator.</p> <p>1823.17 Assessment; appeal based on presumption of delivery.</p> <p>1823.18 Local Board of Tax Review; appeal to Local Board of Tax Review.</p>	<p>1823.19 Actions to recover; statute of limitations.</p> <p>1823.20 Adoption of rules.</p> <p>1823.21 Registration of tenants, contractors and employees.</p> <p>1823.22 Municipal contracts.</p> <p>1823.23 Taxpayers' rights and responsibilities.</p> <p>1823.97 Collection after termination of chapter.</p> <p>1823.98 Savings clause.</p> <p>1823.99 Violations; penalty.</p>
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CROSS REFERENCES

Power to levy - see Ohio Const., Art. XII, §8
Payroll deductions - see Ohio R.C. 9.42
Municipal income taxes - see Ohio R.C. Ch. 718
City Income Tax Department control - see ADM. 121.01

1823.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.

1823.011 AUTHORITY TO LEVY TAX.

(A) The tax on income and the withholding tax established by this Chapter **1823** are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax on income and the withholding tax established by this Chapter **1823** are deemed to be levied in accordance with, and to be consistent with, the provisions and limitations of Ohio Revised Code 718 (ORC 718). This Chapter is deemed to incorporate the provisions of ORC 718.

(B) The tax is an annual tax levied on the income of every person residing in or earning or receiving income in the municipal corporation, and shall be measured by municipal taxable income. The Municipality shall tax income at a uniform rate. The tax is levied on Municipal Taxable Income, as defined herein.
(Ord. 17-15. Passed 11-23-15.)

1823.012 PURPOSES OF TAX; RATE.

(A) To provide funds for the purpose of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the City of Lancaster, Ohio, there shall be, and is hereby, levied a tax on salaries, wages, commissions and other compensation, and on net profits as hereinafter provided.

(B) Rate of tax is one and three-quarters percent 1.75%
(Ord. 17-15. Passed 11-23-15.)

1823.013 ALLOCATION OF FUNDS.

(A) To provide funds for the purposes of operating, maintaining, repairing and providing capital facilities for municipal park and recreational activities and facilities, there should be and is hereby levied an annual tax, in addition to the tax levied by Section 1823.011, and any other section imposing a tax on earnings and income, for the period January 1, 2018 through December 31, 2022 upon those classes of earnings and income set forth in Section 1823.011 at the rate of one and one-half tenths of one percent (0.15%).
(Ord. 1-17. Passed 5-22-17.)

(B) Of the total imposed tax of 1.6%, forty-five hundredths of one percent (0.45%) is to provide funds for the purpose of operating, maintaining, repairing and providing capital facilities for the Fire and Police Departments of the City.

(C) To provide funds for the purpose of providing fire services within the City and acquiring equipment for such services and paying principal and interest on securities issued and public obligations incurred to finance such equipment, there is levied an additional tax of one and one-half tenths of one percent (.15%) upon those classes of salaries, wages, commissions, net profits and other compensation set forth in Section 1823.011 effective July 1, 2005.

(D) For the period beginning July 1, 2005, and continuing thereafter, the balance of those funds shall be used for the following purposes and in the respective percentages:
General Fund 96%
Parks Bond Retirement Fund 1%
Cemetery Fund 1%
Law Enforcement Building Fund 2%
(Ord. 17-15. Passed 11-23-15.)

1823.014 STATEMENT OF PROCEDURAL HISTORY; STATE MANDATED CHANGES TO MUNICIPAL INCOME TAX.

(A) Significant and wide-ranging amendments to ORC 718 were enacted by Am Sub HB 5 49, passed by the 130th and General Assembly, and signed by Governor Kasich on ~~December 19, 2014, and HB 5~~ required municipal corporations to conform to and adopt the provisions of ORC 718 in order to have the authority to impose, enforce, administer and collect a municipal income tax.

(B) As mandated by HB 5 49, municipal income tax Temporary Ordinance No. ~~22-15~~ 3-18 and Permanent Ordinance ~~17-15~~, effective January 1, 201~~6~~8, comprehensively amends Chapter 18~~4~~2 in accordance with the provisions of ORC 718 to allow the Municipality to continue the income tax and withholding tax administration and collection efforts on behalf of the Municipality. (Ord. 17-15. Passed 11-23-15.)

