



ORDINANCE 2023-35

AN ORDINANCE TO AMEND CHAPTER 182 OF THE CITY'S CODIFIED ORDINANCES AND DECLARING AN EMERGENCY.

WHEREAS, the General Assembly comprehensively reviewed and amended Chapter 718 of the Ohio Revised Code by enacting HB 33 in 2023, and mandated that municipal income tax codes be amended by January 1, 2024 such that any income or withholding tax is "levied in accordance with the provisions and limitations specified in [Chapter 718]"; and


WHEREAS, upon a detailed review of HB 33, and the Codified Ordinances of the City of Powell, this Ordinance is found and determined by this Council to enact the amendments required to be in accord with the provisions and limitations specified in Chapter 718 of the Revised Code.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF POWELL, COUNTY OF DELAWARE, STATE OF OHIO, AS FOLLOWS:

Section 1: That Chapter 182 of the City of Powell's Codified Ordinances be amended as provided in Exhibit A.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings so open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.

Section 3: That this ordinance is declared to be an emergency measure necessary to provide for the public peace, safety, health and welfare of the City, and for the further reason that such action is necessary to be implemented by January 1, 2024, and as such will be in full force and effect immediately upon its passage.

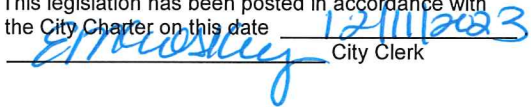


Daniel Swartwout
Mayor
12/5/2023
Date



Elaine McCloskey
City Clerk
12/5/2023
Date

EFFECTIVE DATE: December 5, 2023

This legislation has been posted in accordance with the City Charter on this date 12/11/2023


Elaine McCloskey
City Clerk

Exhibit A

182.062 NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX; ALTERNATIVE APPORTIONMENT.

This section applies to any taxpayer engaged in a business or profession in the Municipality unless the taxpayer is an individual who resides in the Municipality or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under Chapter 5745 of the Ohio Revised Code.

- (a) Except as otherwise provided in division (i) of this section, ~~Net-net~~ profit from a business or profession conducted both within and without the boundaries of the Municipality shall be considered as having a taxable situs in the Municipality for purposes of municipal income taxation in the same proportion as the average ratio of the following:
- (1) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the Municipality during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.
As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;
 - (2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the Municipality to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under Section 182.052 of this chapter;
 - (3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the Municipality to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.
- (b) (1) If the apportionment factors described in subsection (a) of this section do not fairly represent the extent of a taxpayer's business activity in the Municipality, the taxpayer may request, or the Tax Administrator of the Municipality may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:
- A. Separate accounting;
 - B. The exclusion of one or more of the factors;
 - C. The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the Municipality;
 - D. A modification of one or more of the factors.
- (2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by subsection 182.19(a) of this chapter.
- (3) A Tax Administrator may require a taxpayer to use an alternative apportionment method as described in subsection (b)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by subsection 182.19(a) of this chapter.

-
- (4) Nothing in subsection (b) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by a Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.
- (c) As used in subsection (a)(2) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:
- (1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
 - A. The employer;
 - B. A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
 - C. A vendor, customer, client, or patient of a person described in subsection (c)(1)B. of this section, or a related member of such a vendor, customer, client, or patient.
 - (2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;
 - (3) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in subsection (c)(1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If a Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.
- (d) For the purposes of subsection (a)(3) of this section, and except as provided in division (i) of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:
- (1) Gross receipts from the sale of tangible personal property shall be situated to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in a municipal corporation if, regardless of where title passes, the property meets any of the following criteria:
 - A. The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.
 - B. The property is delivered within the municipal corporation from a location outside the municipal corporation, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.
 - C. The property is shipped from a place within the municipal corporation to purchasers outside the municipal corporation, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.
 - (2) Gross receipts from the sale of services shall be situated to the municipal corporation to the extent that such services are performed in the municipal corporation.
 - (3) To the extent included in income, gross receipts from the sale of real property located in the municipal corporation shall be situated to the municipal corporation.