1823.02 EFFECTIVE DATE.

(A) Temporary Ordinance No. ~~22-15~~ 3-18 and Permanent Ordinance ~~17-15~~, effective January 1, 201~~6~~8, and corresponding changes to ORC 718, apply to municipal taxable years beginning on or after January 1, 201~~6~~8. All provisions of this Chapter 1823 apply to taxable years beginning 201~~6~~8 and succeeding taxable years.

(B) Temporary Ordinance No. ~~22-15~~ 3-18 and Permanent Ordinance ~~17-15~~ does not repeal the existing sections of Chapter 181 for any taxable year prior to 2016, and Chapter 182 for taxable years 2016 and 2017 but rather amends Chapter 181 and 182 effective January 1, 2016. For municipal taxable years beginning before January 1, 2016, the Municipality shall continue to administer, audit, and enforce the income tax of the Municipality under ORC 718 and ordinances and resolutions of the Municipality as ~~that~~ those chapters and those ordinances and resolutions existed before January 1, 2016. (Ord. 17-15. Passed 11-23-15.)

1823.03 DEFINITIONS.

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 Title LVII of the Revised Code, unless a different meaning is clearly required. If Except as provided in section 183.25 of the Codified Ordinances, 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 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 control over the use of the term in Title LVII of the Revised Code.

For purposes of this Section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

As Except as otherwise provided in section 183.25 of the Codified Ordinances, 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 23(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 per cent of intangible income deducted under division (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)
 - (i) Except as provided in division (1)(D)(ii) 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;
 - (ii) Division (1)(D)(i) 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 section 4313.02 of the Ohio Revised Code;
- (H)
 - (i) Except as limited by divisions (1)(H)(ii), (iii) and (iv) 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.
 - (ii) No person shall use the deduction allowed by division (1)(H) 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, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty per cent of the amount of the deduction otherwise allowed by division (1)(H)(i) of this section.
 - (b) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (1)(H)(i) of this section.
 - (iv) Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (1)(H) of this section.
 - (v) Nothing in division (1)(H)(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 (1)(H)(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 (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 (1)(H)(iii)(a) of this section shall apply to the amount carried forward.

- (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 division (E)(3)(b) of Section ~~1823~~.063 of this Chapter.
- (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 division (E)(3)(b) of Section ~~1823~~.063 of this Chapter.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (47)(B) of this section, is not a publicly traded partnership that has made the election described in division (23)(D) 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 (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 any of the following:
 - (i) 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;
 - (ii) A full or partial denial of a refund request issued under Section 181.096 (B)(2) of this Chapter;
 - (iii) A Tax Administrator's denial of a taxpayer's request for use of an alternative apportionment method, issued under Section ~~1823~~.062(B)(2) of this Chapter; or
 - (iv) A Tax Administrator's requirement for a taxpayer to use an alternative apportionment method, issued under Section ~~1823~~.062(B)(3) of this Chapter.
 - (v) For purposes of division (2)(A)(i), (ii), (iii) and (iv) of this Section, an assessment shall commence the person's time limitation for

making an appeal to the Local Board of Tax Review pursuant to Section ~~1823~~.18 of this Chapter, and shall have "ASSESSMENT" written in all capital letters at the top of such finding.

- (B) **"ASSESSMENT"** does not include notice(s) denying a request for refund issued under Section ~~1823~~.096 (B)(3) of this Chapter, 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 (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 REVIEW"** has same meaning as "Local Board of Tax Review".
- (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 section 3772.01 of the Ohio Revised Code.
- (7) **"CERTIFIED MAIL," "EXPRESS MAIL," "UNITED STATES MAIL," "POSTAL SERVICE,"** and similar terms include any delivery service authorized pursuant to section 5703.056 of the Ohio Revised Code.
- (8) **"COMPENSATION"** means any form of remuneration paid to an employee for personal services.
- (9) **"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.
- (10) **"DOMICILE"** means the true, fixed and permanent home of the taxpayer to which, whenever absent, the taxpayer intends to return.
- (11) **"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)
 - (i) Except as provided in division (11)(B)(ii) of this section, intangible income;
 - (ii) A municipal corporation that taxed any type of intangible income on March 29, 1988, pursuant to Section 3 of S.B. 238 of the 116th general assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 voted in favor thereof at an election held on November 8, 1988.
 - (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 (11)(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 section 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars for the taxable year. Such compensation in excess of one thousand dollars 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) Awards for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages;
- (I) Income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Ohio Revised Code. Division (11)(I) of this section does not apply for purposes of Chapter 5745. of the Ohio Revised Code.
- (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 (34) 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) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue

Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code

- (O) A portion of the municipal taxable income earned by individuals or a class of individuals under eighteen years of age, specifically exempting fifteen years and younger.
- (P)
 - (i) Except as provided in divisions (11)(P)(ii), (iii), and (iv) of this section, qualifying wages described in division (B)(1) or (E) of Section ~~1823~~.052 of this Chapter to the extent the qualifying wages are not subject to withholding for the Municipality under either of those divisions.
 - (ii) The exemption provided in division (11)(P)(i) 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.
 - (iii) The exemption provided in division (11)(P)(i) of this section does not apply to qualifying wages that an employer elects to withhold under division (D)(2) of Section ~~1823~~.052 of this Chapter
 - (iv) The exemption provided in division (11)(P)(i) of this section does not apply to qualifying wages if both of the following conditions apply:
 - (a) For qualifying wages described in division (B)(1) of Section ~~1823~~.052 of this Chapter, 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 division (E) of Section ~~1823~~.052 of this Chapter, 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 (11)(P)(iv)(a) of this section on the basis of the employee not performing services in that municipal corporation.
- (Q)
 - (i) Except as provided in division (11)(Q)(ii) or (iii) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the Municipality on not more than twenty days in a taxable year.
 - (ii) The exemption provided in division (11)(Q)(i) of this section does not apply under either of the following circumstances:
 - (a) The individual's base of operation is located in the Municipality.
 - (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 (11)(Q)(ii)(b) of this

section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section ~~1823~~.052 of this Chapter.

- (iii) Compensation to which division (11)(Q) 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.
- (iv) For purposes of division (11)(Q) 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.
- (R) 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 section 709.023 of the Ohio Revised Code 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.
- (S) 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 (11) 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.
- (T) Any gains or losses from federal form 4797 and definitely no deduction against any other sources of income including income from W2 wages, income or losses from federal schedule C, E or F and any other type of income.
- (12) "**FORM 2106**" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
- (13) "**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, including a request for refund.
- (14) "**INCOME**" means the following:
 - (A) (i) 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 (23)(D) of this section.

- (ii) For the purposes of division (14)(A)(i) 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 (14)(A)(iv) 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.
 - (iii) Division (14)(A)(ii) 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' distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division 11(N) of this Section.
 - (iv) 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 Municipality, 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. Credit for tax withheld

or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in Section ~~1823~~.081 of this Chapter.

- (15) **"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, trade names, 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.
- (16) **"INTERNAL REVENUE CODE"** means the "Internal Revenue Code of 1986," 100 Sta. 2085, 26 U.S.C.A. 1, as amended.
- (17) **"LIMITED LIABILITY COMPANY"** means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.
- (18) **"LOCAL BOARD OF TAX REVIEW"** and **"BOARD OF TAX REVIEW"** means the entity created under Section ~~1823~~.18 of this Chapter.
- (19) **"MUNICIPAL CORPORATION"** means, in general terms, a status conferred upon a local government unit, by state law giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic development district or joint economic development zone that levies an income tax under section 715.691, 715.70, 715.71, or 715.74 of the Ohio Revised Code.
- (20) (A) **"MUNICIPAL TAXABLE INCOME"** means the following:
 - (i) 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 situated to the Municipality under Section ~~1823~~.062 of this Chapter, ~~and further~~ as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the Municipality.
 - (ii) (a) For an individual who is a resident of a Municipality other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (20)(B) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the Municipality.
 - (b) For an individual who is a resident of a qualified municipal corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the qualified municipal corporation from the qualified municipal corporation's tax on or before December 31, 2013. If a qualified municipal corporation, on or before December 31, 2013, exempts income earned by individuals