-
- (4) To the extent included in income, gross receipts from rents and royalties from real property located in the municipal corporation shall be situated to the municipal corporation.
 - (5) Gross receipts from rents and royalties from tangible personal property shall be situated to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.
 - (e) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual or by a disregarded entity owned by the individual shall be subject to tax only by the municipal corporation in which the property generating the net profit is located and the municipal corporation in which the individual taxpayer that receives the net profit resides.

A municipal corporation shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.

- (f) (1) Except as provided in subsection (f)(2) of this section, commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to a municipal corporation based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the municipal corporation to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
- (2) An individual who is a resident of a municipal corporation that imposes a municipal income tax shall report the individual's net profit from all real estate activity on the individual's annual tax return for that municipal corporation. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such credit is allowed under Section 182.081 of this chapter.
- (g) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under subsections (11)L. and (34)A.(iv) of Section 182.03 of this chapter, by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to a municipal corporation under this section.

- (h) When calculating the ratios described in subsection (a) of this section for the purposes of that subsection or subsection (b) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

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

(A) "Qualifying remote employee or owner" means an individual who is an employee of a taxpayer or who is a partner or member holding an ownership interest in a taxpayer that is treated as a partnership for federal income tax purposes, provided that the individual meets both of the following criteria:

(i) The taxpayer has assigned the individual to a qualifying reporting location.

(ii) The individual is permitted or required to perform services for the taxpayer at a qualifying remote work location.

(B) "Qualifying remote work location" means a permanent or temporary location at which an employee or owner chooses or is required to perform services for the taxpayer, other than a reporting location of the taxpayer or any other location owned or controlled by a customer or client of the taxpayer. "Qualifying remote work location" may include the residence of an employee or owner and may be located outside of a municipal corporation that imposes an income tax in accordance with this chapter. An employee or owner may have more than one qualifying remote work location during a taxable year.

(C) "Reporting location" means either of the following:

(i) A permanent or temporary place of doing business, such as an office, warehouse, storefront, construction site, or similar location, that is owned or controlled directly or indirectly by the taxpayer;

(ii) Any location in this state owned or controlled by a customer or client of the taxpayer, provided that the taxpayer is required to withhold taxes under Section (d) of this chapter, on qualifying wages paid to an employee for the performance of personal services at that location.

(D) "Qualifying reporting location" means one of the following:

(i) The reporting location in this state at which an employee or owner performs services for the taxpayer on a regular or periodic basis during the taxable year;

(ii) If no reporting location exists in this state for an employee or owner under division (G)(1)(d)(i) of this section, the reporting location in this state at which the employee's or owner's supervisor regularly or periodically reports during the taxable year;

(iii) If no reporting location exists in this state for an employee or owner under division (G)(1)(d)(i) or (ii) of this section, the location that the taxpayer otherwise assigns as the employee's or owner's qualifying reporting location, provided the assignment is made in good faith and is recorded and maintained in the taxpayer's business records. A taxpayer may change the qualifying reporting location designated for an employee or owner under this division at any time.

(2) For tax years ending on or after December 31, 2023, a taxpayer may elect to apply the provisions of this division to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of division (F) of this section apply to such apportionment except as otherwise provided in this division.

A taxpayer shall make the election allowed under this division in writing on or with the taxpayer's net profit return or, if applicable, a timely filed amended net profit return or a timely filed appeal of an assessment. The election applies to the taxable year for which that return or appeal is filed and for all subsequent taxable years, until the taxpayer revokes the election.

The taxpayer shall make the initial election with the tax administrator of each municipal corporation with which, after applying the apportionment provisions authorized in this division, the taxpayer is required to file a net profit tax return for that taxable year. A taxpayer shall not be required to notify the tax administrator of a municipal corporation in which a qualifying remote employee's or owner's qualifying remote work location is located, unless the taxpayer is otherwise required to file a net profit return with that municipal corporation due to business operations that are unrelated to the employee's or owner's activity at the qualifying remote work location.

After the taxpayer makes the initial election, the election applies to every municipal corporation in which the taxpayer conducts business. The taxpayer shall not be required to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in such municipal corporation.

Nothing in this division prohibits a taxpayer from making a new election under this division after properly revoking a prior election.

(3) For the purpose of calculating the ratios described in division (F)(1) of this section, all of the following apply to a taxpayer that has made the election described in division (G)(2):

-
- (a) For the purpose of division (F)(1)(a) of this section, the average original cost of any tangible personal property used by a qualifying remote employee or owner at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.
- (b) For the purpose of division (F)(1)(b) of this section, any wages, salaries, and other compensation paid during the taxable period to a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.
- (c) For the purpose of division (F)(1)(c) of this section, and notwithstanding division (F)(4) of this section, any gross receipts of the business or profession from services performed during the taxable period by a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.
- (4) Nothing in this division prevents a taxpayer from requesting, or a tax administrator from requiring, that the taxpayer use, with respect to all or a portion of the income of the taxpayer, an alternative apportionment method as described in division (F)(2) of this section. However, a tax administrator shall not require an alternative apportionment method in such a manner that it would require a taxpayer to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in that municipal corporation.
- (5) Except as otherwise provided in this division, nothing in this division is intended to affect the withholding of taxes on qualifying wages pursuant to Section (d) of this chapter.

(Ord. No. 2015-49, 10-20-2015)

182.094 EXTENSION OF TIME TO FILE.

- (a) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates.
- (b) Any taxpayer that qualifies for an automatic federal extension for a period other than six months for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as that of the extended federal income tax return. For tax years ending on or after January 1, 2023, the extended due date of the City's income tax return for a taxpayer that is not an individual shall be the 15th day of the eleventh month after the last day of the taxable year to which the return relates.
- (c) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the tax administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the request is received by the tax administrator on or before the date the municipal income tax return is due, the tax administrator shall grant the taxpayer's requested extension.
- (d) An extension of time to file under this chapter is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.
- (e) If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of Section 5747.08 of the Ohio Revised Code, a taxpayer shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as the extended due date of the state income tax return.
- (f) If a taxpayer receives an extension for the filing of a municipal income tax return under this section, the tax administrator shall not make any inquiry or send any notice to the taxpayer with regard to the return on or

before the date the taxpayer files the return or on or before the extended due date to file the return, whichever occurs first.

If a tax administrator files section (f), the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to \$150.

This division does not apply to an extension received under section (b) of this division if the tax administrator has actual knowledge that the taxpayer failed to file for a federal extension as required to receive the extension under section (b) of this division or failed to file for an extension under this division.

(Ord. No. 2015-49, 10-20-2015)

182.10 PENALTY, INTEREST, FEES, AND CHARGES.

(a) As used in this section:

- (1) *Applicable law* means this chapter, the resolutions, ordinances, codes, directives, instructions, and rules adopted by the Municipality provided such resolutions, ordinances, codes, directives, instructions, and rules impose or directly or indirectly address the levy, payment, remittance, or filing requirements of a municipal income tax.
- (2) *Federal short-term rate* means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under Section 1274 of the Internal Revenue Code, for July of the current year.
- (3) *Income tax, estimated income tax, and withholding tax* mean any income tax, estimated income tax, and withholding tax imposed by a municipal corporation pursuant to applicable law, including at any time before January 1, 2016.
- (4) *Interest rate as described in subsection (a) of this section* means the federal short-term rate, rounded to the nearest whole number percent, plus five percent. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance with subsection (a)(2) of this section.
- (5) *Return* includes any tax return, report, reconciliation, schedule, and other document required to be filed with a Tax Administrator or municipal corporation by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.
- (6) *Unpaid estimated income tax* means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.
- (7) *Unpaid income tax* means income tax due but not paid by the date the income tax is required to be paid under applicable law.
- (8) *Unpaid withholding tax* means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.
- (9) *Withholding tax* includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee's qualifying wages.

(b) (1) This section shall apply to the following:

- A. Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;
- B. Income tax, estimated income tax, and withholding tax required to be paid or remitted to the Municipality on or after January 1, 2016 for taxable years beginning on or after January 1, 2016;

-
- (2) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the ordinances or rules, as adopted from time to time before January 1, 2016 of this Municipality.
- (c) The Municipality shall impose on a taxpayer, employer, any agent of the employer, and any other payer, and will attempt to collect, the interest amounts and penalties prescribed in this section when the taxpayer, employer, any agent of the employer, or any other payer for any reason fails, in whole or in part, to make to the Municipality timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the Municipality any return required to be filed.
- (1) Interest shall be imposed at the rate defined as "interest rate as described in subsection (a) of this section," per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month.
- (2) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to 15 percent of the amount not timely paid shall be imposed.
- (3) With respect to any unpaid withholding tax, a penalty equal to 50 percent of the amount not timely paid shall be imposed.
- (4) (a) For tax years ending on or before December 31, 2023, With-with respect to returns other than estimated income tax returns, the Municipality shall impose a monthly penalty of \$25.00 for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed a total of \$150.00 in assessed penalty for each failure to timely file a return.
- (b) For tax years ending on or after January 1, 2023, with respect to returns other than estimated income tax returns, the City shall impose a penalty not exceeding \$25 for each failure to timely file each return, regardless of the liability shown thereon, except that the City shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.
- (d) With respect to income taxes, estimated income taxes, withholding taxes, and returns, the Municipality shall not impose, seek to collect, or collect any penalty, amount of interest, charges or additional fees not described in this section.
- (e) With respect to income taxes, estimated income taxes, withholding taxes, and returns, the Municipality shall not refund or credit any penalty, amount of interest, charges, or additional fees that were properly imposed or collected before January 1, 2016.
- (f) The Tax Administrator may, in the Tax Administrator's sole discretion, abate or partially abate penalties or interest imposed under this section when the Tax Administrator deems such abatement or partial abatement to be appropriate. Such abatement or partial abatement shall be properly documented and maintained on the record of the taxpayer who received benefit of such abatement or partial abatement.
- (g) The Municipality shall impose on the taxpayer, employer, any agent of the employer, or any other payer the Municipality's post-judgment collection costs and fees, including attorney's fees.

(Ord. No. 2015-49, 10-20-2015)

182.76 ELECTION TO BE SUBJECT TO R.C. 718.80 TO 718.95

- (a) The City hereby adopts and incorporates herein by reference Sections 718.80 to 718.95 of the Ohio Revised Code for tax years beginning on or after January 1, 2018.
- (b) A taxpayer, as defined in division (c) of this section, may elect to be subject to Sections 718.80 to 718.95 of the Ohio Revised Code in lieu of the provisions of this Ordinance.
- (c) “Taxpayer” has the same meaning as in section 718.01 of the Ohio Revised Code, except that “taxpayer” does not include natural persons or entities subject to the tax imposed under Chapter 5745 of the Ohio Revised Code. “Taxpayer” may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 33
135th General Assembly

Final Analysis

[Click here for LSC's fiscal analyses of H.B. 33](#)

Primary Sponsor: Rep. Edwards

Effective date: Operating appropriations effective July 4, 2023. Most other provisions effective October 3, 2023. Some provisions effective on other dates. Contains item vetoes.

Amanda Goodman, Attorney
Samuel Duling, Research Analyst, and LSC staff

REVISED VERSION*

SUMMARY

This analysis is arranged by state agency in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item. There is a chapter addressing changes to various boards and commissions.

Separate segments at the end address items affecting local government, revisions to the 9-1-1 emergency service law, revisions to adjudication procedures under the Administrative Procedure Act (R.C. Chapter 119), which apply across state government, and authority for state agencies to make electronic notifications and conduct meetings by electronic means.

The analysis concludes with a note on effective dates, expiration, and other administrative matters.

Within each agency and category, a summary of the items appears first (in the form of dot points) followed by a more detailed discussion.

* This version corrects the description of the act's abolishment of the State Adoption Assistance Loan Fund (page 369). It also revises the discussion of the partial veto in the act's ODM doula program provisions (page 439).

cap on the federal deduction for state and local taxes. It also requires OAGI, for purposes of the credit, to be calculated by first deducting the business income deduction described above.

In other words, for purposes of the resident income tax credit for taxes paid to other states, the act includes taxes paid to those states on account of the resident taxpayer's ownership of a PTE that paid taxes to the other jurisdiction on behalf of the taxpayer, either as part of a composite return or as part of a tax designed to avoid the \$10,000 state and local tax deduction cap. But, the tax liability against which that credit is applied is first reduced because it is calculated with an OAGI that has been reduced by the business income deduction.

The act applies these changes to taxable years ending on or after January 1, 2023. Taxpayers may, however, apply them to taxable years ending on or after January 1, 2022, by filing an amended or original return for that year.

Eliminate quarterly employer reconciliation return

(R.C. 5747.07 and 5747.072; Section 803.60)

The act removes the requirement that employers who withhold and remit employee income taxes on a partial weekly basis, i.e., two times in a single week, file quarterly withholding reconciliation returns. Instead, these employers will only be required to file the annual reconciliation returns required for other employers under continuing law starting on January 1, 2024. Reconciliation returns allow an employer to calculate and pay any required employee withholding that was not remitted in the preceding period.

Under continuing law, employers are required to remit employee withholding on a partial weekly basis if they withhold and accumulate a significant amount of it. Employers with smaller accumulated withholding may remit it monthly or quarterly.

Municipal income taxes

Exemption for minors' income

(R.C. 718.01(C)(15); Section 803.10)

The act requires municipal corporations to exempt the income of individuals under 18 years of age from municipal income taxation. The exemption applies to taxable years beginning on or after January 1, 2024. Under prior law, only municipal corporations that authorized such an exemption before 2016 were authorized to grant such an exemption.

Net operating loss deduction cross-reference

(R.C. 718.01; Section 803.10)

The act corrects an erroneous cross-reference in the municipal income tax law governing the deduction of net operating loss (NOL). From 2018-2022, a business was allowed to deduct 50% of its NOL from its taxable net profits. Beginning in 2023, the 50% limitation is discontinued and a business may deduct the full amount of its NOL. The act's correction clarifies that the 50% limitation ceases to apply in 2023. The act requires municipalities that levy an income tax to incorporate this cross-reference change into their municipal tax ordinances and apply it to taxable years beginning in 2023.

Net profits apportionment for remote employees

(R.C. 718.02, 718.021, 718.82, and 718.821; R.C. 718.021 (718.17); Section 803.240)

Under continuing law, municipal corporations may impose an income tax on the net profit of businesses operating within their jurisdictions. When determining the portion of a business' total net profit that is taxable by a particular municipality, the business uses a three-factor formula based on the business' payroll, sales, and property.

The act allows businesses with employees who work remotely to use a modified version of this apportionment formula. Instead of apportioning the payroll earned, sales made, or property used by a remote employee to that employee's remote work location, the employer may instead apportion those amounts to a designated "reporting location." This alternative is available both to businesses that file returns with municipal tax administrators and businesses that elect to file a single return covering all municipal corporations with the Tax Commissioner.

Under continuing law, an employee's payroll is generally only included in the existing apportionment formula if the employee performs services at a location "owned, controlled, or used by, rented to, or under the possession of" the employer, or a vendor or customer of the employer.

Designating a reporting location

To use the act's modified apportionment formula, the business must assign a remote employee to a designated reporting location, which is any location owned or controlled by the employer or, in some circumstances, by a customer of the employer.¹⁶⁰ An employee's designated reporting location will be (a) the location at which the employee works on a regular or periodic basis, (b) if no such location exists, the location at which the employee's supervisor works on a regular or periodic basis, or (c) if neither such locations exist, any reporting location designated by the employer, provided that the designation is made in good faith and is reflected in the employer's business records.

A business can change a remote employee's designated reporting location at any time. If the business is a pass-through entity, e.g., a partnership or LLC, it can also designate a reporting location for any of its equity owners who work remotely.

Election

A business that wishes to use the act's modified apportionment formula must make an election to do so with each municipality in which it is required to file a net profits tax return or, if the business has elected to file a single return with the Tax Commissioner, with the Commissioner. The election can be made on the business' net profit return, timely filed amended return, or a timely filed appeal of an assessment. Once the election is made, it applies to each municipality in which the business operates and to all future taxable years, until it is revoked.

¹⁶⁰ A customer location qualifies only if it is located in a municipality to which the employer is required to withhold income taxes on employee wages, due to one or more employees providing services at that location. R.C. 718.021(A)(3)(b).

Application of continuing formula and effective date

Aside from the apportionment of payroll, sales, and property attributable to remote employees, all other aspects of continuing law's apportionment formula will continue to apply to a business that makes the election allowed under the act. The business can still request to use an alternative apportionment method, as under the continuing apportionment formula, although the act specifies that the business cannot be compelled to use an alternative method that would require it to file a return with a municipality solely because an employee is working remotely in that municipality.

The act applies to taxable years ending on or after December 31, 2023.

Prohibited inquiries and notices

(R.C. 718.05 and 718.85; Section 803.100)

The act limits when a municipal tax administrator or the Tax Commissioner may make inquiries or send notices to taxpayers whose income tax filing deadline has been extended. Under continuing law, taxpayers generally report and remit municipal income tax to municipal tax administrators, but a business that owes taxes on its net profits may elect to report and remit municipal net profits taxes to TAX, which then disperses payments to each municipality to which such tax is owed.

Under continuing law, the due date of a taxpayer's municipal income tax return, whether filed with a municipality or the Tax Commissioner, may be extended under various circumstances, including any of the following:

- The taxpayer has requested an extension of the deadline to file the taxpayer's federal income tax return.
- The taxpayer has requested an extension of the deadline to file the taxpayer's municipal income tax return from the municipal tax administrator or Commissioner.
- The Commissioner extends the state income tax filing deadline for all taxpayers.

When a taxpayer receives an extension, the act prohibits a municipal tax administrator or the Commissioner from sending any inquiry or notice regarding the municipal return until after either the taxpayer files the return or the extended due date passes. If a tax administrator sends a prohibited inquiry or notice, the municipality must reimburse the taxpayer for any reasonable costs incurred in responding to it, up to \$150.

The act's new limitations apply to taxable years ending on or after January 1, 2023. The limitations do not apply, and a municipal tax administrator or the Commissioner may send an otherwise prohibited inquiry or notice, if either has actual knowledge that the taxpayer did not actually file for a federal or municipal income tax extension.

Penalty limitations

(R.C. 718.27 and 718.89; Section 803.100)

The act limits the penalty a municipal corporation or the Tax Commissioner may impose for the failure to timely file a municipal income tax return. Previously, a municipal corporation

could impose a penalty of \$25 for each month a taxpayer failed to file a required income tax or withholding return, up to \$150 for each return. The Commissioner could impose the same monthly penalty on those unfiled returns as well as on unfiled estimated tax declarations. The act reduces these penalties to a one-time \$25 penalty. The act also exempts a taxpayer's first failure to timely file from the penalty, requiring the municipal corporation or Commissioner to either refund or abate the penalty after the taxpayer files the late return. These changes also apply to taxable years ending on or after January 1, 2023.

Extension for businesses

(R.C. 718.05(G)(2) and 718.85(D)(1); Section 803.100)

The act provides an additional, automatic one-month filing extension for municipal income tax returns where a business entity has received a six-month federal extension, bringing the full duration of the extension to seven months beginning in taxable years ending on or after January 1, 2023. The previous extended deadline for individuals and business entities was the same as the extended federal deadline.

Net profits tax reports and notifications

(R.C. 718.80 and 718.84; Section 803.80)

Under continuing law, a business that operates in multiple municipalities, and is therefore subject to multiple municipal income taxes, may elect to have TAX serve as the sole administrator for those taxes. For electing taxpayers, a single municipal net profit tax return is filed through the Ohio Business Gateway for processing by TAX, which handles all administrative functions for those returns, including distributing payments to the municipalities, billing, assessment, collections, audits, and appeals. The act modifies, as described below, the reporting and notification requirements associated with this state-administered municipal net profits tax.

TAX's municipal income tax report

The act requires that twice a year, in May and December, TAX provide information to municipalities on any businesses that had net profits apportioned to the municipality, as reported to TAX, in the preceding five or seven months only, as applicable. (Net profits apportionable to the municipality, e.g., earned in the municipality, are generally subject to the municipality's income tax.) Under prior law, this twice-per-year notification, which had been done in May and November, was required to list information for businesses that had net profits apportioned to the municipality in any prior year. This change applies to reports required to be filed after October 3, 2023.

Rate decrease notification

Under continuing law, by January 31 of each year, a municipal corporation levying an income tax must certify the rate of the tax to TAX. If the municipality increases the rate after that date, the municipality must notify TAX of the increase at least 60 days before it goes into effect. The act requires a municipality to notify TAX, within the same 60-day notice period, when there is any change in its municipal income tax rate, including a decrease.